

Estate Planning - A Simple Explanation:

Living Wills - Powers of Attorney – Wills – Living Trusts

While most people have heard the terms *Living Will*, *Power Of Attorney*, *Will*, and *Living Trust*, individual understandings of these documents varies greatly. What follows is a basic explanation of each document as it is interpreted in the State of Iowa.

1. **Living Will:** In Iowa, the term “Living Will” is really a misnomer. The document is more accurately referred to as a “Declaration Relating to Use of Life-Sustaining Procedures.” This latter title captures the true purpose and nature of the document. More specifically, a Living Will is a document which applies only to a situation where you:
 - i. Have an incurable condition, from which either:
 - a. your death will occur in a relatively short period of time, or
 - b. you will remain in a permanent state of unconsciousness
 - ii. There is no reasonable hope for recovery, as judged by attending doctors, and
 - iii. You are unable to participate in your own medical decisions.

If each of these conditions is present, then your doctors will turn to your Living Will for guidance regarding whether or not you wish to receive any life-sustaining procedures, food, or water. If you do not have a Living Will, the presumption is that you wish to receive the necessary life-sustaining procedures, food, and water in order to sustain your life.

2. **Powers of Attorney:** In its most basic form, a power of attorney is an instrument whereby one person (the “Declarant”) grants another person (the “Agent”) authority to act for him or her in regards to specific tasks. The Declarant states in the document whether the power of attorney is to become effective immediately, or upon the occurrence of a specified future event such as the Declarant being unable to act on his or her own behalf.

The two most common forms of power of attorney are:

- i. Power of Attorney for Health Care through which the Agent is granted authority to make health care decisions for you if you are unable to do so. A Living Will can also be incorporated into this document.
- ii. General (or Financial) Power of Attorney through which the Agent is granted authority to run your financial and business affairs.

Powers of Attorney are flexible documents. They can be as broad or as narrow as you wish. Also, the Declarant can typically revoke the Power of Attorney at any time by providing written notice to all parties affected.

3. **Wills:** A Will states how you would like your property distributed upon your death. If you have minor children, you may also use your Will to nominate someone to care for your children upon your death (a “Guardian”), and, to manage any money given to the children (a “Trustee”).

Wills can be very short and straightforward, or quite long and complex. It just depends on your wishes and your specific property to be addressed.

In Iowa, if you do not have a Will, your property will pass according to the state’s predetermined guidelines and the court will determine the proper placement of any minor children you may have at the time.

4. **Living Trusts:** A Living Trust is an arrangement where you, during your lifetime, transfer title to all, or part, of your property to a person called a “Trustee”. The Trustee then manages the property for you during the remainder of your life. You may appoint yourself or a third party as the Trustee. Upon your death, all of the property in the Living Trust passes automatically to the beneficiaries you have listed in the Living Trust. This avoids having to pass your assets through probate as is typically required in Iowa, can save time and money, and provides an element of privacy as probate is technically a process open to the public.

Obviously, avoiding probate is a very attractive premise. However, it may not be as simple as it seems. To avoid probate, all of your property must be transferred to the Living Trust. For example, your house would need to be deeded from you, John Doe, to “John Doe as Trustee for the John Doe Living Trust”, along with your cars, bank accounts, stocks, retirement accounts, etc. This can be a time consuming and expensive process, and add an element of complexity to your everyday financial and business affairs. Moreover, you need to ensure that any property you acquire after you create the Living Trust is transferred to the Trust. If at your death, some property remains outside of the Living Trust, then that property will be required to go through probate, despite the Living Trust’s existence.

Contrary to what you may have heard, a Living Trust typically offers no tax advantages as compared to passing property through a Will, nor does it provide any extra protection from creditors. Living Trust arrangements are complex. You should seek competent legal advice before entering into a Living Trust so that you fully understand its implications.

Summary: Regardless of the size of your estate, the type of assets you hold, your age, or your family structure, a well thought out estate plan allows you to ensure that your property will pass according to your wishes after you are deceased. This offers great comfort and peace of mind.