

Three Essential Estate Planning Documents Everyone Needs



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A complete estate plan includes essential documents such as a Health Care Proxy, Living Will, Power of Attorney, and Last Will & Testament, which are vital in protecting your medical, legal, and financial decisions. These documents ensure that your healthcare preferences are followed, your assets are managed, and your loved ones are provided for, giving you peace of mind about the future. This article outlines the specifics of these essential estate planning documents, explaining their purpose and importance.

1. Health Care Proxy & Living Will

A Health Care Proxy and Living Will are integral parts of any estate plan and are often prepared and executed together for the reasons outlined below.

The Health Care Proxy allows you to appoint an individual (your “agent”) to make healthcare decisions when your attending physician has determined that you are no longer physically or mentally capable of making your own healthcare decisions. “Healthcare” in this context means any treatment, service, or procedure to diagnose or treat a physical or mental condition. Your agent can make any healthcare decision you would have made if you were to

decide for yourself (unless you choose to limit their authority). By appointing an agent, you can ensure that health care providers follow your wishes—however, you have the right to make health care decisions for yourself for as long as you can do so. With respect to appointing an agent, there are certain restrictions to be aware of (a) any agent you appoint must be over the age of 18; (b) if you appoint your doctor as your agent, they will have to choose between being your agent or your doctor, as they cannot be both; and (c) if you name your spouse as agent and later divorce or become legally separated, your former spouse can no longer be your agent by law unless you state otherwise. You may also want to appoint an alternate agent if your primary agent cannot make healthcare decisions on your behalf.

A Living Will is a written declaration of your individual desires as to the degree and amount of care or withholding of care that you would like if you become terminally ill to the point that there is no reasonable expectation of recovery and there is a medically reasonable likelihood of death (in other words, if you are in a vegetative state). This document essentially provides written instructions to your healthcare agent regarding your strongly held views about specific situations, like life-prolonging procedures and end-of-life care. Accordingly, you can outline your desires in the Living Will as to the degree of care you want to have or to have withheld under various situations. Some examples include artificial nutrition and hydration, mechanical respiration, and cardiac resuscitation. This document is not the same as a “do not resuscitate” (DNR) order, which is a written order by a doctor instructing medical professionals not to restart your heart or lungs when your heartbeat or breathing stops.

2. Power of Attorney

One of the most essential parts of any estate plan is a durable power of attorney. While nothing is more important than our health and the health of our family members, ensuring the proper management of money and assets can cause unnecessary stress for individuals and families during a crisis. A power of attorney can solve this problem.

A power of attorney is a document that names an agent to act on one’s behalf with respect to a person’s finances and assets. Generally, a power of attorney is used by an agent to make decisions concerning the principal’s assets when the principal is no longer capable of making their own decisions. Thus, a power of attorney is often used in emergency situations or during situations of prolonged care. However, a power of attorney can also be used when a person still has capacity. Therefore, a power of attorney can be used for commonly occurring situations, such as something as simple as being out of town. For this very same reason, we highly recommend that a person keep their power of attorney in a safe location, such as a safe or with the law firm that drafted the power of attorney.

A power of attorney can be as broad or as limited as a person chooses. Certain states will require further formalities to confer specific powers on an agent. For example, Florida requires that certain powers must be specifically enumerated by the signature or initial of a principal, such as gifting, creating and sharing right or survivorship designation, disclaiming property, creating or changing beneficiary designations, and more.

To properly prepare you and your family in a time of crisis, a person needs to be able to ensure their family members can properly maintain their assets. The only effective way to do this without a guardianship is with a power of attorney. This is why a power of attorney is essential to any estate plan.

No estate plan is complete without a power of attorney or health care proxy. With that said, attorneys in Florida and some other states would highly encourage clients to sign a declaration of preneed guardian. A declaration of preneed guardian will state who a person prefers to be appointed as their guardian if a guardianship proceeding

is necessary. While a power of attorney and health care proxy are used to avoid guardianship proceedings, it is still recommended that a person have a declaration of preneed guardian in the unlikely event that a guardianship is required.

3. Last Will & Testament

Generally speaking, a Last Will & Testament (LWT) is a legally binding document containing written instructions detailing what is to happen to property owned by an individual at death. An LWT can confer rights or ownership over real or personal property and can be used to appoint legal guardians of minor children.

Why do I need a Will?

Asset Distribution: One of the most important purposes of an LWT is to designate how you want your assets to be distributed after your death. Specifying how your assets will pass to your beneficiaries allows for ease of transition for both liquid and non-liquid assets to ensure those individuals for whom you wish to benefit from your estate are provided.

Avoid Intestacy: Without a properly executed LWT, the laws of intestacy will rule regarding the distribution of assets, potentially creating undesired results. Although intestacy may accomplish your goal of passing your assets to your family, it could also result in a distribution schedule that does not reflect your intentions. The distribution of your assets will be controlled entirely by state law.

Minor Children: In the event you die while one or more of your children reach the age of majority, an LWT can designate a guardian or guardians, allowing you to appoint a caretaker of your choosing who you trust and can control the assets they inherit for their benefit, ensuring their well-being after your death.

Peace of Mind: Having a plan in place allows your family peace of mind, to a degree, and can limit a stressful situation wherein clear directives can be followed. A carefully crafted LWT can save your family from unnecessary issues and potential legal battles following your death.

Preparing an LWT is a simple process wherein you must consider the totality of your assets and explore your wishes for succession. Creating your LWT and estate plan is an ongoing process that should be considered throughout your life. In most cases, updating your LWT is as simple as preparing a codicil, or amendment, to your current LWT to ensure the document is up to date, depending on your circumstances. There is no update limit to your estate plan, and ensuring periodic changes are made will only help ensure your wishes are carried out after your passing.

In sum, having an LWT in place ensures your wishes for succession are accomplished and provides protection for your loved ones upon your passing. Ultimately, having an LWT is one of the most essential documents to have when planning for the future.

Essential estate planning documents like a Health Care Proxy, Living Will, Power of Attorney, and Last Will & Testament are crucial for safeguarding your wishes and protecting your loved ones. These tools ensure that your medical decisions are honored, your assets are managed according to your preferences, and your family is cared

for after your passing. For all estate planning matters, retaining qualified, experienced counsel who can provide the best guidance possible for you and your loved ones is essential. Contact Lippes Mathias' [Trusts & Estates Practice Team](#) for any questions or to begin the estate planning process.

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