

All estate planning starts with a core estate plan. A core estate plan lets you to decide who receives your property at death and how it will be managed for your chosen beneficiaries. Additionally, you can name people or organizations to serve in different roles for you, both during your life and following your death.

A core estate plan typically consists of the following documents:

- (1) Last Will and Testament
- (2) Revocable (Living) Trust
- (3) Durable Financial Power of Attorney
- (4) Durable Medical Power of Attorney
- (5) Directive to Physicians (aka a living will)
- (6) HIPAA Authorization

You may need additional planning beyond a core plan to achieve more sophisticated goals (such as tax minimization, sophisticated philanthropy, or business succession). Any additional planning will build around your core estate plan, so that your overall plan is well coordinated.

## LAST WILL AND TESTAMENT

A Last Will and Testament determines how your “probate assets” will be distributed when you die, identifying who receives these assets (individuals or charities) and how they will be managed (i.e., creating trusts for their benefit under the will).

Probate assets generally mean all property that you own at death except for property (1) distributed through a beneficiary designation (such as for life insurance or an IRA), (2) owned by you as joint tenants with rights of survivorship with another person (those assets belong to the surviving joint tenant at your death), or (3) titled in the name of a trust (those assets are distributed according to the terms of the trust).

Your will names one or more persons to act as “executor” of your estate. An executor’s job is largely administrative. Specifically, the executor (1) works with an attorney to file your will with the probate court, (2) collects and manages all the estate assets during the estate administration period, (3) pays any outstanding debts, expenses, and taxes for the estate, and (4) ultimately distributes the assets to the beneficiaries under your will.

If you have minor children, your will can name someone to serve as guardian for your minor children if you die before your children reach age 18. Think of the guardian as the person responsible for “raising” your minor children.



## REVOCABLE (LIVING) TRUST

You may choose to create a revocable living trust as part of a core estate plan. This kind of trust facilitates the distribution of assets at your death and helps manage assets owned by the trust if you become incapacitated. Unlike a will (which is a public document once filed with the court after your death), the trust agreement for a revocable living trust is a private document, which keeps the details of your estate plan private.

A revocable trust should be paired with a simple will called a “pour over” will. A pour over will directs that any assets not owned by

your revocable trust at your death must be distributed to the trust following your death.

You can transfer assets to your revocable trust during life to avoid the “probate” of those assets at your death. Unlike other states, the probate process under Texas law is generally straightforward. However, if you own real estate in another state and then die with that real estate titled in your individual name, a separate probate proceeding would be required in that state to transfer title of the property to your chosen beneficiaries at death. You can avoid that hassle by retitling that property into the name of your revocable trust while you are alive.

If you become incapacitated, then the assets of your revocable trust will be managed for your benefit by the person(s) named as trustee of the trust. Often, a revocable trust can be the most efficient method for managing assets for an incapacitated person.

#### **DURABLE FINANCIAL POWER OF ATTORNEY**

This document allows you to name one or more people (called agents) to make financial decisions for you if you become incapacitated. You should also name one or more alternate agents, who can serve if your primary agent cannot serve in that role.

#### **DURABLE MEDICAL POWER OF ATTORNEY**

This document allows you to name one or more agents to make medical decisions for you if you become incapacitated. You should

also name one or more alternate agents, who can serve if your primary agent cannot serve in that role.

#### **DIRECTIVE TO PHYSICIANS (LIVING WILL)**

This document allows you to make your wishes known in case of certain significant health care events.

#### **HIPAA AUTHORIZATION**

This document allows you to give one or more people the right to access your confidential medical information.

#### **TITLING OF ASSETS AND BENEFICIARY DESIGNATIONS**

Once you have the appropriate documents in place, you must check that your assets are titled consistent with the plan set out in the documents. For example, titling accounts as joint tenants with rights of survivorship often runs counter to estate planning goals. Each account should be evaluated for the proper titling.

Also, assets that have beneficiary designations (such as IRAs and life insurance) should be reviewed and beneficiary designation forms updated to coordinate those assets with your core plan.

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