

## Estate Planning is More than Just a Will

By Paul Cantor

When most people think about estate planning, their first thought is a will. A common next thought is, "I should probably get one of those *someday*." The unspoken implication, of course, is "but not today." Putting off estate planning seems a popular – but ill-advised – undertaking. Moreover, estate planning means more than just a will.

It is important to note that if you were to pass away *before* you prepare an estate plan, Washington statutes fill the gap by directing what happens to your assets. So, you may have one of two types of estate plans: a plan that you have intentionally set in place via a will or trust, or a default plan, called "intestacy," in which state law determines where your assets will go.

Similarly, if you become incapacitated and have not created and funded a trust or executed a durable power of attorney, the state can intervene to appoint a legal guardian of the person and guardian of the estate. Guardians may be appointed by the court to take charge of your affairs, whether that means making healthcare decisions or managing your assets.

If you prefer to be the one to determine what happens if you become incapacitated or when you die, rather than leaving it to state courts or statutes, here are the basic estate plan documents to have drafted by an experienced estate planning attorney.

**Will:** Your will becomes effective at your death. If you are a parent, your will can identify who the guardians of your minor children will be at your death. It also names a personal representative or executor who is in charge of collecting and distributing your assets, paying bills that were incurred prior to your death, etc. A will can also provide for trusts that could provide tax planning or other benefits. And, most importantly, a will disposes of your assets to the people or charitable organizations you have chosen.

**Power of Attorney for Healthcare:** This document names a person (an "attorney-in-fact") to make healthcare decisions on your behalf if you become incapacitated. Because of healthcare privacy laws, this is an important document to have because it allows the named person access to your medical information so he or she can make informed decisions regarding your healthcare, and possibly end-of-life planning.

**Healthcare Directive/Living Will:** This document states your wishes regarding extraordinary measures necessary to keep you alive due to illness or injury. When preparing this document, consider how you feel about receiving artificial nutrition and hydration, CPR and oxygen and for how long and under what conditions.

**General or Financial Durable Power of Attorney:** This document names an attorney-in-fact to take care of your financial affairs. You may give this person the power to make decisions immediately or only in the event of your becoming incapacitated. The attorney-in-fact can hold limited or broad powers to act. Examples are making gifts on your behalf, selling property, funding a trust, or accessing your accounts to pay your bills. Given the extent of the powers usually authorized, it's important to name a trustworthy person for this role.

**Revocable Living Trust:** Another document that people may use to transfer assets at death or plan for incapacity is a revocable living trust. This trust may be as effective as a will for directing the disposition of your estate, tax planning and can also take the place of a financial power of attorney. A trust only works if it is properly funded since assets must be titled in the name of the trust. A trust also has the benefit of avoiding probate, which allows for greater privacy.

### Keep your estate plan updated

It's important to understand that an estate plan is not a one-time undertaking. Some key events that should lead you to update your plan include:

- Changes in the law.
- Changes in marital status.
- Changes in family status, including having children or having beneficiaries pass away.
- Changes in wealth.

### Use Professional Advisors

Have an attorney draft your estate planning documents. They touch on complicated tax and planning issues and language used is critical to carry out your intent. You may also consider consulting with a tax advisor to address possible gift or estate tax consequences. Finally, consider naming a corporate or professional fiduciary to be executor under your will or trustee of any trusts created. They have the expertise to carry out your intent as expressed in your documents and the objectivity to help your survivors avoid conflict.

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