



# Common Estate Planning Techniques

Estate planning involves many considerations: asset transfer, incapacity protection, health care decisions, guardianship concerns for minor children, and the list can go on and on. The following is a brief summary of some of the common tools and techniques to address these various estate planning needs. There is no “one size fits all” estate plan.

These summaries are provided to help you familiarize yourself with the most common tools utilized to address the most common planning needs. Be sure to work with your estate planning attorney and tax professionals to customize a plan to meet your needs.



## Asset Transfer

### Jointly Held Asset Titling

How an asset is titled can affect how it may transfer upon death. There are two primary ways to title jointly held property (with some special types of titling for married people not discussed here):

#### **JTWROS** - Joint Tenants With Rights Of

**Survivorship:** Each joint owner has an undivided proportionate ownership interest in the asset. When one owner dies, his or her share immediately vests to the surviving owners without the involvement of probate.

**JTIC** - Joint Tenants in Common: Each joint owner has an undivided proportionate ownership interest in the asset. However, when one owner dies, their proportionate share passes to their probate estate to be distributed per that process.

**TOD/POD:** *Transfer on Death/Payable on Death:* A contract between the client and the entity holding the assets (such as Benjamin F. Edwards). This arrangement allows the holding firm to distribute assets held in its accounts as directed by the account owner directly to the beneficiaries upon the account owner's death without having to go through the probate process.

**Beneficiary Designation:** Works similarly to the TOD/POD process. This is usually found in retirement planning situations (IRAs, 401(k)s, etc.) and insurance products. Per the beneficiary designations the assets pass directly to the parties named at the death of the account owner and do so without going through the probate process.

**Will:** A legal document created to direct the probate court how assets are to be distributed. A will also stipulates the party to be responsible for



## Estate Strategies

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administering the probate estate (called a Personal Representative or Executor). Guardians for minor children or dependents are also named in a will. A will only applies to assets that pass through probate. Therefore, assets passing via JTWRROS, TOD, beneficiary designation, trust, etc. would not be controlled by a will.

**Trust:** A legal arrangement where the creator/grantor of the trust transfers assets to a fiduciary called a trustee. The trustee then has the duty to hold assets pursuant to the trust document terms on behalf of the beneficiaries of the trust. These three separate parties, the grantor, trustee and beneficiary, can all be the same person or could be three different entities. Trusts are used for estate planning in many different ways and trusts typically provide the most options and flexibility in meeting legacy goals. Also, since a trust is a legal entity, assets held in trust do not have to pass through the probate process generally.

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### What is Probate?

Probate is the process to pass clear title for assets not otherwise legally transferred to others (either via a TOD, beneficiary designation, trust, etc.). This typically means individually titled assets.

The assets are “probated” in that the probate court ensures the deceased person’s debts and taxes are paid, and thereafter any remaining assets are re-registered with clear title to the new owners.

While probate court has the benefit of judicial oversight and administration, it is often cumbersome, time-consuming and costly. Moreover, probate matters are public record.

**Intestacy:** Dying “intestate” or in a state of “intestacy” means that an individual has died without a will and assets are passing via the probate process. Without directions via a will, the probate court will use default state law statutes to determine where probate assets shall pass. The assets typically pass to the surviving spouse and/or blood relatives of some degree and in varying amounts depending on the specific state rules.

### Incapacity Planning

**Financial power of attorney:** A legal document granting enumerated financial powers to another person, known as the “agent” or “attorney-in-fact”. The powers granted can be very narrow or extremely broad depending on the need. Powers of attorney are usually either “durable” (meaning the power is granted to the agent immediately and the agent’s authority survives any eventual incapacity of the grantor) or “springing” (meaning some action, typically a doctor declaring the grantor to be incapacitated, must occur before the agent has authority to act). Most planners use durable powers of attorney to allow swift transitions of responsibilities when necessary.

**Living Trusts:** A trust created during one’s lifetime, also known as a revocable trust or grantor trust, that has provisions for the care of the grantor should the grantor become incapacitated. The assets held by the trust would then fall to the control of the successor trustee who could use those assets to care for the incapacitated grantor per the trust’s terms.

### Health care/medical power of attorney:

Simply, these are similar to a financial power of attorney, only for health care decisions. These legal documents grant enumerated health care decision



## Estate Strategies

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making powers to the agent. Again, these powers can be broad or narrow and may be durable or springing, though durable powers are more common.

**Living will/health care directive:** Generally, a document stipulating one's wishes for the use or denial of certain medical treatments if they are terminally ill or permanently unconscious. These documents typically only become controlling after mental incapacity.

**Custodianships/Conservatorships:** For individuals that are incapacitated or are minors and a plan hasn't been proactively created for this situation, court involvement is required. For minors, the term is called a custodianship, and for adults who are incapacitated, the term is called a conservatorship. These situations typically require someone to petition the court on behalf of the incapacitated person. If approved, the court will then assume oversight of the person's affairs and appoint a custodian/conservator to manage the day-to-day activities on behalf of the incapacitated person. This is often a slow and expensive process, is a matter of public record, and the court controls allowable spending and sometimes investment strategies.

### Keep Your Balance

There are an immeasurable number of other estate planning techniques that vary in complexity. For more on a few of these issues for those with

potentially larger estates, please refer to the *Here We Go Again* article available from your financial advisor. Regardless of net worth, though, more often than not any estate planning technique comes with tradeoffs. For example, TODs/beneficiary designations are simple to implement and can avoid the costs of probate. However, such techniques only come into play at death, have no incapacity protection built into them, and provide little ability to control the beneficiary's use of the assets upon inheritance.

On the other hand, trusts can often provide more options for control coupled with incapacity protection and probate avoidance. Then again, trusts involve the need for an estate planning attorney, the retitling of assets, etc., all of which typically creates higher costs and more complexity than TODs/beneficiary designations. These ongoing tradeoffs occur with nearly any estate planning technique.

Because of this you must balance your competing goals to formulate the right plan for you. You must balance your retirement spending goals with your desire to leave a legacy to your beneficiaries. You must balance the desire to control your legacy to your beneficiaries with the costs and potential complexity necessary to implement techniques to achieve that control. To help find the right balance for you, work with your financial advisor, and your legal and tax professionals to create and implement a plan that meets your legacy goals.

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