

April 17, 2023 – Wealth Planning Commentary

The importance of basic estate planning documents

April is financial literacy month, and it is important to understand which documents you should have in place as part of your estate plan, regardless of wealth level. These documents serve to protect you if you become incapacitated, offer privacy and clarity to your loved ones, and help to secure and settle your estate.

Arguably the most important document is a will and testament, also known as a testamentary will. A will is a legal document that contains your plan on how your assets should be distributed at your death. It should include your personal information, language that communicates intentions, preferred executor, guardians for minor children, and names of beneficiaries who will inherit the assets.

A will alone, however, does not ensure a quick and efficient estate settlement. When assets are transferred through a will, they go through probate. Probate is a legal process where a court distributes the estate to the proper heirs. The process is public, requires legal professionals, and may take significant time. Heirs may need access to the assets quickly, and probate hinders the process.

To help avoid probate, we recommend creating a revocable trust and titling your asset in the name of the trust. A revocable trust avoids probate at death. These trusts allow you to retain control over the assets and the document may be amended, modified, or revoked during your lifetime. The trust document allows for ease of administration for changes to bequests and other matters. Adding a pour-over provision to your will helps to ensure that all assets will avoid probate. The provision transfers all assets that are titled in your name to the revocable trust when you pass away.

Your estate plan should also include a power of attorney (POA). A power of attorney document designates a person of your choosing as an agent to make decisions on your behalf regarding finances, property, and legal matters. The agent's power may be limited or broad. A durable POA allows your agent to act on your behalf if you become incapacitated. Other power of attorney's are invalid at this point.

A healthcare proxy and a living will convey your wishes for medical treatment. A healthcare proxy authorizes an individual to make medical decisions on your behalf. This power may be valuable if you are undergoing medical treatment and are unable to communicate effectively with your medical team. A living will is primarily for end-of life instructions. It communicates your wishes on matters such as when to attempt to resuscitate.

Basic estate planning documents are necessary, but the process requires thinking about and addressing morbid topics. You may need to rely on someone else to navigate difficult times on your behalf. Many people avoid the process to the detriment of their family members and themselves.

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