WELLS FARGO Advisors

Five important estate planning documents

Understand the essentials before you plan

Prepare for your attorney meeting

Building a comprehensive estate plan requires information-gathering and reflection about your objectives. Below are a few "action items" in advance of your attorney meeting to help make the process more focused and efficient:

- Prepare a basic net worth statement. Include all of your assets and liabilities. Don't forget to list life insurance.
- Indicate how assets and liabilities are owned/titled (e.g., single name, joint tenancy, community property, etc.)
- List your beneficiary designations, both primary and contingent, for assets such as, IRAs, qualified plans, annuities, life insurance and transfer-on-death assets.
- Identify your desired beneficiaries, including family and/or charity. How much do you wish to leave them? In what form (outright or in trust)?
- Think about your appointments for initial and successor agents under powers of attorney, personal representatives/executors under your will, guardians for any minor children, and trustees of any trust you might create.

No matter what your age or net worth, you need an estate plan to protect yourself, your loved ones, and your assets — during your lifetime, as well as after your death. Before visiting with your attorney, it's helpful to have a basic understanding of the documents he or she may recommend for your plan.

1. Will

A will provides instructions for distributing individual assets with no beneficiary designations to your family and other beneficiaries upon your death. Your attorney can customize its provisions to meet your needs. You appoint a personal representative (also known as an "executor") to pay final expenses and taxes, and then distribute your assets. If you have minor children, a will is the only way you can designate a guardian for them.

To be effective, a will must be filed in probate court after your death. Probate is a judicial process for managing your assets if you become incapacitated and for transferring your assets in an orderly fashion when you die. The court oversees payment of liabilities and the distribution of assets. Generally, your personal representative will need to employ an attorney.

Because a will does not take effect until you die, it cannot provide for management of your assets if you become incapacitated. That's why it is important to have other estate planning documents, discussed below, that address the risk of serious illness or incapacity.

2. Durable power of attorney

A power of attorney is a legal document in which you name another person to act on your behalf. This person is called your agent or attorney-in-fact. You can give your appointed agent broad or limited management powers. You should choose this person carefully because he or she will generally be able to sell, invest, and spend your assets.

A traditional power of attorney terminates upon your disability or death. However, a durable power of attorney will continue during incapacity to provide a financial management safety net. A durable power of attorney terminates upon your death.

This is just the beginning

Your estate planning documents need to be coordinated with your beneficiary designations (primary and contingent) and asset titling. You may also have estate tax issues to deal with.

You should review your estate planning documents periodically to ensure they remain up-to-date with any significant changes (births, deaths, divorces, state residency changes, etc.) in your situation.

3. Health care power of attorney

A durable power of attorney for health care authorizes someone to make medical decisions for you in the event you are unable to do so yourself. This document and a living will (see below) can be invaluable for avoiding family conflicts and possible court intervention if you should become unable to make your own health care decisions. This document may also be called a health care proxy.

4. Living will

A living will expresses your intentions regarding the use of life-sustaining measures in the event of a terminal illness. It expresses what you want but does not give anyone the authority to speak for you. In some states, this document may be combined with a health care power of attorney, sometimes referred to as an advance directive or health care declaration.

5. Revocable living trust

A revocable living trust is often used in an estate plan. By transferring assets into a revocable trust, you can provide for continued management of your financial affairs during your lifetime (when you're incapacitated, for example), at your death, and even for generations to come. Your revocable living trust lets trust assets avoid probate and reduces the chance that personal information will become part of public records.

Every revocable trust has three important roles involved. The grantor (or settlor) — generally you — creates the trust and transfers assets to it. The beneficiary(ies) — often you and your family — receive the income and/or principal according to your trust's terms. A trustee — who could be you, a family member, or a corporate trustee — manages the trust assets.

You can change a revocable trust's provisions at any time during your life (as long as you have capacity to do so). If you act as your own trustee, you continue to manage your investments and financial affairs. In this case, your account might be titled "(Your Name), Trustee of the (Your Name) Revocable Living Trust Dated (Date)." Because this legal entity exists beyond your death, property titled in the trust does not need to pass through probate.

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