

5 Foundational Estate Planning Documents

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Key Takeaways

- Having foundational estate planning documents in place can provide you with a sense of choice, clarity, and control over your future affairs.
- A durable power of attorney, advance directives, will, revocable trust (if applicable), and an 'I love you' letter to your family are the five estate planning documents all adults should have.
- Everyone can benefit from having these documents in place to plan for incapacity and death, no matter your wealth level.

Overview

All adults, no matter your age, health, wealth, or family situation, can have a sense of choice, clarity, and control over your future affairs by stating your goals and creating a plan using a few foundational estate planning documents. When considering your future, think about the what-ifs; specifically, the what-ifs around incapacity and death.

What if you were no longer able to make financial and healthcare decisions due to incapacity? How would your bills be paid? Who would make financial decisions for you? How would you ensure your end-of-life care aligns with your wishes?

What if you died? How would your personal and financial assets pass to the people you intend in a timely manner? Who would care for your minor children? Would your family have the essential information needed to act in a time of grief?

These types of questions require introspection, planning, family discussion, and appropriate documentation. Without these five foundational documents, your wishes may not be carried out and your family may experience additional stress, confusion, and turmoil during an already difficult time:

- Durable power of attorney
- Advance directives
- Will
- Revocable trust (if applicable)
- 'I love you letter' to your family

The first four listed above are legal documents. Without them, your wishes lack legal force and are often trumped by state law. The 'I love you letter' to your family, although not a legal document, provides your family a roadmap to help them navigate your finances and fulfill your wishes when you die or if you become incapacitated.

Durable Power of Attorney

A durable [power of attorney](#) (DPOA) is essential in times of incapacity, because it allows the person you name in the document to "step into your shoes" and manage your financial affairs. For example, they can pay your lifestyle

and healthcare expenses, manage your investments, file your taxes, make gifts, and collect any benefits such as Social Security or disability benefits. This person should be someone you trust and who is aware of your financial situation, your perspectives, and your financial advisors.

Consider introducing the person named in your DPOA to your financial advisors in advance, so they can act swiftly and efficiently when needed.

Be proactive by asking your financial institutions (banks, brokerage firms, etc.) if they require their own durable power of attorney document, and if they do, consider completing their respective forms.

The amount of power you give someone in your DPOA can be as expansive or as limited as you desire. Generally, a DPOA terminates at your death, or at divorce (if your former spouse was named in the DPOA).

Note: While a DPOA is effective immediately, a “springing” power of attorney is not effective until you have become incapacitated. However, a springing power of attorney is not available in every state and can have a delay period before becoming effective while your incapacity is confirmed.

Advance Directives

There are three types of advance directives:

- Living will
- Healthcare proxy
- Do-Not-Resuscitate (DNR) order

Depending on your individual circumstances, you may require one, two, or all three documents to ensure your wishes for medical treatment.

Note: Each state determines which of the three types of advance directives, or a combination thereof, it allows. Some states honor advance directives from other

states, while others don't. If you spend significant time in more than one state, consider completing advance directives for multiple states. Access information and advance directive forms for each state at [CaringInfo.org](https://www.caringinfo.org).

Living will. In a living will, you state which types of medical treatments you do – and do not want – to keep you alive, should you become unable to express your wishes yourself (common examples of medical treatments include the use of ventilators, artificial feeding, and dialysis). Most states only allow a living will to take effect if you're terminally ill or seriously injured.

With a living will, the document speaks for you, whereas with a healthcare proxy someone else – who you appoint – speaks for you.

Healthcare proxy. Also known as a medical power of attorney or durable power of attorney for healthcare, a healthcare proxy allows you to appoint someone to make medical decisions on your behalf when you are unable to do so. Like a DPOA, you can limit or expand the powers you give to your appointee, as you deem appropriate.

Because these decisions can be life or death, the person you appoint in your healthcare proxy should be someone you trust to follow your wishes. Spend some time with the person you appoint, going through various what-if scenarios, so they fully understand your wishes and perspectives. Then, to avoid future family strife, share the details of that conversation with other close family members so the family is aligned and there are no surprises.

DNR order. This document tells medical personnel *not* to perform CPR if you go into cardiac arrest. Depending on the situation, some people choose to display their DNR order at home to alert emergency medical professionals of their wishes. Typically, when you are hospitalized, you are given the option to complete a DNR during the admission process, if you do not have one already.

Will

A will specifies how you want your assets distributed after you die, including items with both financial and sentimental value. You get to make the decisions. Without a will, your assets are distributed according to state law, which may not align with your wishes.

A Solution for Unmarried Couples

If one partner is hospitalized and needs someone to make financial and medical decisions, the other partner (if they're not the spouse, next of kin, or a joint owner on financial accounts) *may not* be able to pay bills and/or make medical decisions, even though he or she may be the most qualified to do so. Preparing a DPOA helps solve this problem.

In addition to specifying how your assets will be distributed, in your will you can:

- Name an executor to settle your estate and manage probate, a court-supervised process for validating your will and distributing your assets.
- Name a guardian to care for minor children after you die.
- Provide direction on how debts, taxes, probate fees, and other costs should be paid.
- Provide instructions for covering family members' living expenses during the probate period.
- Designate assets to be placed in a trust for family members or other beneficiaries, if so desired.

Because each state has its own requirements governing the legal validity of a will, it is best to have your will prepared by a local estate planning attorney. And if you move to, or own property in another state, have your will reviewed to ensure it remains valid.

Revocable Trust and Pour-Over Will

While there are many types of trusts, the most common is known as a revocable trust. It's revocable because, generally speaking, you can terminate (revoke), change, add, or remove assets placed inside the trust at any time prior to incapacity or death.

Ownership of the assets that you want to be included in the trust *must* be transferred to the trust. To transfer ownership to the trust, you name the trust as owner either by changing the title or the account ownership, depending on the type of asset. Any future assets that you want to include in the trust should also be owned appropriately.

Depending on your situation, you might consider setting up a revocable trust to:

- Have access and control over your assets during your life (buy, sell, trade, and move assets in and out of the trust).
- Name a successor trustee who can manage your assets based on your wishes if you become incapacitated and manage the distribution of your assets upon passing.
- Help your estate avoid probate on the trust assets upon your death (probate can be a timely and expensive process, depending on your assets and your resident state).
- Manage assets for the benefit of a minor child at your death or incapacity.

Creating a letter for your family gives you the opportunity to share information about the things in your life that may not be obvious to anyone but you.

However, keep in mind that because you have complete control over the assets in the revocable trust, those assets are *not* protected against creditors and are subject to income taxes.

The practical companion to a revocable trust is a pour-over will. It works by gathering assets from the estate that are not already owned by the trust at the date of death and pouring them into the trust (once probate is completed) to be held and/or distributed according to the trust directions.

'I Love You Letter' to Your Family

An ['I love you letter' to your family](#) is an informal, non-legal document that allows you to give information to your loved ones that may help them in times of your incapacity or after your death. This letter typically includes details about your assets, liabilities, and intents. For example, you can leave detailed instructions expressing your wishes on where and how to be buried, including the type of service you want held in your memory. You can provide information about your trusted advisors and their contact information, and include account information and passwords for important ongoing expenses, such as life insurance premium payments that must be maintained during a period of incapacity. The letter can also include more personal information, such as life lessons and family history and values.

Creating a letter for your family gives you the opportunity to share information about the things in your life that may not be obvious to anyone but you. It also allows you to explain the bequests in your will, which can help prevent family acrimony during a time of profound grief.

Bottom line

Having your foundational estate planning documents in place can provide you with confidence that no matter the what-ifs that happens in your life, or at your death, you have a plan in place to deal with them swiftly and according to your wishes.

Everyone can benefit from having these documents in place to plan for incapacity and death, no matter your wealth level.

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As Director of Estate, Trust, and High-Net-Worth Tax for the Schwab Center for Financial Research, Austin provides analysis and insights on topics including complex estate, gift and trust planning, advanced charitable strategies, business succession, and executive compensation.

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