



It is important that an estate plan is in place to ensure your personal wishes are honored in the event you are not available, able, or living to give direction. If you pass away without having proper estate planning documents in place, the court rules would decide the division of your assets. If you become incapacitated and cannot act on your own behalf, the court decides who will make decisions for your care and management of your affairs.

The purpose of this document is to provide a high-level overview of the various components within an estate plan and when each may be needed. If you have any questions on the following, please contact your Senior Advisor or estate planning attorney.

## KEY OBJECTIVES



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### Key Estate Planning Objectives

- Orderly transfer of assets.
- Provide direction for management of investments.
- Choosing a guardian for care of a minor child and a trustee of the assets for minor children or other beneficiaries.
- Reduce taxes on estate.
- Privacy

## PLANNING DOCUMENTS



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### Important Estate Planning Documents

#### Will

- Key features:
  - Directs the distribution of your assets upon your death.
  - Names a personal administrator (executor) to administer the estate and distribute assets.
  - Specifies a guardian for the care of a minor child, as well as a trustee of the assets for minor children or other beneficiaries.
  - Does not avoid probate.
  - Effective only upon death of the creator of the Will.
- Important in the Following Instances:
  - You want your property to pass to someone who is not your closest relative.
  - You have minor children.
  - You have a second marriage and there are children from a prior marriage.
  - You want the opportunity to choose your personal representative (executor) and you don't want the court to make the decision for you.
  - If you have charitable desires at death.
- Types of Wills:
  - Simple Will.
  - Pour-Over Will (used in conjunction with a Trust).
  - Complex Will (incorporating Testamentary Trusts).



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## Trusts

- Key features:
  - A legal entity that provides for the control and distribution of assets.
  - Revocable or Irrevocable:
    - A Revocable Trust can be changed during the testator's lifetime.
    - An Irrevocable Trust cannot be changed once it is established.
  - Living or Testamentary:
    - A Living Trust is created during the testator's lifetime.
    - A Testamentary Trust is created by the Will after death.
  - A Trust can be used to avoid probate.

## Power of Attorney

- Key features:
  - Designates someone to act on your behalf in financial matters.
  - Useful in circumstances of incapacity.
  - Effective only while you are alive.
  - Each state has its own format for a Power of Attorney.
  - Without a valid Power of Attorney, the court will appoint a conservator to make financial and property decisions for you.

## Health Care Directive

- Key features:
  - Designates someone to act on your behalf on health care issues.
  - Useful in circumstances of incapacity.
  - Effective only while you are alive.
  - In Minnesota, those age 18 and above should have their own Health Care Directive.
  - Without a valid Health Care Directive, hospital administration determines your level of care and the court may appoint a guardian to make personal and health care decisions for you.

## Transfer on Death Deed (TODD)

- Key features:
  - Similar to a Payable on Death Designation for a bank account.
  - Avoids probate.
  - Must be recorded during the life of the owner.
  - Transfer effective upon death.



## The Importance of Beneficiary Designations

- Qualified accounts (e.g., IRAs, 401(k) plan, etc.) transfer upon death to the beneficiary(s) listed on the account and pass outside of the Will and avoid probate.
- Review all beneficiary designations periodically to make sure they are in line with your current wishes.

## BENEFICIARY DESIGNATIONS



- How you list your beneficiaries will determine how your assets pass to future generations:
  - Per Stirpes:
    - A legal term which indicates that the designated beneficiary's share would pass on to their children if they predecease the grantor.
    - If you list a beneficiary per stirpes, each branch of the family receives an equal share. If the heir in the first generation of a branch predeceases, the share that would have been given to the heir would be distributed among the heir's living issue (children) in equal shares.
  - Per Capita at each generation:
    - Per MN Statute 524.2-709, property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.
  - My children who survive me:
    - Nothing passes to "living issue" of a deceased child.

## PROBATE



### What is Probate?

- The legal process of distributing the assets of a deceased person.
- It is a public process and administered by the court system.
- In some states it can be costly due to the legal nature of the process.
- The cost of probate is state specific:
  - Flat fee in Minnesota and Wisconsin.
  - Percentage of assets in some states.
- A Will does not avoid probate.
- For properties owned outside of your state of residence, probate is required in each state the property is located in.
- A Trust can avoid probate if assets are titled in the name of the Trust.
- Assets passing by beneficiary designations pass outside of the probate process.

## ESTATE TAX



- The federal estate tax exclusion for 2019 is \$11,400,000 per individual.
- Portability of the federal estate tax exemption between married couples is now permanent. Portability means that when the first spouse dies and the value of his/her estate does not require the use of all of his or her federal estate tax exemption, his/her unused portion of the exemption can be transferred to the surviving spouse.
- The Minnesota estate tax exemption for 2019 is currently \$2,700,000 per individual and is scheduled to increase by \$300,000 annually until it reaches \$3,000,000 in 2020.
- The Minnesota estate tax exemption is not portable like the federal exemption. Estate tax is levied by some, but not all states. It is important to know if your state of residency has a state levied estate tax for appropriate estate planning.

## CHECK LIST



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- Do you have current estate planning documents in place?
    - Will(s)
    - Power of Attorney(s)
    - Health Care Directive(s)
    - Trust(s), if applicable given your situation and desires
  - If you have estate planning documents in place, how long has it been since they have been reviewed by a qualified attorney? Consider the following when determining whether updates may be warranted:
    - Do your documents reflect your current goals and objectives?
    - Do you have minor children? If so, do you have a guardian and trustee named in your Will?
    - Are the individuals listed in your documents still appropriate?
    - Have there been any changes in federal and/or state tax laws that may need to be incorporated?
    - Have you moved to a different state since your estate plan was put in place?
    - Have you gone through any major life changes (marriage, divorce, birth of a child, etc.)?
    - We recommend having estate documents reviewed every five years, if not sooner, based on the above mentioned items.
  - What is the value of your estate? Should you consider estate planning to minimize estate taxes?
  - Is the use of a Living Trust or Testamentary Trust appropriate given your situation?
  - Do you own property outside of your state of residence? Has this been addressed in your documents?
  - Do you have any charitable inclinations? Has this been addressed in your estate planning documents?
  - Do you own a business? Is there a plan in place to pass the business ownership upon your death or incapacity?
  - Have you reviewed beneficiary designations for all retirement plans, qualified accounts, and life insurance? Do the designations reflect your current wishes?

*Please be sure to meet with a qualified estate planning attorney to draft or update your estate planning documents.*