

Estate Planning Tools

Wills / Last Will and Testament

Many people plan their estates by creating a document called a Last Will and Testament. A Will is essentially a legal document that lays out how you want your assets distributed at death. A Will does not control the distribution of all your assets. Joint tenancy property and life insurance proceeds both pass outside your Will. A Will does not take effect until you die so it will not assist with lifetime planning. Upon your death, your Will becomes a public document, and when filed with the Probate Court is available to anyone who wants to read it. Once your Will enters the probate process, your estate is no longer controlled by your family. It's in the hands of the court and the probate attorneys. Because a Will guarantees that your estate will go through probate, it's a very poor estate planning document for most families.

Pour Over Will

Even with the best planning, it's possible that you will own property that is inadvertently left outside your trust. In order to move that property into your trust after your death, the property must go through probate. And in order to go through probate, there must be a Will. The Pour-Over Will is a short document that basically says, "If I own property at the time of my death that is not in my trust, I want my executor to put it in the trust."

Trust

A trust is nothing more than a box with a set of instructions inside. In a more professionally stated manner: a trust is a legal entity created by a trust document executed by a person called a settlor. The trust is administered by a Trustee, which is, in the eyes of the law, a person who never dies. The initial Trustee is named in the trust document. The settlor transfers title to particular assets to the Trustee, who must use the assets according to instructions contained in the trust document. Some of those instructions tell the Trustee what to do with the property when you die. The Trustee simply distributes the property he already legally owns according to the settlor's instructions.

A trust can be created while the settlor is alive (a Living Trust) or after the settlor dies (a Testamentary Trust). If the settlor retains complete control over the trust, which includes the right to change the terms of the trust or terminate the trust altogether, the trust is revocable. In a revocable living trust, the settlor usually serves as the initial Trustee and is usually named the primary beneficiary of the trust.

Power of Attorney

When you execute a Durable Power of Attorney for Asset Management, you authorize your agent to manage your assets. There are several types of these powers:

A general power of attorney authorizes your agent to make only certain kinds of decisions or manage particular assets.

An immediately effective power of attorney allows your agent to act as soon as you execute the document, while a springing power of attorney allows your agent to act only if you become unable to make decisions yourself.

These powers of attorney are important pieces of your estate plan. If you become unable to make decisions, someone must have authority to manage your assets-or else your estate plan may fall apart. For example, say you become incapacitated and it's important to redirect your investments from growth assets to income producing assets. If no one is authorized to manage your assets, your family may find itself in cash flow difficulties.

Durable Power of Attorney for health care

The Durable Power of Attorney for Health Care document is the most important document a couple can make. Without this document you have no standing to make decisions for your partner and no ability to gain access to medical information. When you execute a Durable Power of Attorney for Health Care Decisions, you (the principal) authorize another person (the agent) to make health care decisions for you if you become unable to make those decisions yourself. You decide what powers your agent will have when you create the power of attorney. Generally, your agent will be authorized to determine which doctor treats you, which care facility you go to, whether surgery should be undertaken, and other decisions concerning your care and maintenance while you are unable to make decisions yourself. You should provide guidance on how to make difficult decisions regarding life- sustaining treatments and procedures. If you do so, your agent must make decisions based on the expressed desires.