WELLS FARGO

Five Basic Estate Planning Documents

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

Will. The document everyone 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.

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 simply a legal arrangement between three people: the person creating the trust (known as the grantor, trustor or settlor), the trustee (who takes legal title to the property), and the beneficiary 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), you are typically the grantor, the trustee and the beneficiary. Even though you continue to control the property as trustee, you no longer own it outright. This means that the successor trustee named in the trust agreement takes over automatically if you die or become incapacitated.

However, a trust agreement operates only over those assets held in the name of the trust. So 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.

Durable power of attorney. Under a durable power of attorney, you appoint another person (known as your "agent") to handle your assets on your behalf. It remains in effect after you become incapacitated and allows your agent to handle your assets in the same ways that you could. This means, of course, that you have to select your agent carefully. It may be less effective than using a revocable living trust for incapacity planning because many institutions will not accept durable powers of attorney.

Health care power of attorney. Also known as a health care directive or proxy, this document also designates an agent on your behalf, but in this case to make medical decisions (usually life support decisions) on your behalf when you are unable to do so.

Living will. Not a will at all, a "living will" is a statement of intent regarding the life support measures you want when you are unable to speak for yourself. It serves a different purpose than the health care power attorney: the living will is a non-binding 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.

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 while you are alive. Such a plan will incorporate many if not all of the documents described above. For more information, talk to your estate planning attorney.

WM29270 (IHA-6211801) Valid through March 2020 CAR-0918-00266