

insights

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A good time to consider four essential documents for basic estate planning

Now that all but essential businesses are closed and individuals are working from home in most of the country to slow the spread of COVID-19 (or, as we have all heard by now, to “flatten the curve”), many may use extra time while at home to deal with things they’ve put off. This backlog could include updating existing estate planning documents or implementing an estate plan for the first time.

Now is a good time for those without estate plans to have basic plans put in place and those who already have plans to ensure those documents (which may have been drafted many years ago) correctly reflect their current wishes.

These basic estate planning documents typically include four instruments: a Will, a Revocable Trust, and powers of attorney for health care and property, each of which serves an important purpose in the overall plan.

Revocable Trust

The Revocable Trust is the individual’s substantive estate planning instrument which will provide both for the disposition of an individual’s assets as well as the tax planning and administrative provisions of an individual’s estate plan. It is better that these terms be contained in a Revocable Trust than in a Will, as assets transferred by Will are subject to probate court proceedings, which can make post-death administration more time-consuming and expensive. By contrast, assets transferred via a Revocable Trust are not subject to probate. The Will is a public document, which likely will be filed with a court and subject to public inspection at an individual’s death along with the list of assets transferred by the Will. The Revocable Trust itself and the assets owned by the trust may remain private.

Will

The main purpose of a Will is to direct or “pour-over” at death any assets held in an individual’s own name (rather than by the individual’s Revocable Trust) and without beneficiary designation to the Revocable Trust. Importantly, the Will also serves to appoint guardians of an individual’s children in the event both parents die while their children are minors.

Powers of Attorney

The power of attorney for property and power of attorney for health care (the exact names of these instruments may vary from state to state) address situations where an individual is alive but not able to act for her or himself. As their names suggest, the power of attorney for property allows the person appointed by the individual (an “agent”) to deal with the individual’s various financial and legal matters in the event the individual is not able to do so because of illness or other incapacity. Similarly, the power of attorney for health care allows an agent appointed by the individual to make health care decisions for the individual in those situations and often includes a “living will” or directive regarding end of life care to guide the agent and health care providers in making health care decisions on your behalf. Of course, each of these documents can be modified to suit a particular individual’s needs or preferences related to property and health care.

For individuals who already have the benefit of an estate plan in place, now is an excellent time to review their current documents to confirm that the provisions reflect their current desires and adequately address current family circumstances. In particular, individuals should review their current asset values and titling to ensure that the Revocable Trust has appropriate income and estate tax planning provisions and there are no assets that should be transferred to the trust or for which a beneficiary designation should be updated. In addition, individuals should confirm that those named as their executors, trustees and agents under powers of attorney remain appropriate. For



assistance in creating or updating an estate plan, please reach out to the authors of this article or your regular Thompson Coburn contact.

[Lacey Searfoss](#) and [Jackie Dimmitt](#) are members of Thompson Coburn's Private Client practice group.

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authorsTest

lacey

Lacey R. Searfoss

jacqueline

Jacqueline A. Dimmitt