

Abstract: A well-crafted, up-to-date estate plan is an imperative for everyone. It can truly help ease the burdens on your family during a difficult time. This article looks at wills, living trusts and other important documents.

Wills and living trusts: Estate planning imperatives

Well-crafted, up-to-date estate planning documents are an imperative for everyone. They also can help ease the burdens on your family during a difficult time. Two important examples: wills and living trusts.

The will

A will is a legal document that arranges for the distribution of your property after you die and allows you to designate a guardian for minor children or other dependents. It should name the executor or personal representative who'll be responsible for overseeing your estate as it goes through probate. (Probate is the court-supervised process of paying any debts and taxes and distributing your property after you die.) To be valid, a will must meet the legal requirements in your state.

If you die without a will (that is, “intestate”), the state will appoint an administrator to determine how to distribute your property based on state law. The administrator also will decide who will assume guardianship of any minor children or other dependents. Bottom line? Your assets may be distributed — and your dependents provided for — in ways that differ from what you would have wanted.

The living trust

Because probate can be time-consuming, expensive and public, you may prefer to avoid it. A living trust can help. It's a legal entity to which you, as the grantor, transfer title to your property. During your life, you can act as the trustee, maintaining control over the property in the trust. On your death, the person (such as a family member or advisor) or institution (such as a bank or trust company) you've named as the successor trustee distributes the trust assets to the beneficiaries you've named.

Assets held in a living trust avoid probate — with very limited exceptions. Another benefit is that the successor trustee can take over management of the trust assets should you become incapacitated.

Having a living trust doesn't eliminate the need for a will. For example, you can't name a guardian for minor children or other dependents in a trust. However, a “pour over” will can direct that assets you own outside the living trust be transferred to it on your death.

Other documents

There are other documents that can complement a will and living trust. A “letter of instruction,” for example, provides information that your family will need after your death. In it, you can express your desires for the memorial service, as well as the contact information for your employer, accountant and any other important advisors. (Note: It's not a legal document.)

Also consider powers of attorney. A *durable power of attorney for property* allows you to appoint someone to act on your behalf on financial matters should you become incapacitated. A *power of attorney for health care* covers medical decisions and also takes effect if you become incapacitated. The person to whom you've transferred this power — your health care agent — can make medical decisions on your behalf.

Foundational elements

These are just a few of the foundational elements of a strong estate plan. We can work with you and your attorney to address the tax issues involved.

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