



THE DOCUMENTS INVOLVED IN AN ESTATE PLAN

By: Tony M. Abou Ezzi, Esq.

ESTATE PLANNING: Why create an Estate Plan? Ask yourself this: Do I know what tomorrow holds? An Estate Plan is an active step towards ensuring that no matter what happens to you in the future, you are prepared with a series of documents that set forth your wishes. An Estate Plan provides for your voice to be heard no matter what happens to you in the future. Most of all, having a plan and knowing what will happen to your estate allows you to focus on living your life today and not worrying about what will happen tomorrow.

An Estate Plan consists of:

1. A Last Will and Testament (A Will);
2. A Revocable Living Trust or Irrevocable Trust (A Trust);
3. Power of Attorney for Property;
4. Power of Attorney for Health Care; and
5. A Living Will.

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1. **Last Will and Testament (A Will)** – is created to suit your specific needs and to indicate how you want your assets to be distributed by an Executor when you pass away. Think of your Will as demonstrating your wishes after you pass away; it is a way of preserving your voice in the matter of who you want to receive certain property. If you have tangible personal property and/or real property, you can give your property away according to your wishes by creating a Will. If you want to give specific assets or sums of money to your family or friends a Will allows this. Further, if you have minor children (under 18 years old), your Will is the document that allows you to appoint (name) a guardian for your child or children. A Will becomes effective only upon your death; therefore you can revoke or amend your Will at anytime up until your death.
 - a. **Pour Over Will** – A Pour-Over Will is a document that is created with a Trust in order to catch assets that you forget to place in the Trust. What this means is that any assets (items) that are not placed in the name of your Trust, at the time of your passing, are treated as though you intended to place them in your Trust. The terms of the Trust are then in control of the disposition of all your assets.
 2. **Revocable Living Trust or Irrevocable Trust** – A Trust is a legal document that names a Trustee, the person in charge of the Trust, and Beneficiaries, the persons who will benefit from the Trust. A Trust acts like a Will, except that assets can be distributed without court supervision otherwise known as the Probate process, which is the process of opening and closing an Estate that is overseen by the court. Probating an estate is expensive, frustrating, and time consuming. There are two categories of Trust:

- a. **Irrevocable Trust** – As the name implies, this Trust cannot be revoked and once created it lasts for the duration it takes to distribute the assets in the Trust. This type of Trust typically does not allow amendments to change its terms.
 - b. **Revocable Living Trust** - This type of Trust can be revoked during your lifetime, amended and changed as you see fit. Upon your death, a Revocable Living Trust becomes an Irrevocable Trust.
3. **Power of Attorney for Property** - allows you to name a trusted Agent who agrees to act on your behalf as it relates to your financial affairs (to pay bills, make investment decisions, receive retirement or benefits checks, and sell or purchase property). You can choose the level of decision-making authority that your Agent has to act on your behalf and it only takes effect when you are incapacitated. It terminates upon your passing or when you elect to revoke the Power of Attorney. Without a Power of Attorney for Property, upon the occurrence of your incapacity a guardianship is required to be established in order for your family member or loved one to make decisions for you. In the Power of Attorney you can elect whom you would like to serve as your guardian if the court determines one is needed. Guardianship takes time, it costs a lot more and the court could appoint a guardian that you would not have chosen.
4. **Power of Attorney for Healthcare** - allows you to name a trusted Agent who agrees to act on your behalf as it relates to your medical care and health care related decisions. During a medical emergency where you cannot tell a doctor whether to proceed or not, this document takes effect and permits doctors and nurses to respond quickly knowing that your Agent has legal authority to make critical health care decisions. You can limit the level of decision-making authority that your Agent has to act on your behalf and you can select when the Power of Attorney will take effect and terminate. In the Power of Attorney you can elect whom you would like to serve as your guardian if the court determines one is needed. Guardianship takes time, it costs a lot more and the court could appoint a guardian that you would not have chosen.
5. **Living Will** – A Living Will provides instructions for an Agent you designate as to whether you wish to receive certain life-sustaining treatment when you have a terminable condition. In this document, you are telling the Agent whether or not you wish to be permitted to die naturally. This becomes effective upon signing, and is used only when you are incapacitated and cannot make decisions and have a terminable condition as determined by your physician.

Tony M. Abou Ezzi, Esq. is an Estate Planning, Probate and Guardianship Attorney in Illinois and is the owner of Ezzi Law. He realizes that Estate Planning involves extremely difficult topics and decisions, but he supports his clients through the entire process and counsels them as though they are members of his own family. If you are interested in having Tony assist you with your Estate Plan, please feel free to reach out to him for a free consultation.