

Basic Estate Planning Documents

Presented by Will Berigan

Although many of us don't like to think about planning for a future that we won't be around to experience, a well-thought-out estate plan helps us manage and preserve assets during life and conserve and direct the distribution of assets at death.

Basic estate planning is for everyone. Through an estate plan, you have a say in the "how, when, and to whom" your assets are transferred, in addition to achieving your own specific tax and non-tax planning goals.

Essential Estate Planning Documents

Core estate planning documents generally include:

- Durable power of attorney (POA) for financial matters
- Health care POA (and/or a living will)
- Will
- Trust agreement (depending on your specific situation)

[Read this 7 point checklist for your Estate Plan](#)

Durable POA. This document allows you to authorize someone, called an *agent*, to handle your financial matters if you were to become incapacitated. Without a durable POA, your family members would have to institute legal proceedings and request a probate court to appoint a guardian to carry out these responsibilities. By addressing the possibility of incapacity in advance through a durable POA, you and your family can avoid the expense and potential hassle of the probate process.

Health care documents. With a **health care POA**, you authorize an agent to handle your health care needs in a manner consistent with your intentions in the event of your incapacity. This includes permission for the agent to authorize actions regarding the continuation of life support, nutrition, and hydration, as well as to deal with general health care decisions that may arise.

Some states authorize a secondary health care document, typically called a **living will**. It works in conjunction with a health care POA, authorizing your health care providers to take specific action in the event that there is no reasonable hope of your recovery. It also serves an important function if the agent or other individuals you named in your health care POA are unable to decide on whether to continue life-sustaining treatment for you.

Will. A will allows you to direct who will receive your property upon your death and under what circumstances. It also enables you to direct the payment of estate administration expenses and taxes and nominate an executor to handle these matters. Even more important, it allows you to designate a guardian for your minor children.

Trust. With a trust, you can plan for the management of assets during your life, if you become incapacitated, and upon your death. A trust can also help minimize potential federal or state estate taxes. Trusts come in two general forms: **testamentary trusts**, which are funded at death, and **living trusts**, which are funded during your lifetime. Generally revocable, a living trust is the centerpiece of a well-rounded estate plan. When a living trust is established, the process of distributing assets at the time of death will not be subject to the jurisdiction and oversight of the probate court.

Estate Planning Benefits

Your well-thought-out estate plan can help:

- Provide financial security for your family
- Ensure that your property will be preserved and passed on to beneficiaries
- Mitigate or avoid disputes among family members
- Minimize estate taxes and other administrative costs
- Ensure competent management of your property in the case of incapacity
- Enable you to provide for a favorite charity

Other Considerations

A will governs only probate property; a trust governs only assets owned by the trust. In addition, some assets pass outside of probate by virtue of a beneficiary designation or the manner in which title is held. Therefore, it is important for you and your financial advisor to review the ownership and/or beneficiary designation of these assets to be sure that they will be distributed according to your wishes upon death. These assets include:

- Jointly held property
- Life insurance proceeds
- Retirement benefits
- Employee death benefits
- Retirement plan proceeds

[Read this End of Life Planning checklist](#)

Your financial advisor can coordinate efforts with your attorney and tax preparer in creating an estate plan that suits your needs and purposes and helps achieve your financial and personal goals.

This material has been provided for general informational purposes only and does not constitute either tax or legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a tax preparer, professional tax advisor, or lawyer.



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A 7-Point Checklist for Your Estate Plan

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When it comes to estate planning, executing your will and other estate documents is only the first step. To help ensure that your estate plan stays in tune with your goals and needs, it's important to review and update it on an ongoing basis. Working with your financial advisor and attorney, use this checklist as a starting point to keep your estate plan in good shape.

1. **Check trust funding.** Trusts are often used to preserve privacy, minimize estate taxes or administration expenses, or transfer assets to beneficiaries according to specific wishes. If you have executed a trust, consult with your attorney and financial advisor to determine which assets should be owned by your trust or should have the trust named as a beneficiary. Keep in mind that assets not owned by the trust will not be subject to its provisions.
2. **Account for any life changes.** Have you experienced personal or financial changes since you executed your estate documents—for instance, the arrival of a new family member or a significant increase in assets? If so, be sure to update your documents to reflect those changes and take advantage of asset protection measures, if necessary.
3. **Update beneficiary designations.** Outdated beneficiary designations can derail an estate plan. Review your designations to ensure that the correct people are named, rather than a deceased family member or ex-spouse. If your children were minors when you last reviewed your beneficiary designations, they may now be ready to receive the assets directly.
4. **Review trustee and agent appointments.** While reviewing your beneficiary designations, also reevaluate who you have appointed as executor of your estate, trustee of your trust, or as your agent under your powers of attorney for health care and finances. Are the people you named still ready to carry out your wishes? Will they be capable of administering your assets in an appropriate manner?
5. **Review provisions of powers of attorney and health care directives.** Ongoing changes to federal and state laws won't necessarily invalidate a document that's already been executed; however, such changes may limit your agent's ability to carry out his or her duties. For example, changes to privacy laws may prevent your agent from accessing pertinent medical information. To accomplish your planning goals, it may be necessary to expand your agent's authority.
6. **Prepare for the distribution of personal effects.** If your will includes directions for the distribution of your personal effects, consider informing your executor or administrator ahead of time and providing him or her with a copy of the list. Or you may wish to leave a separate list, if permitted under your state's law. In short, the person handling your estate should be aware of your wishes so that your personal items don't disappear on a first-come, first-served basis before the formal probate process begins.
7. **Understand your documents.** Ask your attorney and financial advisor as many questions as necessary to ensure that you have a clear understanding of each document in your estate plan. If it's been some time since you executed your estate plan and you can't remember something, ask again. Estate planning can be complex, but it's essential that you understand the whole process.

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End-of-Life Planning Checklist

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To ensure that your wishes are carried out after your death, end-of-life planning is essential. But when it comes to organizing your personal and financial affairs, it can be difficult to know where to start. The following checklists are designed to guide you through the planning process.

Estate Planning

- **Execute and update living wills**, durable powers of attorney (POAs), and any other documents that contain instructions for your care in the event of incapacitation. Provide copies to your physician, health care facility, and primary agents. Keep the originals in a safe place known and accessible by family members.
- **Execute and update a will** (and trust, if necessary) to direct the disposition of your assets. Keep the originals in a safe place known and accessible by family members.
- **Consider specific bequests** of personal property (e.g., family heirlooms, jewelry).
- **Consider charitable gifts.**
- **Review beneficiary designations** on assets that will transfer to a named beneficiary (e.g., retirement accounts and life insurance policies).
- **Review how property is titled** and make necessary changes.
- **Consider organ donation** or other deathbed wishes.
- **Prepare instructions to your executor** and/or family members, including a list of assets and personal records and their locations. Note the locations of safety deposit boxes, post office boxes, and safes, as well as keys and combinations.

Financial Arrangements

- **Execute durable general POAs** to authorize an agent to act on your behalf concerning financial matters.
- **Prepare a list of your advisors** and their contact information.
- **Document the location of financial records** (e.g., tax returns; bank statements; homeowner, life, and automobile insurance policies; automobile titles; and deeds).
- **Document the location of personal records** (e.g., social security card, divorce papers, birth certificate, and passport).
- **Document social security or other pension benefits** that may provide death benefits.
- **Document contact information for utilities**, repairmen, and so on.
- **Review and discuss your financial picture** with family members.

Funeral Arrangements

- **Consider preplanning and paying for burial arrangements**, including transportation. Select participants for a memorial service (e.g., officiant and pallbearers).
- **Consider helping family members assemble personal information** for an obituary.
- **Prepare a list of individuals** whom you would like to be contacted upon your death.
- **Notify family and friends of the arrangements** and any other burial wishes.

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