

Estate Planning FAQ's

What is estate planning?

Estate planning is the process of determining how your assets will be managed for your benefit should you become unable manage them yourself as well as how your assets will be distributed after your death. In addition, it can address your desires regarding you finances and health care should you be unable to make decisions for yourself.

Estate planning is generally accomplished through the drafting of various estate planning documents. Perhaps the most common estate planning document is a Will. While a Will is necessary, it is not the only document needed to fully address your estate planning needs. Other estate planning documents are Trusts, Durable Powers of Attorney and Advance Health Care Directives. Each of these documents has a specific purpose and role in a general estate plan.

What is a will?

A Will is a legal document that outlines your instructions regarding the disposition of your estate upon your death. It generally covers the following:

- Provides for the distribution of your assets, including, but not limited to your house and household goods. It can provide for specific monetary gifts to persons or institutions as well as the distribution of specific items of property.
- Nominates an executor or executors, person or persons who will ensure that your instructions are carried out as well as ensure that all bills, taxes, or other debts of the estate are taken care.
- Nominate a guardian for any minor children.

What is a Trust?

A trust is a legal document that allows an individual or institution, the trustee, to manage the assets of the person creating the trust, the Settlor. The most common kind of trust is a Revocable Living Trust. It is a trust that you create while you are living and than can be revoked at anytime during your lifetime. In most cases, you as the Settlor of the trust would appoint yourself as the Trustee of the Trust. This allows you to preside over your assets and properties while you are alive . Just like a Will, a Trust outlines distribution instructions. It also appoints a Successor Trustee, someone who will manage your estate should you become incapacitated. Upon your death, the Successor Trustee, much like an Executor, would be responsible for distributing the estate pursuant to the terms of the trust as well as for paying any debts or taxes of the estate.

Why would I need a Trust if I already have a Will?

Whether or not a Trust is necessary for your particular situation is something that an estate planning attorney would need to determine based upon your assets and financial situation. For individuals with very little assets, a Will may be sufficient. However if your estate contains substantial assets and/or real property, a Trust may be a better option.

While a Trust is not necessary for all individuals, a Trust has many benefits that a will does not. Perhaps the most obvious is that because your Trust contains provisions regarding the distribution of your assets upon your death, it allows your estate to avoid Probate. Probate is a court-supervised process of transferring your assets in the manner prescribed by your will, or, in the case that no will exists, according to state law. Because it involves the court system, it is often a lengthy, as well as public, process. The cost of probating an estate is often greater than that of managing and distributing an estate under a living trust. There are can also be significant tax advantages to having a living trust.

Another advantage of a Living Trust is that it provides for the management of your estate should you be unable to do so, something a Will does not. If you become incapacitated, whoever you named as Successor Trustee will assume the responsibility of managing your assets on your behalf. In addition, your Trust can appoint someone as conservator. This avoids the necessity of having to go through the courts to have a conservator appointed, a process which, like probate, can be lengthy and costly.

If I have a Trust, do I still need a Will?

Yes. Your will provides for the disposition of any assets that are not held in the name of the trust. If you have a Trust, your Will most likely will contain a “pour over “ provision. This provision specifies that any assets held in your name will be transferred, or poured over, to your living trust.

What is a Durable Power of Attorney for Management of Property or Personal Affairs?

A Durable Power of Attorney for Management of Property or Personal Affairs, or Power of Attorney for Financial Management is a document that appoints another individual, an “attorney-in-fact” to make property management or financial decisions on your behalf. This appointment can either be immediate or upon your incapacity. It is important to note, however, that while a Durable Power of Attorney can address financial decisions while you are alive, it cannot dispose of your assets upon your death.

What is an Advance Health Care Directive?

An Advance Health Care Directive, or Durable Power of Attorney for Health Care, appoints an attorney-in-fact to make health care decisions for you. In addition, it can outline your desires regarding end of life decisions, organ donation, disposition of your remains or other health care issues and instructions.