



## The Elements of a Well-Prepared Estate Plan

By Thomas J. Vale

Many individuals believe a testamentary will is all they need for an estate planning document. However, the four basic estate planning documents most people need include not only the *testamentary will*, but also a *power of attorney for financial affairs* as well as a *power of attorney for health care* and a *declaration to physicians*. These documents, executed together protect an individual's financial assets by distributing them on death, and also control access to the property while alive. If an individual becomes incapacitated, the documents save the family the undue burden of a guardianship proceeding and assure that the individual's wishes are respected by family and medical professionals. This article will briefly review how each of these documents works together to best serve your estate planning needs.

The *testamentary will* generally governs distribution of most financial assets after death. In addition to simply dividing assets between surviving children or granting to a surviving spouse, it can be used to make gifts to favorite charities. Some people use their testamentary will to make bequests of particular items to specific individuals. Furthermore, a testamentary will is critical to making sure that your underage children have an appropriate guardian named and a trust established to manage the assets they will inherit.

Failure to properly follow the required steps in executing your testamentary will can mean that your wishes will not be known, and cannot be followed. For example, in the case of *In re Estate of Bessie Kuhn*, Mrs. Kuhn had executed an off-the-shelf "fill in the form" will. She had made specific bequests of property to each of her four god-children. The will required the person executing it to sign next to each bequest. Although Mrs. Kuhn did sign next to the first three bequests, she did not sign next to the final bequest. The court upheld the challenge of one of the first three god-children to the bequest granting property to the fourth god-child. The court found that because Mrs. Kuhn had not signed it would have to speculate as to her intent, and it would not so speculate.

If an individual becomes incompetent to make decisions concerning his or her own health care, it is normally necessary for a family member to initiate guardianship proceedings in circuit court to have the court legally appoint an individual as a legal guardian of the incompetent person. These proceedings can be time consuming and expensive, and they can be divisive between family members.

When an individual executes a power of attorney for health care and a power of attorney for financial affairs in advance, however, he or she can avoid the need for guardianship proceedings. The *power of attorney for health care* names someone to act as health care agent if the need arises. That allows the individual the choice of a representative before a crisis develops. If the power of attorney for health care is properly executed, the individual can normally avoid the need for a guardianship proceeding altogether.





Similarly, the *power of attorney for financial affairs* establishes the designee who can assume the necessary role to manage the incapacitated person's financial affairs. Although generally the document is drafted to afford as wide-ranging powers as possible to allow the designee full authority over assets such as bank accounts, personal property, real estate, stocks, and any other form or property, it is possible to restrict the authority. Again, if done properly, the document eliminates the need to have an expensive court guardianship proceeding.

A *declaration to physicians* (sometimes called a "living will") is another advanced health care directive that informs the doctor of an individual's choices concerning life sustaining procedures. Because the document is sometimes called a living will, it can lead to some confusion as to its purposes. The living will deals solely with health care directives, and has no effect on the distribution of the individual's financial assets at death, which is controlled instead by the testamentary will.

Most individuals need not only a testamentary will and a living will, but also a power of attorney for financial affairs and a power of attorney for health care as part of their estate planning documents. The four documents protect most effectively when executed together. The testamentary will directs the distribution of assets from an individual's estate at the time of their death while the power of attorney for financial affairs allows an individual to manage assets for an individual during their lifetime.

Another document that might be used as part of a basic estate plan is a *revocable living trust*. Generally, this would be used in addition to the documents already discussed if an individual wanted to place assets in trust during his or her lifetime in order to avoid the need for their estate to be probated after death. Exactly how such a trust works and when it might be appropriate requires much more discussion than is provided in this overview article. However, it is important to note that even when using a revocable living trust, an individual should still have the "basics" in place. Even if you have a modest estate, it is important to do some basic estate planning to avoid unnecessary legal expenses for you and your family.

