WELLS FARGO Wealth & Investment Management

Five basic estate planning documents

The following information and opinions are provided courtesy of Wells Fargo Bank, N.A.

A comprehensive estate plan involves more than just a will. Here are the five basic documents that everyone should consider.

1. Will

The document everyone typically thinks of first when they think of estate planning, a will is a legal document that becomes effective at your death to transfer your assets to whomever you like. A will has to be admitted to probate, a court-supervised procedure that in many states can be lengthy and expensive. Even if you have a revocable living trust (discussed below), a will is still necessary as a "backstop" and may provide guidance regarding guardianship of your minor children.

2. Revocable living trust

A revocable living trust is another document that sets forth where your assets pass at your death, but it is designed to provide two benefits that a will does not: probate avoidance and incapacity planning.

A trust is a legal arrangement between three parties: the person creating the trust (known as the grantor, trustor, or settlor), the trustee (who takes legal title to the property), and the beneficiary or beneficiaries for whom the trust is administered. In the case of revocable living trusts ("revocable," meaning it can be revoked, and "living," meaning it is created during the grantor's lifetime), the same person can play all three roles; the details of the trust specify how and

when assets pass to beneficiaries. The grantor has control over the assets held in the trust, even though the grantor no longer owns those assets individually. Successor trustees can be named to oversee the trust assets in the event the grantor can no longer act as trustee.

It is important to note that a trust agreement operates only over those assets held in the name of the trust. If a grantor creates a trust but fails to transfer assets to it (known as "funding the trust"), it may not work as it was intended.

3. Durable power of attorney

Under a durable power of attorney, you appoint another person (known as your "agent") to handle your financial matters when you are not able to act for yourself. A durable power of attorney addresses aspects of your assets that fall outside the revocable living trust, including personal taxes, certain bank accounts, investments, business ownership interests, and types of insurance. This means, of course, that you have to select your agent carefully. Even with a revocable living trust, a power of attorney may be necessary to be able to handle financial matters that don't involve trust assets, such as dealing with the IRS or government agencies.

4. Living will

Not a will at all, a living will is a statement of intent regarding the life support measures you want taken when you are unable to speak for yourself. It serves a different purpose than the health care power attorney—the living will is a nonbinding statement of intent, while the health care power of attorney appoints someone to make binding decisions for you. As a result, they are often used together and may be combined into one document.

5. Advanced health care directive

This document does two things: it appoints an agent who can make medical decisions on your behalf when you are unable to do so and gives directions for the care you want to receive in different situations. Some states use a combination of different documents to appoint an agent and state your directions, including a health care power of attorney, health care proxy, and/or a living will.

Consult with your advisors

A well-thought-out estate plan deals not only with the disposition of your assets at death but also care of yourself and your wealth during your lifetime. Such a plan will incorporate many, if not all, of the documents described above. For more information on which documents may be most appropriate for you and how they should be structured for your specific situation, talk to your estate planning attorney.