Every adult in Texas needs legally valid documents that allow someone to manage their finances and make healthcare decisions in emergency situations, as well as documents that direct the transfer of their property and guardianship of their children after death. This can be accomplished with:

- Durable power of attorney for finances
- Medical power of attorney
- Will

To make things easier for the family, however, it is also often helpful to add a revocable trust and a living will. When you own a business, are part of a blended family, need to protect assets, care for a loved one with special needs, are trying to plan for long-term care, or have other matters that benefit from additional planning, then documents that would be optional for others become essential for you.

The bottom line is that estate planning is not a cookie-cutter exercise, and your needs depend on your specific current situation and future goals. That's why it is a good idea to work out a plan with an experienced estate planning attorney who can tailor documents personally for your objectives. If you try to DIY the process, you may end up with documents that are invalid or wrong for your situation, leaving you and your family unprotected.

What are the Essential Documents?

The basic essential documents include a will, power of attorney, and advance directives. Even if you already have these documents, it is important to review them with an attorney if they are more than a few years old and to create new ones if your documents were originally prepared in a state other than Texas. Laws change, and circumstances and goals rarely remain static, so a periodic review ensures that your documents can achieve the results you want.

What Does a Will Do?

A last will and testament used to be the only document most people prepared ahead of time. This document can:

- Name the personal representative/executor that you want to manage your final affairs
- Name the person or people that you would want to serve as guardians of your minor children if you should pass away
- Identify the people or entities that you want to receive your property after debts are settled
- Provide instructions (but the instructions may not be binding)

While a will can accomplish many goals, a judge in probate court often needs to supervise the process of carrying out directives in the will, and that is why many estate plans now include additional documents that allow assets to be distributed quickly, quietly, and privately without the need for court supervision.

It is important to be aware that not all property will be controlled by the will. Arrangements often cause property to be transferred before that property can become part of the estate directed through the probate process. For instance, a real estate deed may include a co-owner who has the right of survivorship, so the deceased person's interest in the property would automatically pass to that co-owner. Or a retirement account may have a beneficiary clause that distributes the proceeds directly to a beneficiary.

How Does a Durable Power of Attorney Work?

A durable power of attorney for finances is a document that gives someone power to manage some or all of your financial matters. The person you authorize is known as your agent.

When you have an experienced estate planning attorney draw up the document, you can be very specific about what it gives your agent the power to do and what they cannot do. For instance, you can:

- Set up the power so that it only becomes effective if a doctor declares you to be incapacitated
- Create a power that is of limited duration, such as while you're out of the country on a trip

- Allow the agent access to one particular bank account to pay bills but not access to other accounts
- Allow your agent to sign a particular document or type of document but nothing else

There are some critical aspects to be aware of with a financial power of attorney. First, you give your agent control that they can use however they want, so it is important to choose someone you trust as your agent. However, you are not giving them an ownership interest in the asset, so the agent's creditors cannot claim your property.

Many older adults add their children's names to their bank accounts so their children can help manage funds and pay bills. This makes the son or daughter named an owner on the account. If they get into debt because of a lawsuit, medical bills, or for any other reason, their creditors can take all of the parent's assets in the account. If instead the parent established a power of attorney, the son or daughter would still have access to accounts, but no one else could access funds in them.

Preparing a financial power of attorney can also prevent the need for guardianship for an older individual, but it must be done in advance, before dementia or another condition interferes with legal capacity. While powers of attorney are very important documents for older individuals, it is wise for every adult to have one in case they become incapacitated due to an illness like COVID or injuries from a car accident. Disaster can strike at any time of life, and a power of attorney allows someone to manage things for you when you cannot manage them on your own.

Do I Need Health Care Documents?

Most people don't think of their health care as part of their estate plan, but preparation for medical choices needs to be a part of the plan. If you're unable to make decisions about your treatment or communicate your preferences, the directives you prepare in advance can ensure that your wishes are followed.

Advance directives legally recognized in Texas include:

- A medical power of attorney that allows your agent to authorize treatment and make medical decisions if you're incapacitated
- A living will that spells out your preferences for medical treatment in certain situations
- A declaration about your preferences for mental health treatment in certain situations

In addition, it is helpful to have a HIPAA authorization document that allows medical professionals, insurance companies, and others to share information with designated family members or friends.

What Estate Planning Documents May Be Optional in My Situation?

The most helpful and useful optional document for most people is a revocable living trust, but you may also benefit from other types of trusts, business succession plans, beneficiary designations, and other documents and estate planning strategies.

What is a Trust?

Trusts are legal arrangements for owning property in which aspects of ownership are split among three roles: the grantor, the trustee, and the beneficiary. The grantor creates the trust and puts property into it. The trustee manages the property as a caretaker rather than for their own use. The beneficiary doesn't control the property (the trustee does that), but they ultimately get to use it, usually in small amounts periodically distributed by the trustee.

How are Trusts Used?

There are many different types of trusts that can be set up to accomplish different goals. One key differentiating factor is whether the trust is revocable or irrevocable. A revocable trust can be changed or dissolved easily, while an irrevocable trust generally must remain the same.

It can be helpful to think of a trust as a virtual storage box. You can put almost anything in that box, but what happens to it depends on the type of box you've set up. Some trusts are rigid and locked so you can't make changes or remove property, but the lock provides strong protection for the assets. Funds could be put in this type of trust for someone who has trouble managing money so that the trustee gives enough to meet their needs but not excess amounts that could be wasted.

FAQs About Estate Planning Documents

What does an estate planning attorney do?

While estate planning attorneys prepare documents, that is the last step in a complex process. A dedicated attorney will review your financial situation and future goals and develop an efficient plan to achieve the results you want. The plan is likely to involve a combination of documents and strategies. For instance, your attorney might recommend retitling certain property to create a co-ownership, using beneficiary designations for other property, and distributing remaining property through a trust. A skilled estate planning attorney sees the big picture and the tiny details, and works to ensure that the details all fit together to create the big picture that you want.

Why are revocable living trusts so popular?

Revocable living trusts allow people to pass property to their loved ones without needing approval by the probate court. People who set up revocable trusts usually have a will as a backup, but the trust document is the primary means of distributing property.

With a revocable living trust, the person who creates it also gets to be the beneficiary and the trustee. So they use the property just as if it were not part of the trust. When they pass away, someone designated as a successor trustee takes over management of the trust and distributes the property to the people named as successor beneficiaries. The trust document operates much like a will at this point, except everything can happen quickly out of court, saving loved ones a great deal

of time and money.

What do beneficiary designations do?

You can use beneficiary designations and payable-on-death clauses to distribute certain types of property directly to loved ones after you pass away.

What happens if you don’t have the right estate planning documents?

Without legal documents to formalize your preferences, Texas laws will determine who receives your property, who manages your final affairs, and the type of medical care you will receive. You may have told many people what you want to happen, but if you haven’t taken the right steps to make your choices legally binding, then your desires won’t be taken into account.

How often should you review your estate plan?

Generally, it is a good idea to schedule an appointment with your estate planning attorney every three to four years, or after a major change in life circumstances such as a marriage, divorce, a new family member, a death in the family, a move to another state, or retirement.

Schedule a Free Consultation with the Nordhaus Firm to Ensure You’re Prepared for the Future

April Nordhaus is dedicated to building the right plan for every individual and family she serves, knowing that the most efficient plan for one client might not be the right choice for other clients. At the Nordhaus Firm, we invite you to contact us online or call us at 214-726-1450 to schedule a free consultation and learn about the essential estate planning documents for your situation.