



**UNDERSTANDING  
ESTATE PLANNING & LIVING TRUSTS**  
How to Avoid Probate and More

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# 1

## WHY YOU NEED AN ESTATE PLAN

You have an estate. Your estate includes your “stuff” like your car, home, bank accounts, investments and life insurance. No matter how large or modest your estate may be, all of this property is part of your estate. However, estate planning is not just about your “stuff.” Estate planning includes all of the steps you take during your life to strategize and prepare for illness, incapacity, and death. Estate planning allows you to take care of the things you care about and the people you love in a way that aligns with your values and goals. Common estate planning tools allow you to:

- Avoid lengthy and expensive probate process.
- Minimize estate administration costs.
- Designate specific people to benefit from your estate.
- Appoint people you trust to make important decisions on your behalf.
- Name a guardian for minor children.
- Express your desires pertaining to life support, pain medication, and organ donation.

Estate planning is not just for “wealthy” or “old” people. It is something *you* need to do regardless of your net worth, age, or marital status. Completing your estate plan can save your family a great deal of time and money, and greatly reduce anxiety for your family in the event of your incapacity or death.



# 2

## WHAT YOU NEED TO KNOW ABOUT WILLS

At the very least, all adults should have a basic estate plan with a simple Last Will and Testament (commonly referred to as a “will”). A will allows you to:

- Identify who inherits your property.
- Appoint a person you trust to administer your estate.
- Reduce probate costs by waiving a bond.

If you die without a will, Oklahoma law dictates who inherits your property. For many Oklahomans, the result under Oklahoma law does not reflect their desires. This is especially true for blended families.

There is a common misconception a Last Will and Testament resolves all your estate planning concerns. The truth is a will does not prevent probate when you die. All wills must be admitted to probate court before the provisions within them can be carried out.

Probate is the legal process by which the court verifies your will is valid, ensures creditors and taxes are paid, and a personal representative is appointed. Eventually, your remaining assets will be distributed to the beneficiaries named in the will. If you die without a trust or other non-testamentary vehicles in effect, probate is generally the only legal way to take your name off the title to an asset (such as your home or bank account) and change ownership to someone else.

A basic probate matter will usually last six to eight months before all assets are distributed and the personal representative is discharged. More complex cases may take years to resolve. During this time, legal fees and other costs of administration will reduce the value of your estate. Probate is a public process, requiring publications in your local newspaper and multiple public hearings.



# 3

## WHY YOU SHOULD PLAN FOR INCAPACITY

In the event you can no longer handle your affairs due to mental or physical incapacity (caused by, for example, stroke, heart attack, dementia, or a vehicle accident), you are likely to eventually need someone to withdraw funds from your bank, or sell or refinance assets to pay for your care. A family member cannot just begin signing your name for you. Without the proper planning in place, someone will be forced to petition the court to declare you incompetent and appoint someone to act on your behalf. This process is referred to in Oklahoma as a guardianship.

A General Durable Power of Attorney allows you to appoint a person you trust to manage your financial affairs, without involvement of the courts, in the event you are mentally incapacitated by medical emergency, illness or disease. The powers granted under a Durable Power of Attorney will always end immediately upon your death.

A General Durable Power of Attorney may grant your agent the powers to:

- Pay your bills or file documents with the IRS.
- Buy, sell, and invest your assets.
- Enter into contracts.
- Access your bank accounts.

In order to allow someone you trust to manage your financial affairs without court involvement *after* your death, you should include comprehensive disability provisions in a Revocable Living Trust. This allows your successor Trustee to manage your trust assets during any period you are incapacitated, and after your death.



# 4

## HOW MEDICAL DECISIONS ARE MADE

The Oklahoma Legislature reinstated the Durable Power of Attorney for Healthcare in 2022. This document allows Oklahomans to make decisions about their care in case they are temporarily or permanently incapacitated. In addition, the Durable Power of Attorney for Healthcare is used to appoint a Healthcare Agent to make medical decisions on your behalf.

The healthcare decisions that can be made under a Durable Power of Attorney for Healthcare include:

- Selecting and discharging health care providers and facilities.
- Consent or refusal to any care, treatment, service, or procedure.
- Signing a do-not-resuscitate consent in accordance with the provisions of the Oklahoma Do-Not-Resuscitate Act.

In addition to a Durable Power of Attorney for Healthcare, adults should also have an Oklahoma Advance Directive for Healthcare. This document allows clients to make life-sustaining treatment decisions, such as withholding or withdrawing nutrition or hydration, and to appoint a Health Care Proxy to make decisions in accordance with the provisions in the Advance Directive.



# 5

## MAINTAIN CONTROL WITH A TRUST

In simple terms, a Revocable Living Trust is established through a contract between you as an individual, and you as the Trustee of your Trust, which is considered a separate legal entity. The person or persons you appoint to manage your assets upon your incapacity or death are referred to as the successor trustees and are bound to the terms set out in your trust agreement. Once you establish a trust, your attorney can assist you in transferring your property to the trust. The process of drafting, executing, and funding your trust can be completed in just a few weeks.

A Revocable Living Trust offers several benefits when properly executed and funded:

- Avoids probate at death (avoids multiple probates if you own assets in more than one state).
- Provides the most privacy.
- Prevents court control during incapacity.
- Quicker distribution of trust assets.
- Assets can remain in trust until beneficiary reaches a stated age.
- Trusts are more difficult to contest.
- Can protect dependents with special needs.
- Reduced legal fees, compared to the cost of a probate action.
- Maintain flexibility to amend or revoke your trust at any time.



# 6

## OTHER TOOLS IN YOUR ESTATE PLAN

The same estate planning documents will not work for all people. Different families in various scenarios require personalized, custom estate planning documents. It cannot be said that “all clients need a trust” and that is certainly not the message we hope to convey. Many Oklahomans are situated so that a basic will-centered estate plan with the addition of a Transfer On Death Deed for their home and beneficiary designations on bank accounts and other assets will adequately meet their needs and keep legal fees down.

Other documents which should be implemented in your estate plan include the following:

- Deeds and instruments of conveyance to your trust.
- Transfer on Death Deed(s), where appropriate.
- Remembrance and Services Memorandum allowing you to memorialize your desires concerning burial and cremation, your obituary, and memorial services.
- HIPAA Authorization allowing people you designate to receive your protected medical information.
- Name & Fiduciary Summary setting forth your family information and the various individuals appointed to act in their respective capacities within your estate planning documents.



# 7

## WHAT HAPPENS IF YOU DO NOTHING

When it comes to estate planning, many people choose to do nothing. It is very common for people to procrastinate because they think they are too busy, or they don't own enough, or they're not old enough, or the whole process is confusing and they don't know where to start.

If you do nothing, and become incapacitated, the court can take control as explained above. When you die, your estate will go through probate and be distributed according to Oklahoma law, which is often not what you would have wanted. For example, if you are married and have children, your children will each receive a share of your estate. This means your spouse could only receive a percentage of your estate, including your home. If you have minor children at the time of your death, the court will control their inheritances through court appointed guardians. Step-children will generally not inherit anything from your estate under Oklahoma law in the absence of a will or trust that provides otherwise.

The best time to have an attorney assist you with your estate plan is now. Attorneys at Hathcoat & Wade Law Firm, PLLC will meet with you for free to discuss what estate planning options are best for your family. In our experience, the cost of hiring an attorney to prepare comprehensive estate planning documents is almost always significantly less than the cost of a guardianship or probate matter.



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