



Estate Planning

POAs, HCPOAs, Wills, Trusts and the benefits of proactive planning

Who are we?



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Today's Agenda

What is Estate Planning?

Why is Estate Planning Important?

Planning for Incapacity v. Planning for Death

General Power of Attorney (GPOA)

Custodial Power of Attorney

Healthcare Power of Attorney (HCPOA)

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What is Estate Planning?

Estate planning is **the process by which an individual or family arranges the transfer of assets in anticipation of death/incapacity.**



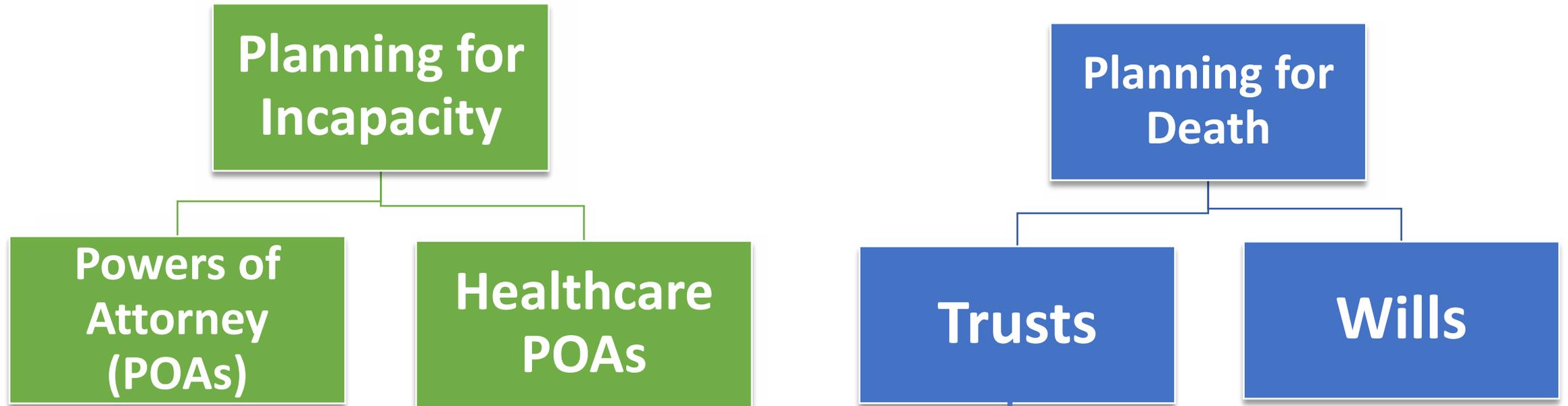


Why Should I Participate in Estate Planning?



Estate planning is important, as **it limits the burden of legal heirs having to bear the toll of transferring the assets had the estate not been planned.**

Planning for Incapacity v. Planning for Death



Can also be used for transferring assets prior to death.

What is Incapacity?

- **Definition of Incapacity** one's "ability to receive and evaluate information or communicate decisions" is so impaired that s/he lacks the capacity to manage his/her **finances** or to provide for his/her "**health**, safety, habitation or therapeutic needs" without a **court-ordered guardian or conservator**.

General Power of Attorney (POA)

General Power of attorney (POA) is a **legal authorization that gives a designated person, termed the agent or attorney-in-fact, the power to act for another person, known as the principal.**



Scope of GPOAs

- The agent may be given broad or limited authority to make decisions about the principal's **property, finances, investments**.
- **General or Limited** to a particular activity
 - E.g., closing the sale of a home
 - **Temporary or Permanent** authority to act on another's behalf
 - **Immediately** or only **upon the occurrence** of a future event
 - E.g., determination that one is unable to act for themselves due to mental or physical disability
- D.C. has **codified statutory and durable POAs**
 - Durable POA means POA continues to be effective even if person becomes disabled, incapacitated, or incompetent.

Custodial Power of Attorney

A minor power of attorney, also known as a “custodial” power of attorney, **allows a parent to select someone else to make everyday life-caring decisions for their child.**

This is often **given when the child is being placed in the care of a family member or nanny.** The selected person, or agent, will have the **power to assist the child** by enrolling and picking them up from school in addition to making decision on medical procedures.

The custodial power of attorney **shall not affect the rights of the parent of the child in any proceeding concerning custody** of the child or the allocation of parental rights and responsibilities for the care of the child.

Healthcare Power of Attorney (HCPOA)

A healthcare power of attorney (HCPOA) is a legal document that allows an individual to empower another person to **make decisions about their medical care.**



Healthcare Power of Attorney (HCPOA)

- It is important to **trust your HCPOA**, as that person may be charged with making life-and-death decisions on your behalf.
- Healthcare proxies can communicate with the patient's doctors to prevent unwanted treatments and avoid making the wrong decisions. They also have the power to make medical decisions for the person who is incapacitated. Writing an HCPOA is straightforward—you fill out a form and have it witnessed.
- Anyone may serve as a healthcare power of attorney, or an [attorney-in-fact](#). Your HCPOA can have any type of relationship with you—this person might be your friend, partner, lover, relative, or colleague for example. You are free to choose anybody, so long as you trust them and feel that they are competent

HCPOA

- Becomes effective whenever principal's capacity to make health care decisions fails for either physical or mental reasons
- Can be fairly customizable to the type of treatment you want to receive/do not want to receive, e.g. DNR

Living Will

- Document directing the withholding or withdrawal of life-sustaining procedures from the declarant should they be in a terminal condition
- Terminal Condition:
 - One that would produce death, within reasonable medical judgment and where application of life-sustaining procedures serves only to postpone patient's moment of death

Why a living Will?

- **Speaks for you when you can't**
 - A living will gives you the power to choose the medical treatment you do or don't want if you become unconscious or incapacitated.
- **Eases stress on your friends and family**
 - Outline your healthcare wishes to help relieve friends and family from making decisions regarding medical treatment you should get.

Testate v. Intestate

- **Testate** succession happens when you die with a valid will in place. So long as your distributions are legal, you may hand out your assets however you please.
- **Intestate** succession happens when you die without a valid will in place. In this case your assets will be distributed according to state probate law.

Wills and Trusts

A will is a legal document that spells out how you want your affairs handled and assets distributed after you die.

A trust is a fiduciary arrangement whereby a grantor (also called a trustor) gives a trustee the right to hold and manage assets for the benefit of a specific purpose or person.



Wills

An instrument by which a person makes a disposition of his property, to take effect after his decease.

- A pour-over will
 - a will used alongside a living trust. You can use it to transfer assets not already held in your trust before you die into your trust after your death.
- Codicil
 - an addition or supplement that explains, modifies, or revokes a will or part of one.

Valid will requires:

- Testator to have “testamentary capacity”
- Testator to be 18+ years old
- Instrument to be
 - In writing
 - Signed by testator
 - Signed by two disinterested witnesses in the presence of testator

Execution

- Will can only be filed with the Court (i.e., Office of the Register of Wills) *after* an individual dies
- *Must* be filed within 90 days of death

Trusts

- An arrangement whereby property/assets are transferred from one person (i.e., settlor) to another person (i.e., trustee) to hold the property for the benefit of a specified list or class of persons (i.e., beneficiaries).
- Unlike wills which take effect upon death, trusts become effective upon the transfer of assets to them. A “living trust” can be created during a grantor’s lifetime. Or a trust may be a “[testamentary trust](#)” created after death in accordance with directives in the decedent-grantor’s will.
- Trusts are frequently used in estate planning to benefit, and provide for the distribution of assets to, the heirs of the grantor.

Trusts

There are many types of trusts:

Revocable

- A revocable trust is a trust whereby provisions can be altered or canceled dependent on the grantor or the originator of the trust. During the life of the trust, income earned is distributed to the grantor, and only a

Irrevocable

- Usually can't be changed without a court order or the approval of all the trust's beneficiaries

Special purpose trusts

- A Special Purpose Trust is drafted to attain a particular result to meet the particular needs of a party.

Charitable trusts

- A public trust for purposes that provide a benefit to the public or a section of the public

Special needs trusts

- A trust that will preserve the beneficiary's eligibility for needs-based government benefits such as Medicaid and Supplemental Security Income (SSI). Because the beneficiary does not own the assets in the trust, he or she can remain eligible for benefit programs that have an asset limit.

When Will v. When Trust

- The main difference between the two documents is that a will takes effect only after your death while a living trust becomes valid as soon as it is duly executed and assets are added — that is, during your lifetime.
- Another significant difference between the two is that a living trust can make provisions for your estate in case you are incapacitated. A will can't do this, although a power of attorney can.
 - ***Living trusts, though, may be more specific and make managing the estate easier on the trustee than a power of attorney.***
- Regarding probate, a living trust can help to avoid time and costs associated with it, particularly since with a living trust, there is no freezing of assets so long as the trust has been funded.
- Another advantage to a living trust is that it remains private in many states, while a will becomes part of the public record during the probate process.
- With a straightforward estate wills can be more cost effective at getting the desired outcome.

Factors to Consider When Choosing Between a Living Trust and a Will

Your location.

Your assets.

Taxes.

Your beneficiaries.

Likelihood of your estate being contested.

Your confidence in your potential trustee.

Your current financial situation.

Final Thoughts on a Living Trust

With a living trust, an asset doesn't become part of it without specifically being included, so **you must keep up with adding your assets to the trust to ensure that a valued asset doesn't end up going through probate**, especially if it is not included in your will either.

For this reason, it is advisable to also have a **pour-over will**, not only because you are able to name a guardian for any children, but also because you can catch any assets that didn't make it into the trust. Like all wills, a pour-over will is handled in probate court, if necessary.

Elective Share

An Elective Share ensures that a surviving spouse is financially protected and not left destitute. The elective share gives the surviving spouse a fixed fraction of the estate, regardless of the length of the marriage.



Elective Share

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- The elective share right entitles the surviving spouse to an elective share of the decedent's net estate that is distributable under the Will.
- The surviving spouse can choose.
- The amount received may vary.
- There are some exclusions as to what makes up the decedent's net estate.
- Because elective shares are a default right of survivorship, it is important to understand the role the prenuptial agreements.

Benefits of Proactive Planning

Although estate planning often is viewed as a concern for older individuals with substantial means, it is a subject that almost everyone needs to address.

Even if your assets are limited to a residence, bank accounts, and perhaps an IRA or 401(k) account, you want to be sure that the people you wish to receive them do indeed become their owners and that your plans are executed with the greatest efficiency and least expense possible.

The intestate statute doesn't include anything regarding gifts to charities, gifts to friends, etc. it is solely blood relations

And if you have complicated personal relationships, for example, children from more than one marriage, a dependent parent or relative, or offspring whose financial resources vary greatly, leaving clearly expressed, and in the circumstances, clearly explained directions for distributing your assets might prevent potential disputes among your heirs.

Benefits of Planning for Incapacity



If individuals don't have a GPOA – (except in limited circumstances) nobody can access any of their accounts without filing to be a conservator.



Critical for HCPOA to be able to decide who makes sensitive decisions about your life.

Resources

D.C. Court Self Help	Law Help D.C.	Legal Counsel for Elderly	D.C. Affordable Law Firm
https://www.dccourts.gov/services/probate-matters/probate-self-help-center	https://www.lawhelp.org/dc/issues/life-and-estate-planning-guardianship	https://www.aarp.org/legal-counsel-for-elderly/	https://www.dcaffordablelaw.org
		<u>Phone:</u> 202) 434-2120	<u>Phone:</u> (202) 844-5430
			<u>Email:</u> info@DCAffordableLaw.org

Questions?



Thank
You!

