

Overview of Common Estate Planning Documents

Patient Advocate Designation

A Patient Advocate Designation appoints an individual to make your medical and mental health treatment decisions for you. Your Patient Advocate only has the authority to act if you are incapable of making such decisions for yourself. The Designation also provides guidance to your Patient Advocate about the types of treatment you may or may not want.

Durable Power of Attorney

A Durable Power of Attorney names another person (the "Agent") to handle your financial matters for you if you become unable to handle your financial affairs due to an accident or illness (you can have the Agent help you even if you are competent). Typically, the powers granted to the Agent are broad and include the ability to sign checks, purchase and sell property, execute contracts, and handle any and all financial matters that you would be able to handle if you were competent and capable of doing so.

You have the ability to provide that your Durable Power of Attorney is effective immediately or only upon the happening of a date or an event in the future. The powers delegated to your Agent can be terminated at any time; otherwise they will automatically be terminated upon your death.

Last Will and Testament

Your Last Will and Testament is your written instructions to the Probate Court appointing a Personal Representative to administer your probate assets, designating beneficiaries of your assets that are subject to probate court administration, and nominating a guardian to care for your minor children (if any). If you do not have a valid Will at the time of your death, the State of Michigan will "write one for you" by applying the sometimes unexpected and complicated rules of intestacy.

Revocable Living Trust

A Revocable Living Trust is a written contract that governs the management and distribution of the assets transferred into it. So long as you are alive and competent, you can serve as the Trustee of your Trust and you maintain the ability to amend or revoke the terms of your Trust Agreement at any time.

Upon your disability or death, the successor Trustee(s) of your choosing will hold, manage, and distribute the assets in accordance with the terms of the Trust Agreement. By the terms of your Trust Agreement, you have the ability to exercise "control from the grave" - i.e., you can specify the manner and time of distribution to your beneficiaries. Assets that are or become titled to your Trust before or at your death are not subject to probate court administration.

Will Your Family Pay for Your Estate Planning Mistakes?

Mistakes, like potholes in a road, are just part of life. However, most mistakes and potholes are avoidable once you know where they are. So it is with common estate planning mistakes. Here are some common estate planning "potholes" to avoid.

1. **Make sure you have the proper estate planning documents in place and up-to-date.** You should have, at a minimum, a will, financial power-of-attorney and a medical power-of- attorney. Depending upon your personal and family circumstances and objectives, a revocable trust may also be appropriate. You need to be sure that your planning documents are kept up-to-date and coordinate to attain your planning objectives.
2. **Family members need to be aware of predatory marriages for financial exploitation.** Vulnerable elderly persons are potential victims to predators looking to use marriage as a means to gain control over the victim's assets, and the victim's family have no effective legal recourse to challenge the marriage after the victim's death. Family's need to be aware of this disturbing trend and what they can do about it.
3. **Clearly express your financial intentions if you should become incompetent.** While most estate plans express how you wish your assets to be distributed and used if you were to pass, you should also consider how you wish your assets to be used for your benefit if you were not in control of your personal care.
4. **Provide a list of important information to assist your fiduciary in handling your estate.** For anyone in charge of managing your assets during a period of incapacitation or estate administration, a well-complied list of information can prevent such a weighty responsibility from becoming a nightmare.
5. **Be careful if you name someone to be a joint owner of an asset.** Joint tenancy is an ownership arrangement between one or more individuals. Unfortunately, owning assets in joint ownership can conflict with your actual estate plan. Joint tenancy takes precedence over the wishes expressed in all wills and trusts. You need to understand the possible problems that can arise when a person is listed as a joint owner with you on an asset.
6. **Check your beneficiary designations.** Beneficiary designations control the transfer of many of your assets, such as life insurance, bank accounts, retirement accounts, even real estate. These beneficiary designations can trump an otherwise well-designed estate plan if not properly prepared and coordinated to meet your planning objectives.
7. **Appoint a Funeral Representative.** A new Michigan law allows you to designate the person who will make your funeral arrangements. This can eliminate an otherwise contentious family situation, especially in a blended family with adult children.
8. **Maintain adequate list of assets and important information.** One of the biggest head-aches for surviving loved ones is locating information on all of a deceased's assets. After

a person dies, children and even surviving spouses are often in the dark as to where to locate such things as insurance policies, retirement benefits, and bank or brokerage accounts, and even who they should contact. Sometimes weeks, even months, are wasted trying to make sure that all a person's financial assets have been located.

9. **Don't neglect items of sentimental value.** Carefully consider how you are disposing of your personal property. Michigan law allows you to leave a written memorandum that lists your tangible items and who is to receive each item.

10. **Don't surprise the family.** Consider whether you should make your feelings known to your beneficiaries while you are alive about your estate planning intentions. Ideally, you should resolve potential disagreements and quell hostilities (as much as possible) while you are still alive. You want to leave a legacy of good relationships.

11. **Select the proper fiduciaries to manage your affairs.** A critical component of any estate plan is selecting an appropriate trustee. There are several options, most commonly, a family member, a trusted advisor, or a professional trustee. While virtually any adult could serve as trustee, the role comes with significant responsibility. So what's the best option? Family member? Trusted advisor? Professional trustee?

12. **What are a trustee's roles & responsibilities?** Trust administration and estate settlement can be daunting. It's one thing to accept this position of honor; it's another to actually carry out the myriad of responsibilities at hand.

13. **Owning real estate in another state.** Absent proper planning, if you individually own real estate in a state other than Michigan, then the non-Michigan real estate will need to be probated in which the property is located. Probate, whether in Michigan and/or in another state can be avoided if you transfer the ownership of the real estate into a living trust.

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