

# ESTATE planning | The Foundation

## The Purpose of Estate Planning

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The purpose of this brochure is to provide general information about estate planning and various documents used, including: Wills, Trusts, Living Wills, Durable Powers of Attorney, and Durable Powers of Attorney for Health Care documents.

Estate planning involves arranging your affairs to provide for the orderly management and disposition of property at the time of disability or death.

The primary concerns of an estate plan should include:

- Assuring the right people receive your property, at the right time, with proper management.
- Minimizing expense, inconvenience, and publicity, including avoiding probate when appropriate.
- Minimizing taxes payable on account of death.
- Maximizing opportunities to protect assets.

If you die without a valid Will, your probate property will be distributed according to the “intestacy” laws. The intestacy laws may not coincide with your wishes. Tax saving opportunities can also be lost. Intestacy laws do not provide the opportunity for gifting to individuals or charities. These problems can be avoided with a valid Will and/or a Living Trust.

The following documents address one or more of these concerns.

## Living Trusts

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A Living Trust is a revocable trust set up by you during your lifetime. In most circumstances, the person setting up the trust (often called the settlor, grantor, or creator) also serves as trustee, or property manager, during his or her lifetime. In most cases, the Living Trust also names the settlor as the first beneficiary of the trust. The settlor controls all trust assets and retains the right to amend the document at any time.

Assets that are owned by or payable to a Living Trust are generally not subject to probate upon the incapacity or death of the settlor, trust beneficiaries or the trustee. Therefore, it is very important to transfer all of your assets into the Living Trust. Upon incapacity or death, the successors named in the trust have control without Probate Court involvement. This saves time, administrative expense and publicity.

A Pourover Will is used with a Living Trust in order to pour over any probate property into the Living Trust.

## Property Management

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A Living Trust can provide management for any property now, upon disability, or upon death. In this manner, a professional trustee, such as a bank’s trust company, family members or trusted associates can be named to invest and distribute your property when needed.



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## Minimizing Estate Taxes

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A Living Trust can minimize federal estate taxes. The current Federal gift and estate taxes can go up to 55%, not including any income taxes payable at death on assets such as retirement funds. Currently, federal estate tax is payable if the taxable estate exceeds \$2,000,000. This amount adjusts annually until repeal for one year in 2010 and then reinstatement in 2011. There is an unlimited tax deduction for charitable gifts and transfers between spouses. Therefore, these transfers are tax free, regardless of size. However, tax planning is oftentimes lost if an individual leaves the estate to his or her spouse without proper planning.

A Living Trust established by a married couple can assure the use of two exemption equivalents through a Unified Credit Trust. A married couple with an estate of \$4,000,000 and using the current exemption equivalent of \$2,000,000 per spouse could save a substantial sum in Federal estate taxes at the death of the survivor with proper planning. In comparison, the same couple owning property jointly without a Living Trust would owe a substantial sum at the death of the survivor.

## Timed Distribution of the Assets

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A Living Trust can provide for a timed distribution of assets to your heirs. For example, distribution may be made to children as needed for support, education, and similar stated purposes at any age, with the unused money kept in the trust to be distributed at ages you specify. Without such an arrangement, minors inheriting property through the Probate process are entitled to receive a full distribution when they reach the age of majority.

## Last Will and Testament

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Your Last Will and Testament or “will” is the most fundamental estate-planning document. A Will is a legal document stating how your property is to be disposed of at your death. A Will must be recorded and usually probated.

Your will is the proper place to:

- Name the personal representative or “executor” who will oversee the disposition of your estate.
- Name the guardians for your children, to serve if neither natural parent can care for them.
- Make gifts to individuals or charities.
- Specify final takers of property should beneficiaries you named predecease you.

A Will may be amended as long as the person making the Will, called the testator, remains competent. A “Codicil” is an amendment to a Will.

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## Power of Attorney and Durable Power of Attorney

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Power of Attorney is a document authorizing another person to act as your agent, signing your name for the purposes specified and generally becomes effective upon incapacitation. Another Power of Attorney is called a Durable Power of Attorney for Health Care and authorizes an agent to make medical decisions for you if you are unable to do so yourself.

## Living Will

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The Living Will is a document stating that your life should not be artificially prolonged.

## Probate

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Probate can be an expensive, time consuming and public proceeding in which the Court oversees the final distribution of all property passing at death. Property passing by a valid contract (e.g. life insurance, retirement funds or Living Trust property) and property passing automatically by law (e.g. joint property) are not subject to probate. Proper estate planning can reduce or eliminate probate costs.

## Summary

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Many other documents may be used in the estate planning process. Everyone's estate plan will involve at least one of the documents or arrangements discussed above. Many estate plans will involve all the documents.

\*The purpose of this document is to provide general information, not legal advice. A qualified attorney should be consulted before implementing any plan.