

Last Will & Test

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THE 411 ON ESTATE PLANNING

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An estate plan is a collection of documents that specify how you want your assets distributed upon incapacity or death. Many individuals defer addressing, or even worse, flat-out avoid establishing a proper estate plan. Perhaps the thought of incapacity or death is simply too much to contemplate, or intimidating legal jargon incorporated into an estate plan stunts an individual's action. Regardless of the reason, establishing and then maintaining a proper estate plan is an essential aspect of a cohesive, well-thought out financial plan.

Below are descriptions of the most fundamental estate planning documents, as well as other estate planning considerations.

A Will

A **will** is the most well-known and widely-used estate planning document. A will is a legally binding blueprint that dictates how an individual would like their estate to be handled upon their death.

Specifically, a will can direct those to leave property¹ to, name a guardian for minor children, choose an executor of the estate, plan personal affairs (such as burial arrangements, gifts, and donations), and hurdle other legal challenges.

Should everyone have a will? Yes. We believe everyone should have a will. A will is essential even for individuals with a very simple estate, or who have already established a revocable trust (see next section).



What if someone dies without a will? If an individual dies without a will, they have died “intestate.” When this occurs, the law of their state of residence determines how their property is distributed upon death. Dying intestate virtually guarantees a costlier, longer, and more stressful probate² process when compared to an individual who had a properly drafted will.

Please visit the following website to review the intestate rules for California: <https://apeopleschoice.com/when-you-die-without-a-will-in-california/>

¹ Property may include bank accounts, investment accounts, real estate, or any other assets you own at the time of your death.

² Probate is the legal process through which a deceased person's estate is properly distributed to heirs and designated beneficiaries and any debt owed to creditors is paid off. In general, probate property is distributed according to the decedent's will, if there is one, or according to state law if no will exists.

Does a will have any shortcomings? A will, unlike a properly funded revocable trust, will be subject to [probate](#). It is almost always preferable to avoid probate given the costs³ associated with the process, coupled with the fact that probate is public record, limiting the privacy of an individual's estate and heirs.

Even with its limitations, a properly drafted and administered will is an essential estate planning document for almost all individuals. The shortcomings of a will can be mitigated by “layering” it with a revocable trust.

A Trust

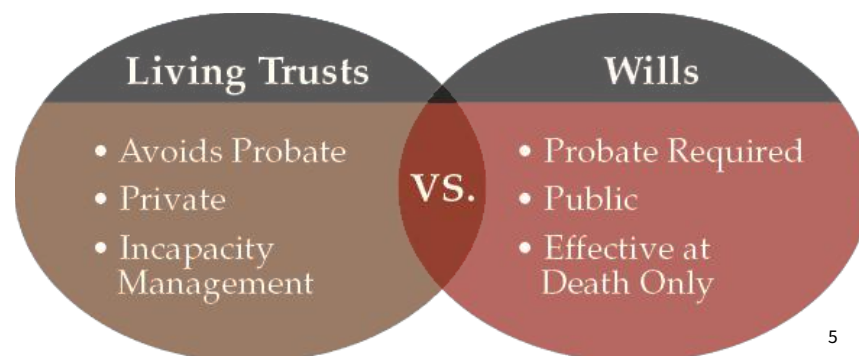
A **trust** is a fiduciary arrangement that allows a third party, or [trustee](#), to hold assets on behalf of a *beneficiary* or *beneficiaries*. Trusts are extremely flexible, with the ability to specify how and under exactly what conditions the assets held “in trust” pass to beneficiaries.

The most common and widely applicable form is a **revocable trust** (also known as an inter vivos or living trust). Revocable trusts are funded during the lifetime of the grantor, the individual that creates the trust, and can be *altered, changed, modified, or revoked entirely* during the grantor's life. Revocable trusts are unique in that the grantor and the trustee are the same person.

What are some advantages of a revocable trust? Advantages of a revocable trust include: flexibility, avoiding the cost, delay, and publicity of probate, protection from court challenges, and the ability to control one's assets after their lifetime.

Why do I need a will if I have a revocable trust? A revocable trust only deals with the specific assets titled or held within the trust, such as life insurance, real property, and investment portfolios. Even with a revocable trust, most attorneys still recommend a pour-over will⁴ to account for those items not placed, or titled, in the name of the trust.

Should everyone have a revocable trust? Not necessarily. Individuals (or couples with no children) that have a very simple estate and/or do not have significant assets may only need a will.



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³ Attorney's fees, court costs, and appraiser's fees.

⁴ A pour-over will simply states that any assets that have not been placed into an individual's revocable living trust should go there when they die.

⁵ Anthoor Law Group, *Plan Your Living Trust Now*, digital image, Anthoor Law Group, accessed October 22, 2018.

An Advance Health Care Directive

An **Advance Health Care Directive** allows an individual to select someone they trust to make decisions regarding their health care in the event they are mentally or physically unable to make decisions for themselves. An Advance Health Care Directive allows for specificity by identifying many different mental and physical impairments and the desired actions for each.

An Advance Health Care Directive is the terminology used in California. In other states, it may be known as a durable power of attorney for health care, a medical power of attorney, or a health care proxy.

Important Note: An Advance Health Care Directive is particularly essential for someone with a family history of poor mental or physical health, or for someone whose health is rapidly declining.

A Financial Power of Attorney

A **financial power of attorney** allows an individual to give a trusted person authority to handle their financial affairs if they become unable or unwilling to do so by incapacitation or other means. A financial power of attorney can be as simple as allowing this trusted person to pay the incapacitated individual's bills, to as involved as operating their business.



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When creating a financial power of attorney, we recommend making the power durable.

A durable power of attorney will last for the entire individual's life. So, if the individual becomes incapacitated more than once in their life, the durable power of attorney will continue to serve its purpose. If durability is not added, the trusted person's power will lapse when/if the individual recovers from an incapacitation.

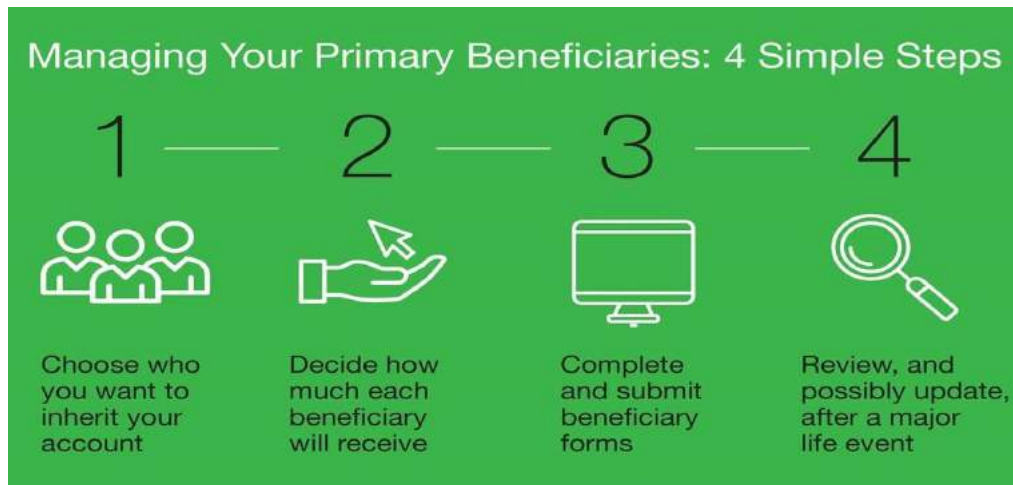
Important note: everyone over the age of 18 should have a properly executed Advance Health Care Directive and financial power of attorney.

Beneficiary Forms

For certain assets, an individual can designate a beneficiary or beneficiaries to automatically receive the property upon their death. For example, an individual can establish a Transfer on Death (TOD) account or a Payable on Death (POD) account, held outside of their trust, designating specific beneficiaries for these types of accounts. All retirement accounts are subject to beneficiary designation rules as well.

⁶ Bellah Perez, PLLC, *Protecting Your Family with a Power of Attorney*, digital image, Bellah Perez, PLLC, accessed October 22, 2018, <https://bellahperez.com/power-of-attorney/>.

Naming a beneficiary for these types of accounts is often very easy to do and should not be overlooked. If you do not name a beneficiary for these accounts, the assets may go through probate. The intestate rules then dictate the beneficiary to receive these assets and this may be inconsistent with your intended wishes.



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Life Insurance

One way to ensure that all of your debts are paid in the event of your death (or disability) is through adequate life insurance coverage.

While a detailed discussion on life insurance is outside the scope of this checklist, the two most common types are [term](#) and [whole life](#).

Owning a Business

If an individual also owns a business, their estate planning becomes more complicated and more important. Not only do they need to consider their family's best interests, but also their business partners, co-owners, heirs, and employees. Here are some tools to help them address the interests of other constituents of their business:

[Management succession plans](#) specify who will take over their role.

[Buy/sell agreements](#) help to assure business continuation for the surviving partner(s) or co-owner(s).

[Family limited partnerships](#) help engage heirs and survivors.

⁷Jahnke, Sandy, April 12, 2018, *4 Simple Steps for Naming Beneficiaries and Why It Matters*, digital image, TD Ameritrade, accessed October 22, 2018, <https://tickertape.tdameritrade.com/personal-finance/naming-beneficiaries-retirement-estate-planning-14994>.

Keeping Your Documents Organized

We believe estate planning documents should be kept in three separate places: the individual(s) should have the originals, their attorney should have a copy, and their wealth manager should have a copy as well.

For personal safekeeping, while we continue to recommend keeping a physical copy of your documents, you should consider utilizing a website to store these documents in the cloud. Reputable websites to store these documents include:

Estate Map (www.estatemap.com)
 Everplans (www.everplans.com)
 The Torch (www.thetorch.com)

We also recommend visiting the following webpage to read a complete guide to keeping personal financial records: <http://news.towerpointwealth.com/posts/wealth-8-organizing-your-financial-records?id=wealth-8>

How Can We Help?

This is a personal decision, based on your individual values, beliefs, and goals, both personally and economically.

At Towerpoint Wealth, we are a legal fiduciary to you, and always work 100% in your best interests. We are here to serve you, and will work with you and your estate planning attorney to ensure that your estate planning documents are in order. If you would like to further discuss estate planning with us, we encourage you to call, 916-405-9166 or email spitchford@towerpointwealth.com to open an objective, no-strings-attached dialogue.



Important note: This guide is focused only on California state law and is not necessarily applicable to other states.

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