



Seven Key Estate Planning Documents to Consider

The need for estate planning is not measured by the size of the estate, but rather by your goals for it.

With your planning efforts you ultimately want to be assured that your assets go where you want them to when you pass on, and that your minor children, spouse, and dependents face minimum estate taxation and are provided for. Estate planning is perhaps the most caring task you can undertake for your survivors.

A number of documents may be used to implement and communicate your goals. This publication provides a summary of seven documents typically created for use in an estate plan. It may provide you with ideas as you work with an attorney and other estate planning professionals.

Will

A will is a written legal document that describes to the probate court how its maker wants to distribute and manage his or her property after death. Common goals accomplished with a will are to

- Ensure that assets are transferred to the intended beneficiaries,
- Protect beneficiaries from mismanagement and from the claims of creditors and ex-spouses,
- Provide for dependents,
- Discourage certain types of conduct, and
- Give incentives to beneficiaries to be productive members of society.

Typically a will is the core component of an estate plan. If you die without a will as a component of your estate plan (being intestate), then a Wyoming statute authorizes the district court in your county to distribute your property in a way you might not have chosen. In these circumstances, a court-appointed administrator will distribute your assets according to a legislative

formula and arrange for guardians of your minor children. This is Wyoming law Title 2: Wills, Decedents' Estates and Probate Code, Chapter 4, Intestate Succession. This formula may be contrary to your wishes. For instance, the amount the surviving spouse receives will vary. If there are no surviving children or descendants of any child, then the surviving spouse is entitled to the entire intestate estate. If there is a surviving spouse and children, or the descendants of any children surviving, then one-half of the estate will go to the surviving spouse and the remainder goes to the children and descendants of children (subject to some limitations).

The basic components in the will document generally include:

- Your name and place of residence,
- A brief description of your assets,
- Names of spouse, children, and other beneficiaries, such as charities or friends, or alternate beneficiaries, in the event a beneficiary dies before you do,
- Designation of who gets your property, as well as when and how,
- Establishment of trusts, if desired,
- Cancellation of debts owed to you, if desired,
- Name of an executor to manage your estate (pay debts and distribute property),
- Name a guardian for your minor children (if you have any),
- Name of an alternative guardian in the event your first choice is unable or unwilling to act,
- Your signature, and
- Witnesses' signatures.

Two of the most important items included in your will are the naming of a guardian for minor children and the naming of an executor.

An executor (or personal representative) will see to the financial affairs and the distribution of property after your death and should have the personal skills and commitment necessary to accomplish these tasks.

A will applies to all assets that belong to you at the time of your death. The will has no effect on assets which pass by law or through a contract. Assets that transfer through law include those you co-own with another, such as a car or house, among others. Assets that pass by contract might include life insurance, retirement benefits, partnership arrangements, or assets owned by a trust.

Those assets that do not pass by either law or a contract must go through the probate process upon your death. Probate is the legal process that occurs in a court of law that validates your will, pays your debts, and distributes your property to named beneficiaries. Having a will simplifies and clarifies the probate process.

Personal Property Distribution

In Wyoming, a statute allows you to make a list of individual items of personal property which you want to go to a particular individual. The goal of this list would be to ensure that those personal items which are important or precious are transferred to the intended person. For instance, if you wish your daughter to receive your wedding rings, then you can put this distribution on a list of your personal property to transfer. This signed and dated list is not part of the will, but its existence is acknowledged in the will. It authorizes the executor to distribute that personal property. This list should not be used for property that has documentation of ownership such as a title (to a car, for instance). It is only for use with non-titled personal property. A certain amount of specificity is needed as to exactly which piece of property and exactly who the recipient is so that confusion and frustration do not result. A copy of the list should be kept with the will, or your executor should know where it is.

Trust

A trust is a legal entity created by you to own assets and manage those assets. A trust is designed to protect and manage your property and, often, to save on estate transfer expenses. In a trust, you can place assets in the name of the trust and then appoint a trustee (a person or institution) to watch over those assets. The trustee manages the property for the beneficiaries according to the trust agreement. At your death, the assets are owned not by you but by the trust.

The goals accomplished by having a trust as part of your estate plan might include:

- Providing possible reduction or elimination of estate taxes. If established and used properly and in conjunction with estate planning laws, such as marital exemptions, then a trust could be used to affect the amount of taxes on the transfer of large estates.
- Managing assets if you become incapacitated. A trust contains instructions about who will manage your finances.

- Maintaining control of assets to beneficiaries. If you are concerned that beneficiaries may be too young or irresponsible to manage their share of your assets, you can set the terms about how or when they receive their distributions.

Trusts can take several forms, and should be created in tandem with wills. The most common are testamentary and living trusts. A *testamentary trust* is created through a will and takes effect after you die and the estate passes through probate. A *living trust* (also known as *inter vivos*) is created while you are alive for either your benefit or someone else's. A living trust can either be revocable – giving you the flexibility of changing or dissolving the trust – or irrevocable – it cannot be changed or terminated, regardless of circumstances.

In the trust document – the deed of trust – there are five key components:

- The settlor: a person who contributes the assets (also known as the donor or the grantor, among others),
- The trustee: a person who controls the assets and implements the terms,
- Trust assets: the property you put into the trust (these do not usually transfer to the trust immediately on creation),
- The beneficiaries: the person, persons, or organizations you intend to benefit from the trust), and
- The deed of trust: the terms under which the benefits will be distributed. The trust deed contains what the trust and its controlling trustees can and cannot do according to both the wishes of the settlor and the laws of the jurisdiction where the trust is written.
- A letter of wishes: the settlor can write a letter of wishes alongside a deed of trust to outline exactly what actions he or she wishes the trustees to take under differing sets of circumstances. The letter is private between settlor and trustee and, while not legally binding, is a guide for a trustee to follow.

Life Insurance

Life insurance is compensation paid to an individual or business for the loss of someone.

The goal of having life insurance in an estate plan is typically to generate cash. Life insurance can provide for dependents while the estate is being settled, cover taxes, and pay debts (federal estate taxes are due nine months after death, so cash to pay them doesn't have to be raised immediately). Life insurance can be particularly useful for parents of young children and those who support a spouse or a disabled adult or child. Co-owners of businesses will find this a useful financial tool to ensure the continuance of a business should a business partner's portion of a business become part of an estate settlement.

Various forms of insurance are available (such as term and whole life). The cost depends on the amount of benefits needed, the insured's age and insurability, the size and composition of family, and estate and projected risk.

The life insurance document is a contract that will contain the following:

- Insuring agreement: the part of the contract in which the insurer agrees to pay covered claims,
- Beneficiary: the recipient of the funds,
- Declarations: identifying information about the insured, such as name, address, etc., and
- Exclusions: section in which certain perils that are not covered under the policy are listed.

Powers of Attorney for Finances

A power of attorney for finances is a legal document that gives another person (someone you select) the authority to handle certain financial and legal affairs if you become legally incapacitated. For example, if you had a serious accident and became incapable of making your financial decisions, then the authorized person would make those decisions for you.

The goal of identifying someone to have powers of attorney for finances would be to protect your assets, accomplish your financial goals, and ensure that they are available for your estate planning goals.

The person you identify to have powers of attorney is called your “attorney-in-fact.” A power of attorney typically is effective as soon as you sign it. You might create a general power of attorney so that someone can handle your finances (such as managing investments and bank accounts) if you go on an extended trip or are ill. A durable power of attorney remains valid if you become incapacitated (cannot handle your own affairs). A “springing” durable power of attorney will go into effect if a doctor certifies you are incapacitated.

If you do not have a power of attorney, then a court proceeding is required to give someone (typically a spouse or close relative) authority to handle your affairs after your death or incapacitation.

In the powers of attorney document, you will name the attorney-in-fact, the powers that he or she may have, and the time at which those powers become effective. Typical powers include

- Handling banking transactions,
- Entering safety deposit boxes,
- Handling transactions involving U.S. securities,
- Buying and selling property,
- Purchasing life insurance,
- Settling claims,
- Entering into contracts,
- Exercising stock rights,
- Buying, managing, or selling real estate,
- Filing tax returns, and
- Handling matters related to government benefits.

Advance Healthcare Directive

An advance directive is a legal document that specifies your wishes for healthcare if you should be unable to make them yourself. Names for these documents vary by state and include: living will, health-care proxy, and health care power of attorney. In Wyoming, your healthcare wishes may be communicated with the Wyoming Advance Health Care Directive form. The goal of creating an advance healthcare directive is to ensure that your preferences for your healthcare are expressed and carried out.

Healthcare decisions covered in this document allow you to:

- Name an agent to make healthcare decisions for you if you become incapable of communicating or making your own decisions,
- Name an alternate agent in case your first choice is not able, willing, or reasonably available to make decisions on your behalf,
- Designate the level of decision-making power of your agent(s),
- Nominate a person to act as your guardian if a court determines that you need one,
- Give specific instructions on whether to continue or withhold or withdraw treatment, including nutrition or hydration, as well as pain relief,
- Express whether you wish for your bodily organs and/or tissue to be donated upon your death, and
- Designate a supervising primary healthcare provider to have primary responsibility for your care.

Advance directives may also be drawn up by an attorney or yourself. As with wills, some elements are required, such as that it must be signed, dated, and witnessed. A copy of advance directives should be given to your family and your healthcare providers so that it may be included in your medical file.

The Wyoming Advance Health Care Directive form is available from AARP Wyoming or the Wyoming Department of Health.

Final Arrangements

Your wishes for funeral and burial arrangements can be expressed in documents (and can also be pre-arranged by contract). The goal of putting down on paper your wishes would be to make your preferences clear (particularly if there are differing views between family members and a partner), to make specific requests, or to reduce the decisions your survivors must make.

It is better to not include these wishes in your will. The will may not be read until well after the funeral. Reserve the will for directions on how to divide and distribute your property and, if applicable, who should have custody of your minor children.

A typical final arrangements document might include:

- The name of the mortuary or other institution that will handle burial or cremation,

- Whether or not you wish to be embalmed,
- The type of coffin or container in which your remains will be buried or cremated, including whether you want it present at any after-death ceremony,
- The details of any ceremony you want before the burial or cremation,
- Who your pallbearers will be if you wish to have some,
- How your remains will be transported to the cemetery and gravesite,
- Where your remains will be buried, stored, or scattered,
- The details of any ceremony you want to accompany your burial, interment, or scattering, and
- The details of any marker you want to show where your remains are buried or interred.

Final Comment

The seven documents summarized here can be used to implement whatever goals you might set for your estate. As your circumstances and goals change, be sure to update your estate plan documents.

The rules relating to some tools, such as trusts, are complex, and some rules are likely to change – for instance taxation of large estate transfers under federal estate tax. For this reason, it can be useful to get professional guidance on what strategies may best address your circumstances and the content of the documents that implement them.

This publication is intended to provide general information on estate planning. It is not intended to substitute for competent legal and estate planning advice.

Checklist

Name		Name	
Item completed	Location of document	Item completed	Location of document
<input type="checkbox"/> Will		<input type="checkbox"/> Will	
<input type="checkbox"/> Personal Property Distribution		<input type="checkbox"/> Personal Property Distribution	
<input type="checkbox"/> Trust		<input type="checkbox"/> Trust	
<input type="checkbox"/> Life Insurance		<input type="checkbox"/> Life Insurance	
<input type="checkbox"/> Powers of Attorney for Finances		<input type="checkbox"/> Powers of Attorney for Finances	
<input type="checkbox"/> Advance Healthcare Directive		<input type="checkbox"/> Advance Healthcare Directive	
<input type="checkbox"/> Final Arrangements		<input type="checkbox"/> Final Arrangements	

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