

## 10 Essential Legal Documents

**1. Will.** A Will is the document by which you designate another person or persons to administer your estate and direct how and to whom your property should be distributed after your death. If you have minor children, Wills are also used to appoint the person or persons you would like to serve as guardians of your children. Wills are subject to the probate process (the court process of transferring assets upon your death).

**2. Revocable Trust.** Alternatively, you can use a Revocable Trust as your main estate planning tool. A primary advantage of using a Revocable Trust is that it will avoid the necessity of having your estate administered by the probate court, if all of your property is transferred to the Trust during life or passes to the Trust at your death by beneficiary designation or other non-probate transfer. Another advantage of a Revocable Trust is that the value of your property at the time of death is unlikely to become public record. While you are alive, the current tax code treats the Revocable Trust as if it does not exist for income tax purposes and you will continue to report your income on your Form 1040 as if you had no Revocable Trust. At your death, a Revocable Trust directs how your assets are to be transferred.

**3. Financial Power of Attorney.** A financial power of attorney is a document by which you appoint a person or persons to manage your finances. Often, this document sets forth broad powers oriented toward your financial matters such as paying bills, signing checks, buying and selling property, accessing your safe deposit box, filing tax returns, and so forth. If you become unable to manage your finances yourself and you have not executed a valid financial power of attorney document, a court proceeding will be required to appoint someone to serve in this capacity. This can be an expensive and time consuming process.

**4. Health Care Power of Attorney.** A health care power of attorney is a document by which you appoint a person to make health care decisions on your behalf in the event you become incapacitated. Often, this document contains certain questions regarding which specific powers you wish to designate to your agent, such as the power to admit you to a community based residential facility or nursing home and the power to withhold or withdraw a feeding tube. If you choose not to grant your agent these powers or if you become incompetent without having executed a valid health care power of attorney, these decisions cannot be made on your behalf without obtaining court approval. Again, this can be an expensive and time consuming process.

**5. HIPAA Authorization.** The HIPAA Authorization is designed to be a response to the potential problems that the HIPAA law could create in determining trustee succession or activation of a power of attorney as a result of an incapacity. Under the HIPAA rules, medical professionals are technically not allowed to even discuss whether a person is incapacitated with a third party. Therefore, there would be practical problems for an agent under a power of attorney or successor trustee to secure the necessary certification of incapacity if this document is not executed.

**6. Living Will.** A Living Will (also called a Declaration to Physicians) is a document by which you can indicate to your physician and your family that, in the event of a terminal condition or a persistent vegetative state, either you do or do not wish to have a feeding tube and/or other life sustaining procedures used.

**7. Authorization of Final Disposition Instructions.** Until recently, there was not a formal way for a person to leave final disposition instructions or to designate someone to make such decisions. However, Wisconsin law now allows competent adults to designate a representative to make disposition decisions. The chosen representative will have final decision making authority, but you can leave directions for the representative as to what your wishes are and how you would like things to be handled after your death.

**8. Tangible Personal Property Statement.** A tangible personal property statement allows you to direct how certain pieces of your tangible personal property (i.e. jewelry, household furniture, artwork, etc.) are to be distributed upon your death. This document is separate from your Will or Revocable Trust, but is incorporated into those documents by reference. The primary advantage to using a separate statement is that it can be revised or updated by you during your lifetime without requiring you to spend the time and money to formally amend your Will or Revocable Trust.

**9. Beneficiary Designation Forms.** Assets such as life insurance, retirement plans, and 401(k) plans all transfer via beneficiary designation. Beneficiary designation forms allow you to designate the person or persons to whom these assets should pass (the beneficiaries) upon your death. Listing a living person or your Revocable Trust as a beneficiary will allow these assets to transfer outside of the probate system upon your death. If you fail to name a beneficiary, the named beneficiary predeceases you, or you name your estate as the beneficiary, these assets will pass as a part of your probate estate. It is important that your beneficiary designations are in line with your overall estate plan so that all of your assets are distributed according to your wishes.

**10. Marital Property Agreement.** A Marital Property Agreement is the document by which you classify the ownership of your property under Wisconsin law. There are many uses for Marital Property Agreements. They can be used to classify property as marital property, thereby allowing the tax planning under your estate plan to work optimally, and getting a tax cost basis adjustment for all of your marital property at the death of the first of you to die. In addition, Wisconsin law allows a married couple to avoid probate without the hassle of transferring property to a trust during life by allowing you to include a "Washington Will" provision in your Marital Property Agreement. Marital Property Agreements can also be used to exempt certain property from Wisconsin's marital property laws, if you so desire (Pre-Nuptial or Post-Nuptial Agreement).



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