

COMMON ESTATE PLANNING DOCUMENTS

What follows is a list of common estate planning documents used in Minnesota, followed by very brief descriptions of the purpose and limitations of each document. All estate planning documents should be prepared only with the specific advice and counsel of a licensed attorney.

Simple Will: A will is the most central and important estate planning document. A will allows you to name your personal representative (executor), direct as to how the probate court should divide your assets, indicate your preference as to what procedural rules should be followed during estate administration, name guardians for any of your minor children, and provide other directions. A lengthy list of things can go wrong if you do not have a will. See separate section labeled "If You Don't Have a Will." A simple will is one that contains no trust provisions, and does not do any tax planning.

Will Containing Trust Provisions for Children: This will is one step up from a simple will, especially recommended for individuals having minor children. This will basically directs that money or other assets going to minor children are transferred to a named trustee, who manages the assets until the child turns a specific age. Also, it is important to note that no trust is established until the death of the person making the will, and most wills of married couples provide that no trust is to be established unless and until both spouses have passed.

Tax Planning Will: A tax planning will is recommended for individuals whose overall estate exceeds \$1,000,000, the point at which Minnesota estate taxes kick in. In determining the "size of the estate," all assets are counted by the IRS, including homestead, other real estate, stock investments, retirement assets, personal property, and proceeds from life insurance policies owned by the decedent. Tax planning can be extremely technical, and often the advice of an attorney **and** CPA is advised. The wide variety of options available for tax planning is beyond the scope of this summary. However, one recognized technique is the "A-B Trust Will" in which a person's estate is divided into a portion for the children calculated as the largest amount of assets which can transfer free of estate tax, with the balance going in trust to the surviving spouse. The disadvantage of preparing any trust will for tax planning is that a longer amount of time is needed to consider the plan, and an extremely careful list of assets and valuations must be made, resulting in a greater expense to the client. However, the few thousand one may pay for a tax planning will is greatly exceeded by the amount of extra taxes paid without such a will.

Revocable Lifetime Trust: Some people refer to this as a "living trust" because it is a trust established while a person is still alive. The most typical pattern is to transfer **all** assets owned by the individual into the revocable trust. Then, upon the death of the person who established the trust, assets are transferred not via probate but simply by designating a successor person to control the trust assets. This type of trust is also extremely helpful if an individual owns real estate in more than one state; without such a trust to hold title to the property, a probate may be required in **each** state where the

decedent owns real estate. The two primary advantages of the revocable trust are: (1) avoidance of probate; and (2) maintaining confidentiality of financial information, as compared to a full probate filing which is open to the public. However, the revocable trust is not for everyone. It takes significant planning and effort to transfer all assets into the revocable trust. The single biggest disadvantage is that if even one asset is not transferred into the trust, then it may be necessary to open a probate file, defeating the entire purpose of the trust.

Power of Attorney: A power of attorney is a written, notarized document allowing a family member or trusted friend the power to transfer, manage, or otherwise make decisions regarding your property. Because a power of attorney can be very broad to cover all of your property or very narrow to cover only specific acts and specific property, there is an infinite variety of versions. The main use of a power of attorney for estate planning, if drafted properly, is to allow a family member or trusted friend to transfer your assets when you are mentally incompetent to do so. The limitation on the power of attorney is that it is void and has no force and effect immediately upon your death.

Health Care Directive: This document is also known as a "living will" and allows you to describe in advance what type of medical treatment you want in the event you are unable at the time to express your preference. In this document you can also name someone to talk to the doctor for health care decisions on your behalf.

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