

What is Your Estate Plan?

If you own something of value that would pass on to someone else upon your death, you have an estate. You also have an estate plan, either created by the state legislature or created by you.

In Michigan, if you die intestate (without a will), the Michigan laws of descent and distribution will determine who receives your property. Typically, the distribution would be to your spouse and children, or if none, to other family members. The law does have some protections for spouse and minor children. The State's plan may or may not reflect your wishes. A will and/or trust allows you to alter the State's default plan to suit your personal preferences.

If you create your own estate plan, it may involve certain documents to meet your estate planning goals.

Will. A will provides for the distribution of property owned by you at the time of your death in a manner of your choosing, subject to certain laws preventing the disinheritance of a spouse and minor children. A will does not govern the distribution of property that passes outside your probate estate such as life insurance, joint property and retirement benefits unless your estate is the named beneficiary. A will may also allow you to designate a guardian or a conservator for your child if you have survived the other parent. You may designate whom you wish to administer your estate. A will can be amended at anytime prior to death.

Trust. Trusts are a compliment to wills. Generally, you establish a trust during your lifetime. Trusts involve the transfer of your property to a person or corporate trustee who manages the assets pursuant to the trust's provisions for the benefit of one or more beneficiaries. A person may be both a trustee and beneficiary of the same trust. A living (inter vivos) trust is one that is effective during your lifetime. A testamentary trust is a provision in your will which does not become operative until your death. The provisions of the trust document will usually determine what happens to the property in the trust upon your death. A living trust may be revocable (subject to change or termination) or irrevocable, depending on the purposes you are attempting to accomplish. With a revocable trust, the creator (grantor/settlor) has access to the trust assets while alive; the trust assets within an irrevocable trust no longer belong to the grantor. They are owned by the trust entity. The purposes of a trust may include property management and disposition prior to or after the death of a grantor. It may also provide opportunities to minimize gift and estate taxes.

Power of Attorney. Powers of attorney are documents created to give one or more persons the power to act on your behalf while you are alive. The power may be limited to a particular activity (e.g. the sale of a home) or general in its application empowering the agent (attorney in fact) to act on your behalf in a variety of situations. A Power of Attorney may take effect immediately or upon the occurrence of a future event (e.g. incapacity). A Power of Attorney may be revoked, but in Michigan, you are required to give written notice to the person named to act for you. With a valid Power of Attorney, your agent can take any action permitted in the document.

If you do not have a Power of Attorney and become unable to manage your personal or business affairs, it may become necessary for a court to appoint one or more people to act for you. People appointed in this capacity are known as guardians (make decisions regarding your person) and conservators (make decisions regarding your finances). Court intervention does not always allow you to choose who may act for you. With a Power of Attorney, you chose who will act and under what circumstances.

There may be other documents to assist meeting your estate planning goals that compliment those mentioned above. The more you become involved in creating your personal estate plan, the more likely your asset management and disposition goals will be met.