

The new estate planning: Four essential documents

Estate planning no longer means just “making a will.” A good estate plan should protect your estate, your heirs and your own financial independence. To accomplish those goals, you may need several legal documents.

A will

Your will contains your written directions concerning the disposition of everything you own, except for assets that you have disposed of by other means. Life insurance proceeds and balances in IRAs, for example, typically pass directly to beneficiaries you have designated. Assets you have placed in joint tenancy will pass directly to the surviving joint owner(s). Fail to make a will, and the state decides for you how your assets are distributed.

By making a will, you are able to appoint an executor (personal representative) of your own choosing to settle your estate. You also may name a guardian for minor children.

Everyone needs a will. Even though living trusts are often referred to as “will substitutes,” trusts actually function in conjunction with wills, as discussed below.

A durable power of attorney

By executing a durable power of attorney, you designate someone to serve as your “attorney-in-fact” and authorize that person to make financial and business decisions for you in the event that you become disabled and are unable to make them yourself.

The financial authority that you delegate may be as broad or as narrow as you wish. In the habit of making regular annual gifts to younger members of the family in order to reduce your eventual estate taxes? If you wish your attorney-in-fact to continue your gift program, be sure the power of attorney is worded accordingly.

Sudden incapacity can strike anyone at any time. Whether you are a family breadwinner or on your own, executing a durable power of attorney is a smart idea. If you create a living trust, you may wish your attorney-in-fact to add your other assets to the trust in the event of your incapacity.

Caution: Third parties sometimes refuse to honor a durable power of attorney, especially if considerable time has passed since the power was created. To minimize the risk of such problems, reexecute your durable power of attorney on a regular basis.

A living trust

By creating a living trust for the management of your invested funds and other assets and selecting a qualified trustee, you can assure yourself of financial protection more comprehensive than that afforded by a durable power of attorney alone. Living trusts also offer important estate planning advantages.

Your directions for the now and future management of the assets that you place in trust are contained in a trust agreement. For example, you might wish to select and monitor your trust's investments for the time being but have your trustee stand ready to take on that responsibility in certain circumstances, such as a job assignment abroad, an extended vacation or an incapacitating illness.

A living trust provides the grantor with three primary advantages:

- Assets you place in trust during your lifetime are shielded from the delays and publicity of probate—the estate settlement process required for assets that pass by will.
- Your trust can continue beyond your lifetime as a source of income and support for your beneficiaries.
- Assets that you do not place in trust during your lifetime may be added at your death by including appropriate instructions in your will. You may also have life insurance proceeds paid to your trust, to be invested and administered for your beneficiaries as your trust agreement directs.

Don't think of living trusts as financial management programs for the rich. These trusts are playing a key role in the financial security planning of millions of American families.

Caution: Avoid do-it-yourself kits for setting up living trusts. There's more to it than simply signing a legal form. Seek professional guidance.

Medical directives

With a *living will* you record your instructions concerning whether or what life-sustaining treatments should be undertaken when you are terminally ill.

With a *health care proxy* (or *durable power of attorney for health care*), you designate someone to make health care decisions for you when you are unable to do so.

Advances in medical science have created an expanding gap between the extraordinary array of treatments and procedures that are possible and those that are practical or desirable

for a particular individual in a specific set of circumstances. By making a living will and designating someone to speak for you if need be, you can feel more confident that your personal wishes and preferences will be honored.

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Any developments occurring after January 15, 2007, are not reflected in this article.