

# A Guide to Estate Planning Documents

## Last Will & Testament

A will is a legal document that outlines how a person's probate assets will be distributed after their death.

It allows individuals to specify their wishes regarding who will inherit their property, who will be appointed as the executor of their estate, and who will be appointed as the guardian of any minor children.

Wills are revocable, meaning that they can be amended/altered/revoked.

### To be considered a valid Will in Ohio:

- must be signed by the testator (the person making the will)
- must be witnessed by two individuals who are not beneficiaries under the will

### Property that is passed by Will is subject to probate.

**Important!** Property that is passed by Beneficiary Designation(s), Transfer on Death (TOD) or Payable on Death (POD) does not fall to your Will, is not subject to probate, and will transfer directly to the person(s) named.

### Wills are important because...

- Ease the administration of your estate
- The requirement of a bond can be waived, saving the cost of bond premiums
- If someone dies without a Will (called dying intestate) the property will pass according to state laws and probate administration is initiated.

## Beneficiary Designations

Beneficiary designations are a critical part of an estate plan, superseding what's written in a will.

These designations apply to accounts like retirement plans, investment accounts, life insurance policies, annuities, and bank accounts.

### It's important to:

- Regularly review and update beneficiaries after major life events (e.g., marriage, divorce, birth, death)
- Ensure primary and contingent beneficiaries are listed.
- Avoid naming minors without a trust or custodial arrangement in place.

### In Ohio, you can also put beneficiary designations on real estate and vehicles.

Transfer on Death (TOD) Affidavit - Real Estate: A TOD affidavit allows you to designate a beneficiary (or multiple beneficiaries) for real estate. It's recorded with the county recorder while you're living and only becomes effective upon your death.

Transfer on Death (TOD) - Vehicles: Ohio allows vehicle owners to add a beneficiary to a car title through a simple TOD designation through Ohio BMV.


## Financial Durable Power of Attorney

A financial power of attorney is a legal document that allows an individual to appoint someone to make financial decisions on their behalf if they become unable to do so.

This can include paying bills, managing investments, and making other financial decisions. In Ohio, a financial power of attorney must be signed by the person making the document and notarized (no witnesses required).

Durable POAs are relatively inexpensive and simple to execute and can be revoked and/or amended if desired. This document is private and effective immediately. No declaration of incompetence is required (unlike under a guardianship).

### Durable Powers of Attorney are important because

- In the event of illness or disability, the individual named in your document can manage your financial affairs on your behalf
  - You can avoid the need for Probate Court guardianship should you become incapacitated. This process can be time-consuming, expensive and can involve significant court oversight.
  - A durable power of attorney allows the agent to represent the principal before and after incapacity occurs
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## Healthcare Power of Attorney

A healthcare power of attorney is a legal document that allows an individual to appoint someone to make healthcare decisions on their behalf if they become unable to do so.

This can include decisions regarding medical treatments and procedures, as well as decisions regarding end-of-life care.

In Ohio, a healthcare power of attorney must be signed by the person making the document and two witnesses.

### Healthcare agents can confer with medical professionals to make decisions concerning:

- Where an individual should be treated
- The extent of medical treatment that should be provided
- Whether surgery should be performed
- If medications should be administered
- The types of life support systems that should or should not be utilized

## Living Will

A living will is a legal document that outlines an individual's wishes regarding medical treatment if they become unable to make decisions for themselves.

It can specify whether or not life-prolonging measures should be used, such as artificial nutrition and hydration, and under what conditions. In Ohio, confirmation of your condition is required by (2) physicians.

In Ohio, a living will must be signed by the individual making the document and two witnesses.

### Living Wills are important because

- Your wishes relieve the burden from your loved ones in having to make difficult life-and-death decisions
- You may designate whether or not you wish to be an organ donor
- You designate who is to be notified if you are deemed to be terminally ill or in a permanently unconscious state

# Trusts

A Trust is a legal entity that holds and manages assets for another person. A trustee is the person and/or institution named in a trust agreement to carry out the provisions of the trust.

A Trustee holds legal title to the assets placed in the trust, in which the trustee manages for all trust beneficiaries.

## Trusts have many uses:

- Control the distribution of property
- Avoid probate
- Can be used to provide for a child with special needs or minor children
- Protect property for children in a second marriage or divorce situations
- Maintains privacy (unlike a will, a trust generally isn't public)

## Common Mistake: Not Funding the Trust

Creating a trust is only the first step. Assets must be retitled into the trust's name (or have the trust named as beneficiary, depending on the asset) to fully realize the benefits. This process is known as funding the trust.

## There are Many Types of Trusts

While revocable living trusts are the most commonly used in estate planning, there are many other types of trusts designed for specific goals.

Each trust has its own rules, tax considerations, and legal requirements. Choosing the right one depends on your family structure, financial goals, and estate planning needs. Working with an experienced estate planning attorney is essential to determine what fits best.



## Working with a Qualified Estate Planning Attorney

While online templates and DIY services can be convenient and cost-effective, estate planning is not one-size-fits-all. For very simple situations, online platforms may be appropriate but many **individuals benefit from the guidance of an experienced professional.**

### An attorney who specializes in estate planning can:

- Ensure your documents comply with Ohio-specific laws
- Identify potential tax and legal risks based on your family and financial situation
- Help coordinate your beneficiary designations, trust, and will to work together seamlessly
- Guide you through complex issues like blended families, special needs planning, or Medicaid eligibility
- Provide clarity on when a trust is appropriate—and how to fund it correctly
- Update your plan as laws or personal circumstances change

Working with a specialist helps ensure your wishes are carried out efficiently and your loved ones are protected from unnecessary complications or court involvement.

General practice attorneys or those unfamiliar with estate planning may overlook crucial steps. When it comes to protecting your legacy, experience matters.

## Where to Keep Estate Planning Documents

Store estate documents in a secure but accessible place.

### Key considerations:

- Keep originals in a fireproof safe or locked cabinet.
- Share copies with your attorney and named agents (e.g., POA, executor).
- Let someone you trust know where the originals are stored.

Don't place documents in a bank safe deposit box without making arrangements for someone else to access it (e.g., co-owner or POA).

**IMPORTANT DISCLAIMER:** The information provided in this document is for general informational purposes only and is not intended to be, nor should it be construed as, legal advice. While we aim to provide helpful guidance on estate planning topics, we are not attorneys and do not draft legal documents or provide legal opinions. You should consult a qualified attorney for legal advice specific to your individual circumstances and to ensure that any estate planning documents meet the requirements of applicable state laws.