

Estate Planning Workshop #2: Need for Wills, Power of Attorneys and Health Care Designees

- If you do not create a Will what happens?
 - If no one can be found all of your items will be handled by the State you reside in
 - Indiana – goes to a fund in Indianapolis to be turned back over to the State Government after a waiting period
- Your Will becomes public record once you are dead
 - Put in general information
 - Specific information can be put in documents into a file folder for your executor
- Components of a Will
 - Identify your heirs including in the future (grandkids, great grandkids)
 - Name/Identify an Executor
 - Trustee for Minor Children or Adults needing care
 - Specific Bequests
 - Antique quilt goes to ____
 - Leave a legacy gift to favorite non-profit.
 - Can setup or add to an existing program, but add a contingency
 - IE Scholarship for Floyd Central High School Senior
 - What if high school merges?
 - Give a broader scope – Any Indiana High School Senior
 - Make sure all you own is taken care of to make it easier on your heirs
- Distribution of Funds
 - Debtors get first dibs
 - Let the executor know which account to pay debts
 - Expenses to administer the estate and end of life plans
 - Taxes
 - Then Heirs
- Distribution of Stuff - Memo Clause
 - Let your executor know where your list is
 - List of items designated to whom in own handwriting
 - Tangible personal property
 - Family Auction Style
 - Make suggestion on where to donate items if no one wants them
- Residuary
 - All that is left will be divided among the heirs or non-profits you designate
- Trust
 - Contained under a will or
 - Contained under separate agreement
- Power of Attorney
 - A power of attorney (POA) is a legal document giving one person (the agent or attorney-in-fact) the power to act for another person, the principal.
 - The agent can have broad legal authority or limited authority to make decisions about the principal's property, finances, or medical care.
 - The POA is often used when the principal can't be present to sign necessary legal documents for a financial transaction.
 - A durable power of attorney(DPOA) remains in effect if the principal becomes ill or disabled and cannot act personally.

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- “durable” power of attorney takes effect when the document is signed while a “springing” power of attorney comes into effect only if and when the principal becomes incapacitated. A power of attorney may also be limited to medical matters, enabling the agent to make crucial decisions on behalf of an incapacitated person.
- A person who wants the power of attorney to remain in effect after the person’s health deteriorates would need to sign a (DPOA)
- Limited Power of Attorney specific to the use such as to finish purchase or sale of a home
- Medical Power of Attorney
 - A medical power of attorney (or healthcare power of attorney) is a **legal document that lets you give someone legal authority to make important decisions about your medical care**. These decisions could be about treatment options, medication, surgery, end-of-life care, and more
 - Can help the Medical Power of Attorney designee make decisions for you by letting them know your wishes
- POA handles Financial affairs
 - pays taxes
 - makes deposits
 - pays bills
 - makes gifts
 - accesses digital accounts

If you had any POA drawn up in the 1970’s make sure you take a look to see if yours needs to be reworked to take out old language regarding a "springing" power of attorney

- "spring" into effect when you become incapacitated.
- springing power of attorney can cause more problems than it solves.
- Instead of being able to use the power of attorney as soon as the need arises, the agent must get a "determination" of your incapacity before using the document. In other words, someone – usually a doctor – must certify that you can no longer make your own decisions. This could take days or weeks and disrupt the handling of your finances and medical decisions

Glossary of Terms

- Partial list from <https://www.freewill.com/glossary>
- **Administrator (or Estate Administrator)**

A person appointed by [probate](#) court who is responsible for carrying out the legal and financial wishes stated in a will if someone dies without a [will \(intestate\)](#). This person plays the same role as an [executor](#) if the [decedent](#) had died with a valid will.

- **Agent (or Attorney-in-Fact)**

A person who is given authority, in a document called a power of attorney, to act on behalf of another as a fiduciary. Related concepts are [Durable Power of Attorney](#), [Durable Financial Power of Attorney](#), and [Durable Healthcare Power of Attorney](#).

- **Alternate Beneficiary (or Contingent Beneficiary)**

A person or organization named to receive a [testator's](#) assets if the primary [beneficiary](#) named in the testator's [will](#) or [trust](#) dies before the testator. If an alternate beneficiary is not selected and the primary beneficiary dies before the testator, the default rules of each state will establish who receives the assets.

- **Annual Exclusion**

The amount someone can give to another person each year without having to file a gift tax return or pay a gift tax. The annual exclusion amount in 2022 is \$16,000 per recipient.

- **Assets**

Everything someone owns, including [real property](#), bank accounts, life insurance, investments, jewelry, furniture, retirement accounts, and vehicles.

- **Beneficiary (or Devisee or Heir or Inheritor or Recipient)**

A person who receives something from a will, trust, or other legal contract, such as a life insurance policy, a retirement account, a payable-on-death account.

- **Bequest (or Devise)**

A gift in a will or trust. Gifts are normally specific (a particular item or cash gift) or residuary (a percentage share of what is left after all other gifts have been made). A testator can make a bequest to a specific person, organization, or a class of people (e.g., children, grandchildren.)

- **Closing Letter**

A letter sent by the IRS to the [executor](#) of an estate to show that the estate's tax return is satisfactory. Depending on the state, the executor may have to file a closing letter with the state tax bureau. Prior to June 1, 2015, the IRS issued an estate tax closing letter for nearly every estate tax return filed. However, for estate tax returns filed on or after June 1, 2015, the IRS changed its policy and now issues an estate tax closing letter only at the request of an estate.

- **Codicil**

A document which is an addition or amendment to an existing [will](#).

- **Corpus or Principal**

The real property and personal property in a [trust](#) to be used for the benefit of trust beneficiaries, either through distribution or income generation. In the trust, the [grantor](#) specifies how and when the [trustee](#) can use the principal.

- **Probate Estate**

A subset of a person's estate that goes through [probate](#) at death. Usually the probate estate does not include [assets](#) under [joint ownership](#), [payable on death accounts](#),

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retirement plans such as 401Ks & IRAs, insurance policies with specified beneficiaries, and any assets in a trust.

- **Probate Fees**

Fees that are paid when an estate goes through [probate](#). Usually these include legal, [executor](#), and [appraisal](#) fees as well as court costs. The fees are typically paid from the assets in the [probate estate](#) before the [assets](#) are fully distributed to the [heirs](#).

- **Residuary Estate, Residual Estate, Residue**

The remainder of an [estate](#) after taking into account any specific gifts.

- **Title**

The legal right to something. In a real estate context, title refers to ownership of the property, meaning that you have rights to use the property.

<https://www.freewill.com/glossary>