

The Four Basic Estate Planning Documents



When it comes to estate planning, the adage is true. An ounce of prevention is worth a pound of cure. Many people believe that they do not have enough money to need an estate plan; however, the need for an estate plan is not solely related to the amount of your wealth. Meeting with an estate planning attorney before a problem arises will enable you to avoid problems and added expense later. A basic estate plan is comprised of four legal documents, which are explained below.

1. Last Will and Testament

Everyone needs a Will. Your Will directs the disposition of your probate estate. Your probate estate consists of assets held in your name alone that do not have a beneficiary designated. If you do not have a Will, your estate will pass as directed by the Commonwealth's intestacy law.

A common misconception is that you do not need a Will if everything you own is held jointly or has a designated beneficiary. There must be a surviving joint owner or beneficiary for this plan to work. If the person whose name is on your accounts happens to be with you in an automobile accident and you both pass away simultaneously, your estate will need to be probated as there will be no surviving joint owner or beneficiary.

A Will is also necessary to designate a Personal Representative, formerly known as the Executor, who will carry out the administration of your probate estate. Your Personal Representative will gather your assets, pay your valid debts, and make distribution of your estate to your beneficiaries as set forth in your Will. If you have minor children, you can also designate a guardian in your Will to take custody of them after you pass away. By not making a Will, you forfeit your power and ability to make these designations and to direct the disposition of your property.

2. Health Care Proxy

A Health Care Proxy is a document in which you designate someone to make health care decisions for you if you are incapacitated and unable to make your own health care decisions. This person would step into your shoes and make medical decisions for you as you would have made them.

"Living will" language is normally included within the health care proxy. The living will language addresses your end-of-life decisions and generally sets forth that you do not want extraordinary medical procedures used to keep you alive when there is no

likelihood that you will recover. For this reason, it is especially important to choose someone who will be able to honor your decision.

3. Durable Power of Attorney

A Durable Power of Attorney is a document in which you designate someone to make financial decisions for you. This document is usually in full force and effect when it is signed, but it is expected that it will not be used unless you desire assistance with, or are unable to handle, your financial affairs.

The Durable Power of Attorney is a very powerful document. It gives authority to the person you designate to handle all of your financial decisions, not just pay your bills. In most cases, the person you name will be authorized to handle your real estate, life insurance, retirement accounts, other investment accounts, bank accounts, and any other matters involving your money. As such, you should choose someone that you can trust without reservation.

4. Declaration of Homestead

The Declaration of Homestead, once properly recorded in the Registry of Deeds, declares your principal residence to be your homestead. This declaration will protect the equity in your home up to \$500,000 from attachment, seizure, execution on judgment, levy, or sale for the payment of debts. If a declaration is not recorded, there is an automatic \$125,000 of equity protection. In addition to some other specific exceptions, a Declaration of Homestead will not protect your real estate from nursing home costs or tax liens.

Conclusion

With these four documents, most people can help their family members or trusted companions avoid expensive and painful legal hassles related to their long-term care and their estate. Individuals with more complicated estates may require different or additional documents to fully protect their interests and their beneficiaries, but for the majority of people, a basic estate plan is only four documents away.

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