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# Key Estate Planning Documents You Need

***Benefits of a will:***

- *Distributes property according to your wishes*
- *Names an executor to settle your estate*
- *Names a guardian for minor children*

There are five estate planning documents you may need, regardless of your age, health, or wealth:

1. Durable power of attorney
2. Advance medical directives
3. Will
4. Letter of instruction
5. Living trust

The last document, a living trust, isn't always necessary, but it's included here because it's a vital component of many estate plans.

## Durable power of attorney

A durable power of attorney (DPOA) can help protect your property in the event you become physically unable or mentally incompetent to handle financial matters. If no one is ready to look after your financial affairs when you can't, your property may be wasted, abused, or lost.

A DPOA allows you to authorize someone else to act on your behalf, so he or she can do things like pay everyday expenses, collect benefits, watch over your investments, and file taxes.

There are two types of DPOAs: (1) an immediate DPOA, which is effective immediately (this may be appropriate, for example, if you face a serious operation or illness), and (2) a springing DPOA, which is not effective unless you have become incapacitated.

***Caution:*** *A springing DPOA is not permitted in some states, so you'll want to check with an attorney.*

## Advance medical directives

Advance medical directives let others know what medical treatment you would want, or allows someone to make medical decisions for you, in the event you can't express your wishes yourself. If you don't have an advance medical directive, medical care providers must prolong your life using artificial means, if necessary. With today's technology, physicians can sustain you for days and weeks (if not months or even years).

There are three types of advance medical directives. Each state allows only a certain type (or types). You may find that one, two, or all three types are necessary to carry out all of your wishes for medical treatment. (Just make sure all documents are consistent.)

First, a living will allows you to approve or decline certain types of medical care, even if you will die as a result of that choice. In most states, living wills take effect only under certain circumstances, such as terminal injury or illness. Generally, one can be used only to decline medical treatment that "serves only to postpone the moment of death." In those states that do not allow living wills, you may still want to have one to serve as evidence of your wishes.

Second, a durable power of attorney for health care (known as a health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will or won't have.

Finally, a Do Not Resuscitate order (DNR) is a doctor's order that tells medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

## Will

A will is often said to be the cornerstone of any estate plan. The main purpose of a will is to disburse property to heirs after your death. If you don't leave a will, disbursements will be made according to state law, which might not be what you would want.

There are two other equally important aspects of a will:

1. You can name the person (executor) who will manage and settle your estate. If you do not name someone, the court will appoint an administrator, who might not be someone you would choose.

***Other benefits of a living trust:***

- *Gives someone the power to manage your property if you should become incapacitated*
- *Lets a professional manage your property for you*
- *May circumvent state laws that limit your ability to give to charity, or force you to leave a certain percentage of your property to your spouse*

2. You can name a legal guardian for minor children or dependents with special needs. If you don't appoint a guardian, the state will appoint one for you.

Keep in mind that a will is a legal document, and the courts are very reluctant to overturn any provisions within it. Therefore, it's crucial that your will be well written and articulated, and properly executed under your state's laws. It's also important to keep your will up-to-date.

## Letter of instruction

A letter of instruction (also called a testamentary letter or side letter) is an informal, nonlegal document that generally accompanies your will and is used to express your personal thoughts and directions regarding what is in the will (or about other things, such as your burial wishes or where to locate other documents). This can be the most helpful document you leave for your family members and your executor.

Unlike your will, a letter of instruction remains private. Therefore, it is an opportunity to say the things you would rather not make public.

A letter of instruction is not a substitute for a will. Any directions you include in the letter are only suggestions and are not binding. The people to whom you address the letter may follow or disregard any instructions.

## Living trust

A living trust (also known as a revocable or inter vivos trust) is a separate legal entity you create to own property, such as your home or investments. The trust is called a living trust because it's meant to function while you're alive. You control the property in the trust, and, whenever you wish, you can change the trust terms, transfer property in and out of the trust, or end the trust altogether.

Not everyone needs a living trust, but it can be used to accomplish various purposes. The primary function is typically to avoid probate. This is possible because property in a living trust is not included in the probate estate.

Depending on your situation and your state's laws, the probate process can be simple, easy, and inexpensive, or it can be relatively complex, resulting in delay and expense. This may be the case, for instance, if you own property in more than one state or in a foreign country, or have heirs that live overseas.

Further, probate takes time, and your property generally won't be distributed until the process is completed. A small family allowance is sometimes paid, but it may be insufficient to provide for a family's ongoing needs. Transferring property through a living trust provides for a quicker, almost immediate transfer of property to those who need it.
Probate can also interfere with the management of property like a closely held business or stock portfolio. Although your executor is responsible for managing the property until probate is completed, he or she may not have the expertise or authority to make significant management decisions, and the property may lose value. Transferring the property with a living trust can result in a smoother transition in management.

Finally, avoiding probate may be desirable if you're concerned about privacy. Probated documents (e.g., will, inventory) become a matter of public record. Generally, a trust document does not.

***Caution:*** *Although a living trust transfers property like a will, you should still also have a will because the trust will be unable to accomplish certain things that only a will can, such as naming an executor or a guardian for minor children.*

***Tip:*** *There are other ways to avoid the probate process besides creating a living trust, such as titling property jointly.*

***Caution:*** *Living trusts do not generally minimize estate taxes or protect property from future creditors or ex-spouses.*

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