

Estate Planning documents are the important legal documents that are needed by every individual, examples include a Last Will & Testament, Durable Power of Attorney documents, Guardianship of minor children, Medical Power of Attorney documents, Trust documents, and Beneficiary Designation forms. All these documents need to be in good order, secured in a safe location, be accessible by the people you have authorized, and properly communicated to those who need to know.

In my second to last breath in this life, I want to know that I have properly planned for the care of my family, the achievement of our goals, and fulfilled the loving promises that I made to them, as I begin my next life journey.

Everyone will die, and most of us will be incapacitated a few times in our lives because of medical problems, physical accident, or age related mental decline. The estate planning documents are the critical bridges that protect your property, your lifestyle, allow others to temporarily control your property for your benefit, and transition your property to your chosen heirs and charities.

Unfortunately, about 64% of Americans do not have even simple estate planning documents, such as a Last Will & Testamentⁱ. Potentially, only 27% of families have engaged in serious conversations about estate planning and healthcare planningⁱⁱ. Less than 10% have easy access to the documents.

If someone must make a decision about the end of my life, I want it to be a person I love, trust, and knows my heart

To designate another human being as your Fiduciary (example: Executor, Guardian, Trustee, and/or Power of Attorney) in the estate documents is a major compliment and expression of trust for that person. You trust that person with your family, your life, your finances, and even your legacy.

As part of that designation process and the drafting of the documents, it is important that you have clear communications with these people (often family members) about their roles, responsibilities, and reasons that you chose them. Without such communication, they may be poorly prepared to accept the position and service your family the way you expect. So, a major element of the Estate Planning Process is the proper preparation of the documents and the clear communication of your intentions and goals with those who will execute. Therefore, for each of the needed parties to the following common estate documents, please consider the following criteria as you decide upon the individual fiduciaries that will serve your family and legacy:

- Is the person capable of doing the task you asked- mentally, physically, emotionally, and geographically? Can they be there for decisions?
- Do they have the skills and interest to do the role?
- Have they accepted the responsibility?
- Do they know where the needed documents are to initiate their service to you?
- Do they have the assets or the inheritance that helps achieve the goals?
- Do they know your intentions and your criteria for making the same difficult decisions?
- Do you trust them to make the decisions or complete the activity as you have envisioned?
- Will other family members support them in the activity and the decisions?

The doors we open and close each day decide the life we live.... A man who lives fully is prepared to die at any time - Flora Whitmore

Having the Serious Family Conversation About Selecting your Fiduciaries

For each Fiduciary role, even if the person you selected is able to serve and they have accepted the responsibility; you still want to identify some successors in the documents in case the situation changes.

I want the relationship my kids had with each other while we were alive to continue after our death, not end because of fights over money or things.

The following are the common fiduciary roles that need to be nominated or chosen in the estate planning documents. Some have been pre-filled with potential persons based on popularity of that arrangement. As the drafter of the documents, you can nominate or appoint anyone you choose.

Estate Documents for:

Person A

Person B

Last Will & Testament- Executor*

Person B

Person A

-Contingent Executor _____

-Tertiary Executor _____

*Executors are often family because it can be setup as an unpaid role. They can hire advisors to help- which include banks and attorneys. To keep family harmony and avoid errors, many people nominate or hire professional corporate fiduciaries as their Executor (ex. Key Bank)

Last Will & Testament- Guardian*

Person B

Person A

-Contingent Guardian _____

-Tertiary Guardian _____

*The Guardian needs to be a person of trust who shares the morals, spiritual beliefs, personal responsibility, and integrity of the parent. They need the ability to manage the household while everyone is grieving. It is important that they manage the financial affairs with integrity and thrift. Remember - they will be a surrogate parent to the children. If you make someone a Guardian, you need to provide the financial resources for them to raise the children in accordance with your goals. Make sure the person understands and agrees with your expectations. It is best for the Guardian to be a person who lives locally so that the children do not need to be uprooted. You can authorize the consolidation of the households to one residence with an approved method to account for the financial expenditures that benefit everyone.

Durable Power of Attorney*

-Primary DPOA

Person B

Person A

-Contingent DPOA

Trusted Child/Friend 1

Trusted Child/Friend 2

-Tertiary DPOA

Trusted Child/Friend 2

Trusted Child/Friend 1

*Can be durable or springing *Power of Attorney*, Government authorized POA, or Digital Access POA. Remember POA is needed for any third party, including spouse, to have information, trading, and/or withdrawal access for individual accounts, retirement accounts, and qualified plans. POA relationship terminates upon death. After death, accounts are only accessible by the Executors and/or Trustees.

Medical Power of Attorney*

-Primary MPOA

Person B

Person A

-Contingent MPOA

Trusted Child/Friend 1

Trusted Child/Friend 2

-Tertiary MPOA

Trusted Child/Friend 2

Trusted Child/Friend 1

* It is important that the person named as *Medical Power of Attorney* is properly authorized and emotionally capable of making the decisions based on your expressed wishes. Even though recordings are not legally binding, it can be helpful to record a message that gives some guiding principles and also expresses appreciation to the MPOA for the willingness to make the hard decisions. This message can also encourage family members to trust and forgive after difficult decisions are made. Most states do not allow "joint Medical Power of Attorneys arrangements to exist because it makes decision process more difficult. The MPOA needs to live in the vicinity or be able to travel quickly.

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Trustee & Trust Advisors*

-Grantor Trustee	<u>Person A</u>	<u>Person B</u>
-Successor Trustee	<u>Person B</u>	<u>Person A</u>
-Successor Trustee	<u>Trusted Child/Friend 1</u>	<u>Trusted Child/Friend 2</u>
-Successor Trustee	<u>Corporate Trustee</u>	<u>Corporate Trustee</u>
-Directed Trustee	_____	_____
-Trust Protector	_____	_____

Beneficiary Designations*

-Primary Beneficiary	<u>Person B</u>	<u>Person A</u>
-Contingent Beneficiary	<u>Trust</u>	<u>Trust</u>
-Tertiary Beneficiary	<u>Child/ Children</u>	<u>Child/ Children</u>
-Quaternary Beneficiary	<u>Estate Person A</u>	<u>Estate Person B</u>

*Beneficiary Designations exist in brokerage accounts, IRA, Life Insurance, and qualified plans; these arrangements supersede the Last Will & Testament and Bypass the probate process. Coordination errors with these documents or the failure to properly identify the person can have disastrous impact on the estate plan. Beneficiary designations can be per Stirpes or Per Capita and can be simple or complicated documents that put permanent restrictions on the heirs. The Beneficiary designation and even related payouts can be revocable or irrevocable.

Estate Planning is a noble task. It fulfills the goals of loving deeply, living fully, and leaving a legacy.

When I am ill, I do not want to worry about the finances because I will have more important stuff to focus on- living.

Other Matters to Discuss:

- **With Medical Power of Attorney(s)** – Discuss “End of Life” medical procedures, DNR orders, use of life support technologies and criteria to disconnect, hospice, palliative care, Nursing home care. The Medical POA authorized person should have a certified executed document in their possession since medical decisions are time sensitive.
- **With Power of Attorney(s)** – Discuss when they are authorized to act and what they are authorized to do. Inform them where your financial information is located- original POA and your current financial information. However, you need to update financial custodians with the documentation, name of your POA, and their contact information. Do not provide the POA with an executed version of the document. Keep the original document in a safe but accessible place. If the POA had the actual document in their possession, they could initiate unauthorized transactions and transfers.
- **With the Executors and Trustees:** Discuss the authority that you have given them and share the information about assets and how organized. They need to know where the data files are located and who your trusted advisors have been for when their fiduciary responsibilities are actually triggered. One idea that may make the job easier is to record messages for heirs and beneficiaries so that they understand your intentions better regarding the estate distribution provisions.

I want to live a long life, but I am prepared to die. We are always only one heartbeat away from death.

ⁱ Source- 2015 Rocket Lawyer estate-planning survey by Harris Poll.

ⁱⁱ Source- The Conversation Project Institute- <http://theconversationproject.org>