

Back to Basics: Estate Planning



As a general concept, estate planning allows an individual to plan not only for what happens to his or her estate upon death, but also how his or her affairs are handled during life. There are certain documents that each person should have in order to accomplish these objectives.

A **Last Will and Testament** is a document that allows you, the Testator, to set forth the disposition of your probate estate upon your death. Your “probate estate” includes any assets that are held in your individual name at the time of your passing. This means that assets that designate a beneficiary, such as life insurance or retirement accounts, pass outside of your Will and are not subject to the dispositive terms of your Will. Instead, those assets will pass pursuant to the beneficiary designation form that you complete and is on file with the institution. Similarly, assets that are held jointly (for example, perhaps a bank account or a house) will pass by operation of law to the joint owner.

Your Will should be narrowly tailored to meet your individual planning goals. If appropriate (either for tax planning or long-term care planning purposes), it should include a trust for your surviving spouse. Perhaps a trust for your children or grandchildren is also appropriate, either due to age, creditor concerns, or your child’s spending habits. If you have minor children, a guardian should be nominated as well. You will appoint an Executor, who will be tasked with administering your estate upon your passing. In addition, if you include any trusts, you will appoint a Trustee who will be tasked with administering the trust(s) under your Will.

A **Power of Attorney** is a document that allows you to appoint an Agent to make financial decisions on your behalf in the event you are unable to make those decisions on your own. It is important to remember that unless you otherwise indicate, your Power of Attorney is effective on signing, which means that even if you continue to have capacity and the ability to make your own decisions, once the Power of Attorney is signed, your Agent can make decisions on your behalf. For this reason, it is extremely important that you appoint someone whom you trust to act in your best interests.

An **Advance Directive** (Health Care Proxy and Living Will) is a document that allows you to appoint a Representative to make medical decisions on your behalf in the event you are unable to make those decisions on your own. In addition to preparing this document, it is important to advise your Representative of your wishes regarding artificial nutrition and hydration and any specific treatment instructions for last illness.
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It is important that your estate planning documents reflect your personal goals and wishes. When you meet with an estate planning attorney, he or she should discuss the assets in your estate, and how you wish for your estate to be distributed, and then structure a plan to accomplish those goals.

For more information about this alert or any aspect of estate planning, please contact Lauren I. Mechaly.



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Founded in 1912 as a two-person law firm in Morristown, New Jersey, Schenck Price has entered its second century as an 85-attorney, full-service firm. Our Firm's long history of legal excellence in the areas of education, health care, construction, trust and estate planning, corporate law, real estate, environmental law, insurance defense, banking, and commercial litigation, has expanded as the Firm has grown.

Our areas of practice also include telecommunications, technology, labor and employment law, and family law and divorce. Many of our attorneys have been recognized for excellence in their respective practice areas.