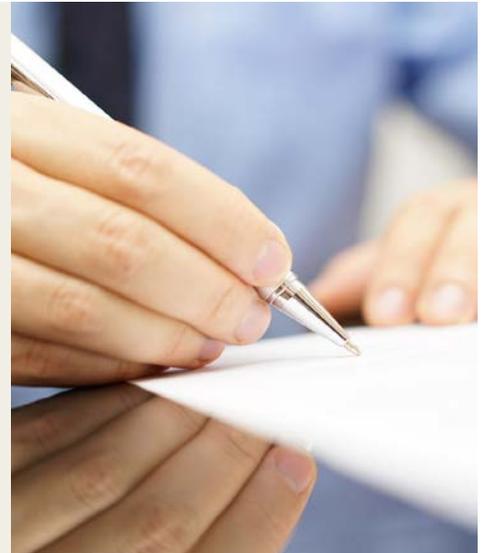


# Essential Estate Planning Documents

Many think “estate planning” is only for the wealthy. However, most people, regardless of wealth, have an idea of how they would like their assets to be divided in the event of death or who they would prefer to make decisions for them in the event of their incapacity.

This desire for control is the true purpose for estate planning, but many of us haven’t implemented anything to put these goals into place.



Knowing people’s propensity to fail to plan for these events, each state has created an estate plan for us to control what happens if we have not proactively made these decisions. The question becomes: do you want your own plan for who will receive your assets, who will make medical decisions for you, and who will care for your minor or dependent children; or do you want the plan provided by your state’s law. Most would rather make these personal decisions themselves.

There are certain basic estate planning documents that enable us to more easily transition assets upon our death and help manage our financial and health care decisions in the event that we are unable to do so. For those with larger estates, these documents can also provide significant tax planning to efficiently pass your wealth to your beneficiaries.

Perhaps most important, these documents usually are able to be changed at any time. Therefore, when life events, tax laws, or any other unforeseen incidents arise, you can review the new circumstances and make any necessary modifications to your plan.

## **Whether you know it or not, you already have a plan**

Without a proactive estate plan, decisions regarding your health, the care of your children, and your assets will be controlled by your state’s law and the courts.

There are five basic planning documents that can help formalize your wishes while you are alive as well as after your death.

## Estate Strategies

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### Will

A will is the first thing most of us think of when we consider estate planning documents. A will provides instructions for distributing your assets upon your death. It also can contain other important instructions such as listing the guardian for any minor children or dependents. When drafting your will, you appoint a person to carry out your instructions upon your death, known as a personal representative or executor. These responsibilities are handled via the probate process.

Probate is a public court process whereby the court oversees the administration of your estate, including how to distribute your assets. Your will directs the court where assets should pass and who you've selected as personal representative. Without a will state law will dictate these decisions.

Importantly, a will provides no incapacity protection, and the will only applies to assets that pass through probate. Therefore, the will would not apply to assets passing via transfer on death, beneficiary designation, trust, etc. Avoidance of this probate process is a common reason some individuals also consider having a revocable living trust.

### Revocable Living Trust

A revocable living trust is a legal arrangement in which the creator/grantor of the trust transfers assets to a fiduciary, known as the trustee. The trustee has the duty to hold assets per the terms of the trust document on behalf of the named trust beneficiaries. These three separate parties: the grantor, the trustee and the beneficiary, are usually the same person in a revocable living trust. The trust also provides instructions for what should happen with the trust assets upon the incapacity and/or

death of the grantor of the trust and will name a successor trustee to manage the trust affairs at that time. The trust is considered a legal entity, and assets become titled in the trust. Because the terms of the trust can stipulate the distribution of assets, the trust avoids the need for the probate process. Lastly, as long as the grantor of the trust remains alive and competent, the grantor can change or revoke the terms of the trust at any time. Revocable living trust planning is becoming the common estate planning tool for many individuals.

### Why should I consider using a professional trustee?

A professional trustee, also known as a corporate trustee, is usually a trust company or financial institution. There are a number of reasons why you might consider using a professional trustee. Even if you have family members who could serve as trustee, you may want to avoid burdening them with this responsibility. A corporate professional trustee will provide prudent, non-biased investment and trust management with a staff of trained specialists. A corporate trustee also offers a more permanent solution than an individual trustee.

### Durable Power of Attorney

A durable power of attorney is a document where you name another person or persons to act on your behalf in the event of certain circumstances, such as your incapacity. This person is called your agent or attorney-in-fact. This document allows your agent to act on financial, legal and administrative matters if you are unable to make these decisions for yourself. A durable power of attorney can enable your family members to manage your affairs without having to go to the probate court to have someone appointed

## Estate Strategies

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to do so. The durable power of attorney typically does not control assets titled in a revocable living trust, and the rights of your attorney-in-fact to act on your behalf terminate at your death.

### Health Care Power of Attorney

A durable health care power of attorney authorizes someone to make medical decisions for you in the event of your incapacity. This document is sometimes used in conjunction with a living will to help avoid confusion and delay when making medical decisions.

### Living Will

A living will, also known as a health care directive, lists your intentions with regards to the use of life-sustaining measures should you become unable to communicate these desires and are threatened with a serious illness or medical condition. This document indicates your wishes rather than naming an agent to make decisions for you as in the power of attorney documents. A living will is oftentimes a companion document to a health care power of attorney.

### Talk to Your Financial Advisor

Depending on your situation, you may not need all of these documents or you may benefit from additional strategies. Beginning to consider these concepts may seem like an overwhelming endeavor, but your advisors, such as your Benjamin F. Edwards financial advisor, along with your attorney and CPA, can assist you in determining what is best for you and your family. The first step is to review where you are

today. You should prepare a net worth statement which lists all of your assets and liabilities, including how assets are titled and noting whether there are beneficiary designations on those assets.

#### What else do I need to do?

You will also need to make sure your assets are titled properly and, if appropriate, that they have the correct beneficiaries on record. For instance, make sure the beneficiaries on your retirement plans, annuity, insurance and IRAs are coordinated with the wishes that you indicated in your other documents.

Your financial advisor can help you prepare this document. You should also review any previously drafted estate planning documents. By organizing these items, you can identify whether your current plan meets your legacy goals, or if it's time to update the plan.

### The Most Important Part - Review

The only thing certain in life is change. Remember that once you have your documents in place, you may still need to update them due to changes in your personal circumstances or the law. You should also periodically review these issues with your financial advisor, your CPA and your attorney to better ensure your strategy remains aligned with your goals, keeping you in control of your legacy planning. ■

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