

Estate Planning Terms

Please consult with an estate attorney to create or update estate documents. It is important to review these documents every few years or as significant life changes occur (e.g. birth of child, marriage, divorce, death, change in wealth).

Last Will & Testament

Legal document specifying the desired division of property upon death and lists guardianship for any minor children, if applicable. Suggestion: Usually 100% of the person's estate goes to the remaining spouse, then a certain percentage to children/relatives (if remaining spouse is not alive) per stirpes and/or to charities.

Per Stirpes vs. Per Capita

These terms are used in estate planning to designate who will inherit assets if a beneficiary passes away before the person who created the will (the testator) dies. Per stirpes stipulates that, should a beneficiary predecease the testator, the beneficiary's share of the inheritance goes to their heirs - further down the family tree. Per capita takes a different approach: all inheritance is divided equally among the testator's surviving beneficiaries - no further down the family tree.

Executor

Person named in a decedent's "will" to carry out, or execute, the provisions of the will. Suggestion: Usually, the executor is the surviving spouse and then a secondary designee if the executor is not able to carry out the duties.

Trusts set up in will

Depending on the decedent's wishes, sometimes trusts are set up according to the deceased's will and a trustee is named, rather than having the money pass outright to specific beneficiaries. Suggestion: One approach is to be specific about when your heirs would receive the trust monies (principal or interest) and for what purpose. For example, your children might receive 1/3 of the trust principal at age 35, another 1/3 at age 40, and the remainder at age 45. The trust principal/interest could only be used prior to age 35 for health or education purposes.

Power of Attorney (POA)

Legal document giving one person (the agent) power to act for another person. The agent can have broad legal authority or limited authority to make legal decisions about the principal's property and finances. The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal cannot be present to sign necessary legal documents. Suggestion: Usually, the agent is the surviving spouse, then a secondary agent if the spouse is not able to carry out the duties.

Healthcare Proxy (POAHC) and Living Will

POAHC assigns the healthcare decisions of an individual to another in the event the individual is unable to make decisions. A Living Will discusses measures to be taken in extreme or end of life circumstances. It might be combined with the POAHC and is dependent on state law. Suggestion: Usually, the agent is the surviving spouse, then a secondary agent if the spouse is not able to carry out the duties. Also, organ donation should be specified here if desired.



Please consult an estate attorney to change your estate documents. Any suggestions written above are suggestions ONLY. The goal is for clients to consider these matters AND then discuss and execute new estate documents with a qualified estate attorney.