

Independent Living Skills Seminar: Wills & Estate Planning

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There are 3 main documents involved in estate planning.

1. The Will.
 - The will takes effect when you pass away. It names your estate trustee (used to be called executor/executrix). If you lose track of an old will, any new will written automatically supersedes the old one.
 - The estate trustee is appointed by the writer of the will to handle all your affairs including outstanding bills, legal costs, funeral arrangements/costs, last year of taxes etc.
 - The estate trustee is given the power to go through all of your assets and finances to be divided up according to your wishes.
 - You may appoint 1 estate trustee or several. The position of estate trustee is voluntary, which means the person you appoint is allowed to refuse to take on the role of estate trustee. So, it is important that you talk to the person you want to choose before appointing them to make sure they will actually be comfortable carrying out your plan. In any case, it is a good idea to have a back-up person named if the original trustee refuses the position or is unable to carry out your wishes (eg. if they pass away before you)
 - It is recommended that the estate trustee be a relative, but it is possible to have a lawyer take on the role as a cost.
 - The average processing time for a will after the date of death is 6 to 10 months, it can take a long time to track down beneficiaries, pay debts and arrange payment of the last year of taxes (it can take even longer if the will is out of date)
 - The value of the estate can be determined after debts and/or bills are paid. The remaining money is delivered to the named beneficiary/beneficiaries. In this process, any assets are sold/liquidated and the money earned from them is put into a trustee account, which will then be given to the beneficiary or divided up among multiple beneficiaries.
 - o If there are outstanding debts that are more than what the estate money can cover, assets must be sold to cover those costs first. This may mean the beneficiary doesn't get what they were initially supposed to get.
 - The estate money is usually divided equally among beneficiaries, if the will is written that way. But it can specify that certain beneficiaries receive a certain amount or percentage. If there are problems with the division, the beneficiaries can hire lawyers to challenge it, but ultimately that hurts the amount that any one beneficiary would get.
 - It is VERY important to update your will throughout your life. Recommended to do this every 5 years or so, or if there is a major life event (eg. marriage, birth of a child, death of a beneficiary etc.)
 - o Especially if any portion of your estate is to be donated to charity, that money can't just be given to anyone. Lawyers are obligated to find the most correct allocation for the money of someone who is named in the will. So, it takes a huge amount of work and cost to trace organizations that may have dissolved or changed their name since you listed them as a beneficiary, which may end up cutting into the money you would have given them.
 - When it comes to updating your will, minor changes can be made by simply inputting a new page into the file that outlines the changes but doesn't really affect the overall will. The cost for

this is around \$75. If the changes are larger, it would require writing an entirely new will and would cost the same as creating one for the first time.

- A typical will is around 10 pages.
- Writing your own will is a legal and binding document if you have it witnessed by 2 people (called a "holographic will"). The concern would be that there may be errors or loop holes in the way it is written that may cause problems when correct legal terminology isn't used. However, writing your own will is better than not having one at all.
- You can also pick up will and power of attorney packages at Staples for \$50. They are a more thorough option than writing your own, but may still have some problems.
- Lawyers write wills that are customized to you and your plan. If you bring him in a will you have written, he is obligated to make the necessary changes if he is going to sign off on it so that it meets the legal standards for those types of documents. The advantage with this is that the will be soundly written and your plan can't be as easily overthrown. It also gives you the peace of mind to know that the law firm keeps copies of the will in case your copy is ever lost or damaged so that the estate trustee can get access to the document as soon as possible. They will also make arrangements for a back-up lawyer to take over your case if your original lawyer is no longer able to do so (eg. they pass away).

2. Powers of Attorney

- This document is the part of your will that appoints someone to make decisions for you and who take care of your affairs, if the situation arises. The decisions made by this person must be deemed "in your best interest", if they are not the person may be charged with fraud (but only after they have been caught stealing your money or making unethical decisions, so it is VERY important to CAREFULLY consider who you choose to be your power of attorney).
- The power of attorney does not take effect until you are no longer able to speak for yourself or make your own decisions. If you are still conscious and able to communicate your wishes, no one else can make decisions regarding your finances or health care.
- There are 2 main areas where power of attorney are necessary: for financial decisions and for health decisions. You can have one person act as power of attorney in both areas, or you may choose 2 different people.
 - o It is also recommended that you choose a back-up for each position, in case something happens to the original people you had in mind. If there are any changes to your relationship with the designated person or their capabilities to do the job, it is important to update your documents and make sure the wrong person is not put in charge of your most crucial decisions.
- Just because you are married does not automatically grant you decision making power over your spouse! If you want to make your spouse power of attorney, it needs to be clearly stated in your will.

3. Living Will component

- In the case of power of attorney for health, the main issue is often when to remove a person from life support.
- It takes 2 doctors to determine if there is no reasonable prospect for meaningful recovery.
- Only after this has been determined, can the power of attorney (along with the 2 doctors) remove life support measures. At this point, death would be considered from "natural causes".
 - o This is important because euthanasia is illegal, and acting alone, the power of attorney could be seen as acting against the best interests of the person who appointed them.