

THE ULTIMATE GUIDE TO
WILLS, TRUSTS,



AND ESTATE PLANNING

The Ultimate Guide To Will's, Trust's and Estate Planning

What would you say if you were told that with some specific, concrete planning now, you could ensure that your loved ones are taken care of and that, upon your passing, your assets will be distributed according to your wishes?

We know that at any age, planning for the end of life is difficult. Not only because we must face our own mortality and admit that we will one day no longer be here, but also because there are so many factors to consider. Our natural reaction is to avoid the subject entirely. However, when we do that, we take the risk of becoming incapacitated or passing away without any estate plan.

At Reese Law Firm, we believe that knowledge and preparation will help you make the best decisions for your family. We want estate planning to be easy for you. This is why we offer this free introductory guide to estate planning, and a free strategy session with Attorney Reese to review your situation and discuss your options. (This guide covers “typical” estate planning and should not take the place of legal counsel.) *See glossary of terms at end of document for quick reference*

You Have Many Options To Consider When Crafting An Estate Plan

So many options are available to you as you begin planning your estate, it can quickly become overwhelming. Some options coordinate well together and others don't. First, let's discuss what your estate is.

Your estate consists of everything you own - real estate; tangible personal possessions, such as cars, jewelry, and furniture; bank accounts; retirement funds; and insurance. A full estate plan not only plans for how your assets will be distributed after you die and how remaining family members will be taken care of, it also serves as a way to plan for the possibility of future mental or physical incapacity.

Understand that not every option discussed below will be right for you and your family. Consultation with legal counsel is strongly recommended when crafting your estate plan.

Pay on Death and Transfer on Death Designations

The **Pay on Death designation (POD)** allows certain assets to be passed automatically to specified beneficiaries upon your death. Many 401k plans, retirement accounts, bank accounts, and brokerage accounts allow you to name such POD beneficiaries. **Transfer on Death (TOD)** is a similar designation typically placed on assets with a title such as real estate, automobiles, or boats. Both POD and TOD accounts bypass the probate process entirely. (Section 2B defines and discusses probate and why you probably don't want your estate to go through it.)

Wills

A will, in its most basic element, is a signed, witnessed document wherein you declare how you want your estate distributed after death. It is also the vehicle typically employed to appoint guardians for minor children. A will can be revised as frequently as you wish. The only stipulations are that you must be mentally competent at the time of execution and you must follow the proper execution formalities.

It is important to note that just because you have a will doesn't mean that your wishes are able to be carried out immediately. In Ohio, assets bequeathed in your will cannot be distributed until your estate is probated. The probate process is a lengthy, expensive, and public process with the actions of the Executor strictly monitored by the Probate Court and subject to its questioning and authority. Executor action is often accompanied by the assistance of an attorney.

Living Will and Powers of Attorney

Advanced Directives are legal documents drafted to give healthcare instructions, should you become unable to make such decisions for yourself. There are two specific types of advanced directives: a healthcare power of attorney and a living will. Additionally, we will discuss a financial power of attorney in this section.

A **Healthcare Power of Attorney** allows you to designate someone to make healthcare decisions on your behalf, if you are no longer capable. This person should be someone you trust completely, but he should also be capable of making hard decisions.



A **Living Will** is a document wherein you express your wishes regarding end of life care. Having this document in place takes the responsibility for making difficult decisions - regarding resuscitation and artificial respiration - off of your loved ones. In Ohio, the following criteria must be present in order for a living will to take effect: the patient must be unconscious or terminally ill, and two doctors must sign off saying that there is no hope for recovery. While a Living Will isn't absolutely necessary, many people choose to have one in place in order to protect their loved ones.

A **Financial Power of Attorney** is an extremely powerful document. It gives a trusted friend or relative the power to take financial actions on your behalf. Though this document is occasionally used to empower someone to act on your behalf while you are out of the country (or unavailable for one reason or another), the most frequent situation in which a financial power of attorney comes into play is when someone is incapacitated or incompetent to the point that they can no longer manage their financial affairs.

Revocable Living Trusts

A Revocable Living Trust is the most elegant, versatile, and powerful of the Estate Planning tools available. If utilized properly, it paves the way for the complete avoidance of probate, provides a long-term distribution plan for your assets, and lays out a strategy for dealing with the potential of incompetence or incapacitation later in life. This asset management vehicle not only allows you to plan for the future, it allows you to have incredible flexibility in the present management and use of your trust assets.

You can make changes up to and including complete revocation of the trust at any time up until your death or the onset of incompetence. Another powerful feature of a Revocable Living Trust is the grantor's ability to set certain benchmarks that a trust beneficiary must meet prior to being eligible to receive any distributions. These conditions can range from the attainment of a certain age to the acquisition of a specific level of education, or any other condition that may be important to the Grantor.

As referenced above, a Revocable Living Trust also protects your estate from being placed under the care of a court-appointed conservator, should you become incapacitated and are no longer able to make decisions on your own. In this scenario, your successor trustee would simply assume the role of trustee, thus allowing the trust to continue functioning under your predetermined wishes.

You Have Questions

Why would I ever need a will and a trust?

A will, and even payable-on-death and transfer-on-death designations, can make broad transfers of assets, but a trust divides an estate with the precision of a scalpel. It allows for much more precision and control of the final outcome than a will does. A will is certainly useful for designating a guardian for minor children, but any functions beyond that limited, albeit incredibly important, function are better served with a trust. When a trust is used, the will takes on the role of a “catchall”. If the decedent neglected to put an asset into the trust, the will in many cases sweeps it into the trust.

Tell Me More About Probate and Trusts

Whether or not you have a will, upon your death, any probate assets you owned at the time of your death will go through a process called probate. A probate asset is defined as an asset that is owned in your name and doesn't transfer on death to another person or entity. If you have a will in place, the Probate Court will first determine the validity of your will. Once the validity of the will has been established, the Court will oversee the process as

Executor pays off all legitimate debts and then distributes the assets according to the directions given in your will. If you do not have a will in place, the court will appoint an Administrator to assemble your assets, pay your final bills, and distribute any remaining assets to surviving relatives according to the state's default distribution schedule.



Probate often takes a minimum of nine to twelve months to complete. In some situations, this can leave the surviving spouse struggling to pay the bills until the deceased spouse's will has been probated. Another negative of probate is how expensive it is, often costing thousands to tens of thousands of dollars in attorney's fees and court fees. Typically, this number is 3-4% of the value of the estate.

Additionally, Probate is a matter of public record. Anyone can search the court records and see the value of the estate and who the beneficiaries are. For many people, the public nature of probate alone is undesirable. When you add the other detrimental elements of time delay and additional costs, probate becomes extremely undesirable.

Another problem that can present itself during the probate process is a will contest. A disgruntled relative or friend can file a challenge to the will, claiming that the will is not valid, or that the decedent informed them that they were going to have a significant inheritance that is not reflected in the will. Though these claims may be proven false in the end, they can delay the process and significantly increase the estate's legal bill.

While it is true that in many situations an individual or couple can avoid probate through a carefully enacted series of Transfer on Death (TOD) and Pay on Death (POD) designations, these strategies have limitations.



For example, suppose that a mother and father were killed in a joint automobile accident. Let's further suppose that all their bank accounts, financial accounts, etc. are set up with the children as the POD recipients if both spouses are deceased. In that scenario, the children's inheritance would be under the jurisdiction of the Probate Court due to the requirement that a guardian be appointed to manage any minor's inheritance.

Additionally, if you fast-forward to when each of these children turns eighteen, they are immediately entitled to their share of the inheritance. This raises serious concerns for many parents who foresee the pitfalls of a potentially irresponsible eighteen-year-old coming into possession of what could easily be several hundred thousand dollars (when factoring in life insurance). In either of these rather unlikely, but not inconceivable, circumstances, the assets must either be managed under the probate court's oversight through a guardian, or they are distributed directly into the hands of an eighteen-year old.

Another problematic scenario goes as follows: Let's assume the mother and father pass away simultaneously, or near each other, leaving adult children who have children of their own. Any POD accounts or life insurance policies naming their children as beneficiaries would be split amongst the surviving children. Should any of the children have predeceased their parents, the monies would be split among ONLY the surviving children. In this scenario, any children of the deceased child would get nothing. This result is not normally the intent of a grandparent, but it is an often-overlooked possibility.



If, instead, a trust were the beneficiary of the life insurance policy and the POD accounts, the children only receive the money at the ages designated in the trust (with provisions for education and medical expenses along the way), and any predeceased child's descendants are protected. If funded properly, a revocable living trust allows all of a person's assets to pass outside of probate and protects the children from the risks of a windfall at age eighteen and grandchildren from accidental disinheritance.

For a comparatively small price, a trust can be established which will not only save money in the long run, but also protect the family's privacy. It will also provide assurance that in the case of the unthinkable, children and grandchildren will be provided for and financially protected.

What Should I Do If I Have Young Children Or Family Members Who Need Special Care?

Special consideration should be taken when you are selecting a guardian for minors or dependents should you die or become incapacitated. In Ohio, a guardian is typically nominated via a will and approved by the Probate Court. If no guardian has been named in your will, the probate court will appoint a guardian for the children or the special needs family member. Often, this would be the closest living relative. In order to ensure that you have a say in your child's guardian, you must make sure you have a will in place at the time of your death.

In Ohio, there are two separate types of guardianships that must be accounted for: Guardian of the Person and Guardian of the Estate. A Guardian of the Person is someone who makes the day-to-day care decisions for the ward; and a Guardian of the Estate, is someone who makes financial decisions for the ward. While both of these roles can be assigned to the same person, they should both be addressed in the will. As mentioned above, parents with minor children should also consider putting their assets into a trust in order to prevent their children from coming into a large inheritance while they are young and unable to make the most wise financial decisions possible.

Still Have Questions or Concerns?

Whether you have a lot of assets and are looking to avoid costly tax issues, or you have young children and want to make sure you properly provide for and prepare for their future, or if you just feel uncertain about drafting a will on your own, a free strategy session with Reese Law Firm can help.

We will advise you on what options you should select for your estate plan and then draft the necessary documents to carry out that selection. We can also help you set up a trust and make sure it is properly funded.

Visit www.reeselawfirmllc.setmore.com or call/text (614) 321-2422 to schedule your free strategy session today.



Glossary of Terms

Beneficiary: **a)** the person(s) designated to receive the income of an estate that is subject to a trust or **b)** the person(s) named (such as an insurance policy or a retirement account) to receive proceeds or benefits

Decedent: a deceased person

Estate: the assets and liabilities left by a person at death

Executor: the person appointed by a testator to execute a will

Guardian: one who has the care of the person or property of another

Intestate: having made no valid will

Power of attorney: a legal instrument authorizing one to act as the attorney or agent of the grantor

Probate: the action or process of assembling a decedent's assets, paying all debts, and distributing the remaining assets

Trustee: a natural person or legal entity to whom property is legally committed to be administered for the benefit of a beneficiary

Ward: a person who by reason of incapacity (such as minority or mental illness) is under the protection of a court either directly or through a guardian appointed by the court

Will: a legal declaration of a person's wishes regarding the disposal of his or her property or estate after death

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