



THE LEGAL DOCUMENTS THAT COMPRISE AN ESTATE PLAN

Once you have determined what your estate plan should be, you will need to memorialize it in writing. Several different documents will be required to effectuate your wishes. The essential documents are explained below. Additional documents may be necessary depending on the complexity of your estate and your estate planning goals.

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A WILL OR LIVING TRUST WITH A POUR OVER WILL

These are the foundation documents of the estate plan. For probate avoidance, you may prefer a living trust in combination with a will to dispose of property that doesn't pass through the trust. If probate avoidance is not a goal (or is accomplished through other devices), then a will may be sufficient. These documents will allow you to designate how your property is to be distributed on your death.

In a will, you can name a guardian to care for your minor children in the event of your death or loss of capacity. A will may also state who will handle your children's assets, including those you bequeath to them. In addition, in a will, you can designate your executor, the person you entrust to implement your wishes that are outlined in the will.

If your family or financial situation requires more sophisticated estate planning, then a trust may be appropriate for you. A revocable living trust contains your instructions concerning three significant time periods in your life. They are:

1. The time during which you are alive and well;
2. The time at which you lose mental capacity (should that occur); and
3. The time after your death.

In a trust, you can name a trustee to oversee the distribution of trust property on your death and to manage the trust property should you become incapacitated.

If you decide to establish a living trust, then your will can function as a pour-over will. A pour-over will states that any assets that were not placed into your revocable living trust should be moved there upon your death. It designates your trust as the beneficiary of any assets that it does not currently hold, and that do not go directly to a beneficiary through another method, such as a beneficiary designation on an investment account.

However, any of your assets that are not transferred to a trust prior to your death will be subject to probate even if they are placed in trust after your death through a pour-over will. In the event you do not fund some assets into your trust, and you neglect to establish a pour-over will, your assets will pass to your heirs in accordance with the laws of intestate succession. Therefore, your assets could go to someone from whom you have been estranged for years merely because you are closely related.

A DURABLE POWER OF ATTORNEY (Also Called a Financial Power of Attorney)

This document allows you to name a person to manage your financial affairs if you become unable to do so. Your financial power of attorney will be responsible for paying your bills and managing your investments and financial matters. These duties should be carried out by someone you consider to be trustworthy.

A HEALTH CARE POWER OF ATTORNEY (Also Called a Health Care Proxy)

With this document, you appoint a person to make health care decisions for you if you become unable to make them for yourself. These decisions can include consenting to surgery, checking you into a nursing home or hospital, obtaining your medical records, and terminating life sustaining treatment. Your health care power of attorney will be communicating with your physician, and carrying out your wishes with respect to different types of treatment.

A LIVING WILL (Also Called an Advance Directive)

A living will, or advance health care directive, allows you to prepare for events concerning your health that could occur due to illness, an accident or other reasons that render you incapable of making medical decisions. The directive may include your instructions as to the type and extent of medical care you wish to receive including life support. A living will may also contain your directions with respect to the administration of medications for pain or infections.

BENEFICIARY DESIGNATIONS

Certain assets, such as retirement plans, investment accounts, and life insurance proceeds pass by beneficiary designation. Wills do not automatically apply to these assets. The beneficiaries you designate have priority over those named in a will. However, you can make your will apply to these assets by the wording you use on the designation, which may be advisable in some circumstances.

For example, if your minor children are named as beneficiaries of a life insurance policy, they will receive the policy proceeds outright instead of in the trust you established for them in your will. This could result in a costly court proceeding to receive and manage the funds. To leave such assets in trust for them, you must name “the trustee named in my will” as the beneficiary.

You should review your current beneficiary designations with your estate planning attorney to ensure they are in alignment with your overall estate plan and your wishes and that they are worded correctly.

ESTATE PLANNING IS ONGOING

Remember that estate planning is not a one-time event. Once you have your initial plan and documents in place, you and your estate planning attorney will need to review them periodically. Changes in the law and significant life events, such as marriage, divorce, re-marriage, or the birth of a child or grandchild, may alter your goals and require changes to your estate planning documents.