

# Overview of basic estate planning documents



Creating a carefully designed estate plan that encompasses all assets and provides clear directions on how everything from prized possessions to health care decisions are to be handled usually requires creation of several coordinated documents, each serving a specific purpose. As you work with your estate planning attorney and tax advisor to design or update your estate plan, this list of commonly used estate planning documents, and the role each plays, may help you understand the process.

## **Beneficiary designations — Distribution of life insurance, IRA, 401(k) and other retirement plan assets**

The distribution of life insurance proceeds and assets from IRAs, 401(k)s, pension plans and other retirement plans is governed by beneficiary designations. You should review beneficiary designations for these assets periodically to make sure they work with your other estate planning documents in addressing your desired goals.

## **Will — Distribution of probate property, avoid intestacy, designate certain fiduciaries**

<b>Property disposition</b>	
<b>Probate property</b>	A Will directs how probate property — property owned at death as well as assets that are payable to the estate — is to be distributed. Non-probate property, such as joint property with the right of survivorship, passes automatically to the surviving joint tenant and is not governed by a Will.
<b>Intestacy laws</b>	In the absence of a Will, state intestacy laws determine who receives property and who administers your estate. Under intestacy, it is likely that property will not pass to intended beneficiaries in the manner desired. In addition, intestacy may not use appropriate tax planning techniques, resulting in payment of estate tax that could have been avoided or deferred.
<b>Fiduciary designations — Wills are often used to designate various fiduciaries</b>	
<b>Executors/Personal representatives</b>	Carry out the terms of the Will, collect assets, file tax returns, and pay debts, administration expenses and taxes. They serve until estate administration is complete — typically two to three years.
<b>Trustees</b>	Administer any trusts created under the Will. They are responsible for investing trust assets and making distributions in accordance with the terms of the trust. They serve for the duration of the trust.
<b>Guardians</b>	Care for minor children and administer their property (in the absence of a trust) if there is no surviving parent. They serve until the child attains majority — typically at age 18.

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Trusts	
<b>Testamentary trusts</b>	Are created under a Will and do not take effect until after death when the Will is admitted to probate. Examples include bypass trusts, marital deduction trusts and continuing trusts for children or other descendants.
<b>Lifetime trusts</b>	Are established during your lifetime and can be irrevocable or revocable.
<b>Irrevocable lifetime trusts</b>	Are typically used to make gifts during one's lifetime, often to remove assets and the appreciation on them from one's taxable estate (as of 2022, the lifetime gift tax exemption is \$12.06 million).
Power of attorney — Designating an agent to act on one's behalf	
<b>Power of attorney</b>	<p>A power of attorney allows the principal (you) to appoint one or more agents or attorneys-in-fact to act on your behalf in a variety of financial and legal matters.</p> <ul style="list-style-type: none"> <li>• Depending on the wishes of the principal, the powers granted may be broad or limited.</li> <li>• Typically, the broad powers include the ability to pay bills, make investment decisions and make decisions regarding real estate transactions and other legal matters.</li> <li>• The ability to make gifts can also be granted and may be useful for estate planning purposes.</li> </ul> <p>A durable power of attorney remains in effect even if the principal subsequently becomes incompetent or incapacitated.</p> <ul style="list-style-type: none"> <li>• May avoid the need for a court-appointed guardian to manage a person's property.</li> <li>• Can serve as a simple substitute for a revocable trust, which can also provide for the management of property in the event of incapacity.</li> <li>• Terminates upon the principal's death.</li> </ul>
Living Will and health care proxy — Conveying medical wishes and decision-making authority	
<b>Living Will</b>	<p>A written statement that guides family members and health care providers when someone is incapable of communicating regarding the medical treatment they wish to receive —or reject —under stated circumstances.</p> <ul style="list-style-type: none"> <li>• Typically states conditions where certain extraordinary forms of medical care shouldn't be administered.</li> <li>• Generally becomes effective when an individual is no longer able to express his or her own wishes.</li> </ul>
<b>Health care proxy or health care power of attorney</b>	<p>Appoints a proxy or agent, often a spouse or adult child, to make health care decisions when someone becomes incapable of making or communicating decisions themselves.</p> <p>Living Wills and health care proxies are often used together with the agent carrying out the wishes expressed in the Living Will. The agent may also be authorized to make decisions on matters not specifically covered in the Living Will.</p>

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