

Five Essential Estate Planning Documents

Homework: Read this article. Then review your estate documents. Do you have all of them? Are the people you named still correct?

We have recently met with several clients to help update their estate planning documents. This month, I will review the Big 5 documents you should have.

All adults should have these documents.

Essential #1: Last Will and Testament*

When you think of an estate plan, you probably think of making a will. This is because a will is one of the basic building blocks of an estate plan. A will allows you to dictate who will receive your property when you die; without a will or other estate planning tools, the State of Ohio makes that determination. A will also allows you to appoint a guardian for your children if they are minors at your death.

People often think about wills in terms of leaving their larger assets to loved ones, but one of the most useful things about a will is its ability to leave smaller items, perhaps those without much financial value but with great sentimental value, to specific people. This can prevent fighting among your heirs after your death over cherished family heirlooms. Preventing conflict among family members is one of the most important things your estate plan will do.

Keith notes: Any asset with a beneficiary designation does not pass by the will. If assets pass through the will, probate is often required. Probate can be time consuming, so use beneficiary designations, if possible.

Essential #2: Durable Financial Power of Attorney*

If you can no longer take care of your business and financial affairs, who will take care of them for you? Don't assume that your spouse or adult children can; in most cases, that is simply not true. A power of attorney grants another person you choose to conduct business (like paying bills, entering contracts, opening and closing accounts) on your behalf. "Durable" means that this power survives after you become legally incapacitated.

Don't assume you'll be able to see incapacity coming and appoint someone "when the time is right." A sudden illness, like stroke, or an accident can render you suddenly legally incapacitated. And people tend to be in denial about the onset of dementia. By the time it's obvious you can no longer manage your own affairs, you may no longer be legally capable of appointing an agent under a power of attorney to manage them for you. Your family will be forced to go to court and essentially sue you for the right to take care of your business.

Keith notes: A Durable Power of Attorney can only be used while you are living. At death, the Executor of the will (Essential #1) is in charge of your estate.

Essential #3: Healthcare Power of Attorney*

A medical or healthcare power of attorney specifies who can make decisions on your behalf in the event that you cannot make them for yourself. This person, called your healthcare agent or attorney-in-fact, should be someone you trust to act in your best interests and in accordance with your values. You can give your healthcare agent specific guidance as to what treatments you would or would not want to receive via a Living Will Declaration, or grant them the authority to act as they think best.

Essential #4: Living Will (optional)*

Living wills and other advance directives are written, legal instructions regarding your preferences for medical care if you are unable to make decisions for yourself. Advance directives guide choices for doctors and caregivers if you're terminally ill, seriously injured, in a coma, in the late stages of dementia or near the end of life.

Advance directives aren't just for older adults. Unexpected end-of-life situations can happen at any age, so it's important for all adults to prepare these documents.

Keith notes: The Living Will gives your instructions about life prolonging procedures if you are terminally ill. Without this, your Healthcare Power of Attorney will make the decisions. This form is optional.

Essential #5: HIPAA Release Form (optional)

"HIPAA" stand for the Health Insurance Portability and Accountability Act of 1996. Part of this law is intended to protect the privacy of your medical information. This is a good thing, but in order for people you care about (other than your healthcare agent) to have access to your medical information, you must grant access to your records through HIPAA releases.

As you can see, most of these essentials have little to do with how much money you have, or whether you are responsible for providing for others. Estate planning is important for all adults, and, as you can see, estate planning is about much more than what happens after you die.

* Source: Gudorf Law Group, LLC

Take some time to review and update your documents.