

Estate Planning Essentials Part 1: The Fundamentals of Estate Planning

Whether you have an existing estate plan or you are considering creating your first estate plan, it's important to understand the fundamental documents that are part of a typical estate plan and how these documents work.

Typical Estate Planning Documents

This article is intended to provide you with a broad overview of the estate planning process and to help you facilitate an estate planning discussion. While the questions are complex and sometimes difficult, thinking about them now, and discussing them with your tax attorney or advisor, could help you ensure that your wishes are honored long after your lifetime.

Your financial advisor can help you articulate your estate planning goals and help facilitate these discussions with any outside advisors.

In addition to the 5 most common estate planning documents we will highlight below, high net worth and ultra-high net worth individuals may also have various types of trusts incorporated into their estate plan.

1. Last Will and Testament
2. Revocable ("living") Trust
3. Power of Attorney for Finances
4. Health Care Proxy/Healthcare Power of Attorney
5. Living Will

What Do These Different Documents Do?

1. Last Will and Testament

Your last will and testament, usually referred to as your Will, primarily controls who will receive your assets upon your death and what conditions you apply to the individuals receiving your assets. These conditions could include age limitations, life milestones, limitations on asset use, and many other options.

Importantly, if you have minor children, your Will is the only document in which you can name guardians for them. Your Will also allows you to name who will manage your estate after you are gone; typically this is either a personal representative or executor, depending on your state. You can also name a trustee or trustees to manage any testamentary trusts you might create under your Will. It is important to note that if you use a Will as your primary estate planning vehicle, your estate will go through probate.

2. Revocable ("living") Trust

As your assets increase, most people no longer use a Will as their primary estate planning vehicle. Instead, they use a funded revocable trust to ensure that someone (a trustee) can act on their behalf should they be unable to do so themselves, or after they have passed. A major benefit of creating and funding a revocable trust during your lifetime is that it avoids probate.

Probate is the legal process by which your Will is submitted to a court so that your assets can be transferred to your beneficiaries. In many states, the probate process can be expensive, time consuming, or both. Additionally, the probate process is generally a public process, whereas the administration of a living trust is generally a private process.

3. Power of Attorney for Finances

A power of attorney for finances allows you to name an agent or agents that will have the legal right to act on your behalf in financial matters. Typically, a power of attorney for finances is intended to allow someone to act should you become incapacitated, if you are traveling or otherwise are unavailable to act yourself. Even if you have a revocable trust to facilitate investment management of your assets, you still want to have a power of attorney for finances for other functions, such as dealing with banks, the postal service, filing taxes and other day-to-day financial activities. Your power of attorney for finances ceases to function at your death, whereas a living trust continues to function after your pass away.

4. Health Care Proxy / Healthcare Power of Attorney

A health care proxy / healthcare power of attorney allows you to name an agent or agents that will have the legal right to act on your behalf in all healthcare matters, in the event that you become legally incapacitated and are unable to make your own healthcare decisions.

5. Living Will

A living will, not to be confused with a last will and testament, is simply a document that tells your medical providers what you would like to have happen in the event you can't make your own medical decision and the agent under your health care power of attorney/proxy is unavailable. Typically, a living will indicates whether you want to be resuscitated, whether you want tube feeding, blood transfusions and many other types of medical procedures. A living will is a tool to help guide your medical providers; it does not provide anyone with decision-making authority.

What Should You Be Thinking About for Your Will or Trust?

You should think about who should receive your assets upon your death, and when do you want to have an age trigger, for instance, you could plan to have the assets held in trust until your beneficiary turns 30. At 30, your beneficiary could become co-trustee of the trust, and at age 35 your beneficiary could become the sole trustee of the trust. Alternatively, you could utilize an event trigger, for example, your trustee receives 1/3 of the trust assets upon graduating from college. You could also choose for the assets to remain in trust and out of your beneficiary's control for their entire lifetime.

In addition, you may want to consider whom you wish to act as your fiduciaries, such as executors/personal representative, trustees, and guardians. These decisions can be the hardest, but often most important, because these individuals will be executing your wishes, sometimes for many years after your death. For this reason, many people create a letter of intent to accompany a Will. This letter outlines your goals and expectations for your wealth and for your beneficiaries and explains how you would have made decisions.

What are Other Essential Planning Considerations?

If your children are minors, who do you want to oversee where they live and where they go to school? (This position is typically called the guardian of the person.)

Are you concerned about giving your beneficiaries too much money at too young an age, and do you want to limit or postpone their access to money you give them through a trust?

If you decide to make gifts to beneficiaries in trust rather than outright, who will act as your trustee?

Do you want to provide primarily for your spouse and/or children, or do you want to provide for others, including but not limited to grandchildren, siblings, nieces and nephews, friends or charity?

How Often Should You Review an Estate Plan?

People often wonder how often they should review their estate plan, and while there is no firm rule, typically an estate plan should be reviewed after a major life event, a change in financial circumstances, or at minimum, every few years.

When creating an estate plan, typically you are creating a plan that is intended to be revised and changed over time. The plan usually needs minor revisions every 5 years and major revisions every 10 years; because of this, we recommend that an estate plan be designed with your present life in mind. Plan for what you would like to happen if you passed away within the next 10 years. As time passes you will revisit and change your documents as your life and circumstances change, so it's best to focus your planning on the near to mid-term.

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