



# The Five Basic Estate Planning Documents

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*It all sounds so simple until it's  
your life.*

-QUOTE FROM ME TO YOU

# Outline for Today

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What are the Five Estate Planning Documents?

How do your documents work together?

Where should you keep your documents?

Do you need an attorney to draft these documents?

# The Five Documents

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- Living Will\*
- Health Care Power of Attorney\*
- Financial Power of Attorney\*
- Last Will and Testament\*
- Revocable Living Trust

\*Everyone over 18 needs these documents

# Living Will

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## Definition:

- written statement detailing a person's desires regarding their medical treatment in circumstances in which they are no longer able to express informed consent
- Applies to life-sustaining treatment in the event of a terminal illness

## What it does:

- Your instructions to doctors and the hospital
  - Make sure your doctor and hospital are willing to comply with your wishes.

# Durable Power of Attorney for Health Care Decisions

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## Definition:

- A Durable Power of Attorney for Health Care is a document that lets you name someone else to make decisions about your health care in case you are not able to make those decisions yourself.

## What it does:

- It gives that person (your agent) decision-making ability about your medical care. Any bills for your care will be required to be paid.

## Advanced Directive:

- provides instruction for your agent on decisions to be made on your behalf (think of it as a blue print to your preferred health decisions)
- DNR – Do not resuscitate, Out-of-hospital DNR – restore heartbeat or breathing if you are not in a hospital, DNI – Do not intubate, DNH – do not hospitalize
- Physician orders for life-sustaining treatment (POLST) and medical orders for life-sustaining treatment (MOLST)

Center for Practical Bioethics – [www.practicalbioethics.org](http://www.practicalbioethics.org)

# Durable Power of Attorney for Financial Decisions

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## Definition:

- Authorizes your agent to make financial decisions on your behalf if you are unable to make them yourself
- Can be “springing” or effective when you sign it
- Can be limited, can have multiple.
- Ends at death.

This is a very powerful document.

Financial institutions would like your document to be less than three years old

Caution: Social Security, VA, some banks, and some brokerage firms require their own form document (Power of Attorney) to be completed.

# Last Will and Testament

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## Definition:

- States your intention for the distribution of your assets after death
- Names a guardian for your minor children
- Appoints a personal representative, executor (executrix) to carry out your wishes
- Can create a testamentary trust after your death
- Public record
- Only controls those things in your name and your name alone
- Importance of personal property lists

Any one over the age of 18 should have a will.

A will guarantees probate.

In the absence of a will, state law dictates (intestate).



## Who Gets What in Kansas?

Under intestate succession, who gets what depends on whether or not you have living children, parents, or other close relatives when you die.

<b>If you die with:</b>	<b>here's what happens:</b>
children but no spouse	children inherit everything
spouse but no descendants	spouse inherits everything
spouse and descendants	spouse inherits 1/2 of your intestate property descendants inherit 1/2 of your intestate property
parents but no spouse or descendants	parents inherit everything
siblings but no spouse, descendants, or parents	siblings inherit everything

## Who Gets What in Missouri?

Under intestate succession, who gets what depends on whether or not you have living children, parents, or other close relatives when you die.

If you die with:	here's what happens:
children but no spouse	children inherit everything
spouse but no descendants	spouse inherits everything
spouse and descendants from you and that spouse	spouse inherits first \$20,000 of your intestate property, plus 1/2 of the balance  descendants inherit everything else
spouse and descendants from you and someone other than that spouse	spouse inherits 1/2 of your intestate property  descendants inherit everything else
parents and siblings but no spouse or descendants	parents and siblings inherit your intestate property in equal shares
parents but no spouse, descendants, or siblings	parents inherit everything
siblings but no spouse, descendants, or parents	siblings inherit everything

# Revocable Living Trust

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## Definition:

- A revocable living trust is a trust document created by an individual - can be changed
- Becomes irrevocable (can't be changed) upon your incapacity or at your death
- Three parties to a Trust
  - Grantor, settlor, trustor – person who sets up the trust
  - Trustee – person who takes care of the trust assets; Successor Trustee – “next up”
  - Beneficiary – for whom the trust benefits
- Avoids probate
- Information is private for the trust owner and beneficiaries
- Protects you during your lifetime, should you become incapacitated, and after death
  - Only protects the assets titled in the name of the trust
- Can be used as a tax planning tool (although, for 2024, the Estate Tax Exemption amount is \$13.61 million per person)

# How Do Your Documents Work Together?

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Advance Directive – Living Will and Health Care Power of Attorney control “the Person.”

Financial Power of Attorney, Last Will & Testament, and Revocable Living Trust control “the money and the stuff.”

Health Care Power of Attorney and Financial Power of Attorney name an agent to serve on your behalf

- Can be the same person or different people
- Unfortunately, your agent does not have to do his/her job

The court supervises the executor (personal representative)

There are laws requiring a trustee to do their job.

## When Your Documents are Used\*

\*Of the Five Basic Estate Planning documents

During Lifetime	Incapacity	After Death
Revocable Living Trust	Health Care Power of Attorney	Last Will & Testament
All other documents are “on standby”	Financial Power of Attorney	Revocable Living Trust (now Irrevocable)
	Revocable Living Trust (now irrevocable)	
	Living Will	

# Where Should You Keep Your Documents?

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First – you should only have one ORIGINAL Last Will & Testament – destroy the others.

Second – think about who will USE your documents:

- Health Care Power of Attorney – when this is needed, you cannot speak for yourself. The agent should have an original document (you can have as many originals of this document as you want). Always take one with you when entering a hospital.
- Living Will – should be on file with your doctor’s office and the hospital you use most often. You can have multiple originals. Always take one with you when entering a hospital.
- Last Will & Testament – you will be dead when this comes into play. Keep in a safe place. This is the only document for your safe deposit box. Remember - only one original
- Revocable Living Trust – you will use this document to title/retitle assets – keep at home. You can have multiple originals. Your successor trustee will need the original trust when taking over.

Third – don’t write on original documents. Keep your notes on a separate piece of paper. Keep your documents updated. When life changes, change your documents.

# Top 5 Estate Planning Mistakes

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1. Not doing anything
  - I don't have anything
  - Let the kids figure it out
  - Death is easy, incapacity isn't
  - Any of your beneficiaries disabled?
  - What about personal property?
2. Not understanding the roles in your estate plan
  - Agent, Trustee, Executor

# Top 5 Estate Planning Mistakes

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3. Where are your documents?
  - Having your documents accessible by those that need them
  - Burial plan?
  - On-line accounts?
  - Passwords, social media, digital assets?
4. Not talking to your spouse and your family members
  - Maybe even have a discussion about expected behaviors (blended family especially)
  - Make sure your family is willing to honor your wishes
  - If your decisions are divisive, why you made the decisions you did
5. Not titling your assets in accordance with your estate plan.