



Frequently Asked Questions about Estate Planning

There is a lot of confusing vocabulary and concepts when it comes to Estate Planning. Use this document to make sense of it all.

I. What is a *Will*?

Simply, a will provides instructions for distributing your assets to your family and/or other beneficiaries upon your death. Family First can customize the provisions to meet the needs of your particular situation. You will appoint a personal representative (an Executor) to distribute your assets.

A will, to be effective, must be filed in probate court. Probate is a judicial process for managing your assets if you become incapacitated and for transferring your assets in an orderly fashion when you die. The court oversees payment of liabilities and the distribution of assets. Generally, your personal representative will need to hire an attorney.

Because a will does not take effect until after you die, it cannot provide for management of your assets if you become incapacitated. There are more concrete estate planning documents, which we recommend and because they are more effective to protect your assets.

II. What if I only have a *Will*?

If you only have a Will, at the time of your death, your estate goes through Probate. This process will take 1 to 2 years, perhaps longer. During this time, the court controls your finances and assets, possibly guardianship of your your children, and your estate will pay all



the court fees and legal fees. The costs associated will be higher and the time it takes to go through Probate can be increased if your will is contested.

III. What if I don't have a Will?

At death, your estate goes through Probate. This process will take 1 to 2 years, perhaps longer. During this time, the court controls your finances and assets, to possibly include your children, and your estate will pay all the court fees and legal fees.

IV. What is a *Durable Power of Attorney*?

A power of attorney is a legal document in which you name another person to act on your behalf. This person is called your agent or attorney-in-fact. You can give your appointed agent broad or limited management powers. You should choose this person carefully because he or she will generally be able to sell, invest and spend your assets.

A traditional power of attorney terminates upon your disability or death. However, a durable power of attorney will continue during incapacity to provide a financial management safety net. A durable power of attorney terminates upon your death.

V. What is a *Healthcare Power of Attorney*?

A durable power of attorney for health care authorizes someone to make medical decisions for you in the event you are unable to do so yourself. This document and a living will can be invaluable for avoiding family conflicts and possible court intervention if you become unable to make your own health care decisions.



VI. What is a *Living Will*?

A living will expresses your intentions regarding the use of life-sustaining measures, in the event of a terminal illness. It expresses what you want but does not give anyone the authority to speak for you.

VII. What is a *Revocable Living Trust*?

There are many different types of trusts with different purposes, each accomplishing a variety of goals. A revocable living trust is one type of trust often used in an estate plan. By transferring assets into a revocable trust, you can provide for continued management of your financial affairs during your lifetime (when you're incapacitated, for example), at your death and for generations to come. Your revocable living trust lets trust assets avoid probate and reduces the chance that personal information will become part of public records.

Every revocable trust has three important components. The grantor (or settlor/trustor), typically yourself, creates the trust and transfers assets to it. The beneficiary or beneficiaries, typically yourself and your family, reserve the income and/or principal according to your trust's terms. The third component, a trustee, who could be you, a family member or a corporate trustee, manages the trust assets.

You can change a revocable trust's provisions at any time during your life. If you act as your own trustee, you continue to manage your investments and financial affairs. In this case, your account might be titled "Your name, Trustee of Your Name Revocable Living Trust." Because this legal entity exists beyond your death, property titled in the trust does not need to pass through probate.



VIII. What is *Probate Court* and why should I avoid it?

Probate is a court proceeding. It occurs either upon incapacitation or death. The purpose is to prove your Will and distribute your property. Probate is expensive and it takes time. Cost can range between 4% and 10% of the State's gross, taken out before the debts are paid. Probate often takes between 1 and 2 years, sometimes longer. During this time, assets are frozen and your minor children may be placed in State custody until guardianship is determined by the courts. If your family needs money to live on, their request could be denied. You and your family have no privacy or control during Probate. Probate files are open to the public, business competitors, unscrupulous solicitors and disgruntled heirs who can contest your will. Also, the court controls which assets are distributed to your family members, when they are to be distributed and your estate pays for the supervision of this process.

IIIX. How do I avoid Probate?

The only practical method to avoid probate and protect your family, property and assets is to set up a Living Trust.

IX. What if I put a Living Trust in place?

When you put a Living Trust in place, there is no probate at death, no court fees or legal fees, your assets can be immediately distributed, per your written instructions. Your family will have access to your funds; your children will not need to be placed in the care of the state.