

Planning Strategies

Basic Estate Planning Documents Everyone Should Have

When working with a trusts and estates lawyer to create a new estate plan, a client should end up with the following documents:

1. Durable Power of Attorney
2. Health Care Proxy
(also known as a Health Care Power of Attorney)
3. Living Will
4. Will
5. Revocable Trust (in some cases)

In this introductory article, we will provide a brief synopsis of each document. Subsequent pieces will go into more detail about these key parts of a full estate plan.



Durable Power of Attorney

A power of attorney (or “POA”) is a legal document by which you (as the principal) grant authority to someone else (as the agent) to act on your behalf regarding your personal financial accounts and affairs. A POA is usually broad and covers many things related to your finances, such as maintaining investments or paying your bills. It may be “durable” if it remains in effect even if you become incapacitated later. Because of the large scope of the durable POA, and the fact that someone else will manage your bank and investment accounts when you are incapacitated, it is important that you choose an agent whom you trust, which can be a close family member or friend.

Health Care Proxy

A Health Care Proxy (also called a Health Care Power of Attorney) is a document by which you appoint someone to make health care decisions for you in case you are unable to do so yourself. A Health Care Proxy often will grant permission for the disclosure of your confidential health care information, which the Health Insurance Portability and Accountability Act (aka “HIPAA”) normally protects. A Health Care Proxy may also include your wishes as to organ and tissue donation.

Living Will

A Living Will is a document by which you express your wishes concerning end-of-life medical treatment, including your preferences if you are not in a position to choose them yourself.

These treatments may include resuscitation, artificial nutrition and hydration, and mechanical ventilation.

A Living Will differs from a Health Care Proxy in that it lays out, in writing, directions for medical treatments, while a Health Care Proxy designates another person to make these decisions for you.

Will

A will is perhaps the most basic, and most important, estate planning document for two reasons:

1. It clarifies who gets what from your probate estate at death.
2. It appoints an executor (or personal representative) to act with respect to all of your assets and liabilities.

If you die without a will, your state’s law of “intestate succession” will apply to the disposition of your probate estate. Note that a will does not govern the disposition of assets outside the probate estate, such as joint property or property held in trust. Retirement accounts, “transfer-on-death” accounts, and life insurance proceeds are excluded from probate when there is an effective beneficiary designation.

A will is especially important if you are considering leaving part of your wealth to a trust for a spouse, child, or a charity, because the laws of intestate succession make no such provisions in the absence of a will. If you don’t have an estate plan in place, your estate could be subject to unnecessary taxes, and your wishes might not be carried out.

Revocable Trust

Many estate plans include a revocable trust in addition to a will. It is an efficient and useful tool for distributing your assets according to your specific wishes. You (the grantor) may change the terms of the trust any time before your death or incapacity.

When funded with a significant amount of your assets, a revocable trust keeps assets under your control while you are alive and capable. You may name yourself as the trustee, or name another individual, corporation, or a combination as trustee(s). If you serve as your own trustee, it is a good idea to name a co-trustee or successor trustee.

Should you become incapacitated, your named successor trustee can take over and act on your behalf for any property held in the trust. Upon your death, any assets held in the trust are excluded from the probate process and can be dealt with immediately by your trustee, according to the directions laid out in the revocable trust document. This can potentially save your beneficiaries the time and trouble of going through probate court.

A revocable trust also provides privacy. Unlike a will, which is considered a public document, a revocable trust does not need to be filed in court when you die, keeping your estate wishes private.

A final advantage is that if you own property in more than one state, such as a vacation home, your estate can avoid having to go through “ancillary probate” in the other states if the property is held in your revocable trust.

Choosing a Fiduciary and Updating Periodically

It is essential that you not only have these basic documents in place but that you carefully consider who you want to act as your fiduciary or agent in such cases. This could be a close family member, an attorney, a trusted business associate, or a corporate fiduciary, such as a trust company. You also may name more than one fiduciary.

It is a good idea to refresh your documents every so often. Unless there is a life event or a major change in the law that would justify a revision, we advise that you review your estate plan every 5 to 7 years.

Feel free to contact your Portfolio Manager or Client Advisor at 1919 Investment Counsel for advice on these key estate planning documents.



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Warwick M. Carter, Jr. is a Managing Director at 1919 Investment Counsel based in New York. As a Senior Wealth Advisor, his primary focus is generational wealth planning for high net worth individuals and families. He also advises on philanthropic planning. When giving advice, Warwick takes a comprehensive approach to assessing all aspects of a client's tax, financial and family situation. Warwick works closely with Portfolio Managers and Client Advisors in all of our offices to integrate wealth strategies with a client's investments. He regularly meets with outside advisors to devise appropriate solutions that will help grow wealth in a tax-aware way over the long term.

Outside of the office, Warwick has considerable experience in philanthropic planning as well as managing foundations. He has advised some of the largest foundations in the country. Warwick served on the Board of Trustees of the HealthCare Chaplaincy Network in New York and was a member of the Board of Visitors of the Columbus School of Law at The Catholic University of America in Washington, D.C. Additionally, Warwick is a member of the New York State Bar Association and the Society of Trust and Estate Practitioners (STEP).

Warwick joined 1919 Investment Counsel in 2019. Prior to joining 1919, he served as a Senior Trust Officer for J.P. Morgan Private Bank in New York and Washington, D.C. He was subsequently National Head of Trusts and Estates at Fiduciary Trust Company International for nearly six years. He also launched a private consulting practice advising RIAs on trusts and estates matters. Earlier in his career, he practiced law in New York.

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About 1919 Investment Counsel

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