

Will Prep, Estate Planning and More

Many people believe that having an estate plan simply means having an updated will. However, a successful estate plan also includes provisions allowing your family members to access or control your assets or healthcare should you become unable to do so yourself.

Here is a short checklist of items that are commonly used by families when completing their estate planning suite of documents:

- Last Will and Testament (or, in specific instances, a trust)**
- Beneficiary Designations**
- Durable Healthcare Power of Attorney**
- HIPPA Authorization Form**
- Living Will**
- Durable Power of Attorney**
- Letter of Intent**
- Guardianship Designations**

Below is a concise summary of each of the above listed items:

1. Wills and Trusts

A Last Will and Testament or Trust should be one of the main components of every estate plan, even if you do not have substantial assets. A Will ensures property is distributed according to an individual's wishes. Trusts can help limit estate taxes or legal challenges in specific situations. A Trust can be an especially critical component of an estate plan when dealing with individuals who have special needs.

A Will or Trust should be written in a manner that is consistent with the way you would like the assets to be distributed when you pass away. Some assets, such as retirement accounts or insurance policies, are “beneficiary designated” assets, and therefore pass outside of a Will to a named beneficiary.

Assets being passed through a Will have to go through the probate process, while beneficiary designated assets generally do not. Probate is the legal process through which a deceased person's estate is properly distributed to their heirs, and any outstanding debts are paid off. In general, property passing through probate is distributed according to the decedent's Last Will and Testament. If no Will exists, then property is distributed according to state law.

2. Beneficiary Designations

As previously noted, some of your possessions can pass to your heirs without being directed in the Will or Trust (e.g. your 401(k) plan assets or life insurance policies). Therefore, it is important to maintain an updated primary beneficiary and contingent beneficiary(s) on these accounts.

If you do not name a beneficiary, or if the beneficiary is deceased, the assets will end up going through the probate process. This is generally not ideal because probate is a public process that can cause delays and add expense.

Note: named beneficiaries should be over the age of 21 and mentally competent. If they are not, it is more likely a court will be required to be involved.

3. Durable Healthcare Power of Attorney

A healthcare power of attorney (HCPA) document designates another individual (typically a spouse or family member) to make important healthcare decisions on your behalf if you become mentally or physically incapacitated or unable to communicate.

If you are considering implementing such a document, it is important to pick someone you trust who shares your views, and who would be likely to recommend a course of action you would desire.

A backup agent should also be identified in case your initial choice is unavailable or unable to act at the time needed.

A durable HCPA means that the document will still be effective if you become unable to make your own decisions (mentally or physically incapacitated). An important note: the term “durable” does not mean that the HCPA survives the loved one’s death, only mental incapacity.

4. HIPAA Authorization Form (may be included in the HCPA)

A HIPAA authorization form is a document that allows a certain person (or party) to share specific health information with another person or group. Your appointed person can be a doctor, a hospital, a health care provider, or attorney. The health information being shared could be medical records, drug or alcohol treatment, etc.

5. Living Will or Advanced Directive (may be included in the HCPA)

A Living Will or Advanced Directive is a legal document that details whether you wish to receive life-prolonging medical treatments. They include several different conditions such as lifesaving interventions, pain management, or organ donation. A Living Will differs from a Do Not Resuscitate (DNR) and/or Do Not Intubate (DNI) order, which are only established in coordination with the medical team for individuals with severe pre-existing medical conditions and are either elderly or terminally ill. A DNR or DNI order states that no steps will be taken to restart a patient’s heart or restore breathing if the patient experiences cardiac or respiratory arrest.

6. Durable Power of Attorney

A Durable Power of Attorney (DPOA) allows an assigned agent or person to act on your behalf when you are unable to do so yourself. A Durable POA means that the document is designed to remain in effect even if you can no longer make decisions for yourself (mentally or physically incapacitated). A court may have to decide how your assets are managed if you do not have a Durable Power of Attorney, and the court's decision may not be consistent with your wishes.



This document gives your DPOA the power to conduct financial transactions on your behalf while keeping your wishes and best interests in mind. You can always alter or revoke this type of DPOA if you are not mentally incapacitated. A DPOA also ends upon death.

For many families, it can make sense for spouses to grant Power of Attorney to each other. However, in some cases it may be more logical to have another family member, friend, or trusted advisor to act as the agent, if such a person is more financially savvy or more complex matters are involved.

7. Letter of Intent

A letter of intent is simply a document left to your executor or a beneficiary. The purpose is to define your wishes regarding specific assets after your death or incapacitation. Some letters of intent also provide funeral details or other special requests.

While such a document may not be legally valid, it can still help to inform a probate judge of your intentions and may assist in the distribution of your assets.

8. Guardianship Designations

Some Wills or Trusts may allow you to designate a Guardian for minor children. However, if your Will does not allow for this, a separate document must be established. Choosing a trusted individual or couple for this duty is extremely important. It is vital to ensure the Guardian(s) chosen share your views, are financially sound, and are willing and able to raise your children. As with all designations, a backup or contingent guardian should also be named.

Without a Guardianship designation, a court would be responsible for naming Guardians for your minor children and could place them with a family member you would not have chosen. In extreme cases, the court has the authority to mandate your children become wards of the state.

The Bottom Line

There is more to estate planning than deciding how to divvy up your assets when you die. It is also about making certain your family members and other beneficiaries are provided for and have access to your assets upon your temporary or permanent incapacity.

This document is not meant to provide a comprehensive list of estate planning documents, and the descriptions provided for each document are merely for educational purposes and should not be relied upon for determining the purpose or sufficiency of such estate planning documents. Retirement Plan Analytics is not licensed to practice law or accounting, and this document should not be relied upon as legal or accounting advice.

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*Sourced Referenced: 6 Estate Planning Must-Haves – written by Glenn Curtis
Living wills and advance directives for medical decisions – Written by Mayo Clinic Staff*

