



# Essential Estate Planning Documents and Probate Avoidance



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# Essential Estate Planning Documents

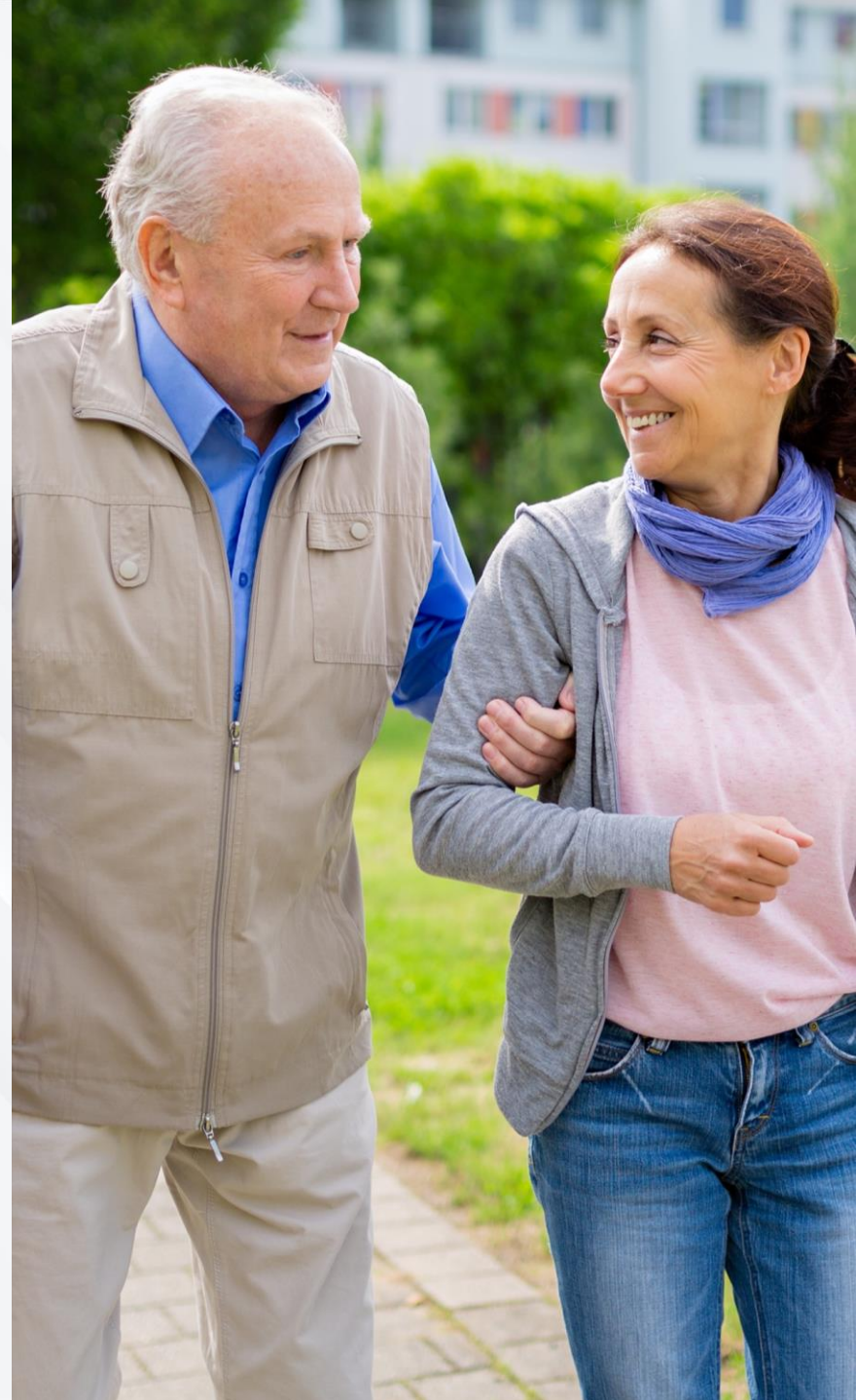
Is it true?

# Only the Rich Need to Worry About Estate Planning?

- Who inherits your property?
- Who handles your finances?
- Who takes care of you if you are incapacitated?
- Who makes medical decisions for you?
- **NO, IT IS NOT TRUE!**



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The Basics

# Where there's a Will...

State law gives us the right to decide who inherits our property. If we don't decide then the law of intestate succession applies.



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Who handles your finances?

## The Executor

You have the right to choose who you want to handle your final bills, clean out your home, sell your assets and pay your taxes when you die.

Again, if you don't choose someone, the law will.



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Who handles your finances –  
Take 2

# The Durable Financial Power of Attorney

- Incompetency, physical ailments, illness
  - Who do you trust
  - What powers to allow
  - Who do you appoint
  - Are there going to be successors
  - What if I don't have a Durable Financial Power of Attorney?



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Who will make my medical decisions?

## **Guardianship of the Person vs. Health Care Power of Attorney**

- Guardian of the Person – Court appoints and oversees ongoing until death or competency returns.
- Health Care Power of Attorney – outside of the Court. You decide.



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## Last, but not least, the Living Will **Different than the Health Care Power**

- End of Life Decisions
- Name Persons to be notified
- Allows you to decide about life sustaining treatment.



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# The Living Will Declaration

Allows you, as the principal, to declare that under certain medical conditions your wishes regarding the withdrawal or the withholding of life sustaining treatment

Can include artificial nutrition and hydration.



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Back to Basics

# Control of your Client's assets and wishes: the Core Four Documents to consider:

- Last Will and Testament
- Durable Financial Power of Attorney
- Health Care Power of Attorney
- Living Will Declaration



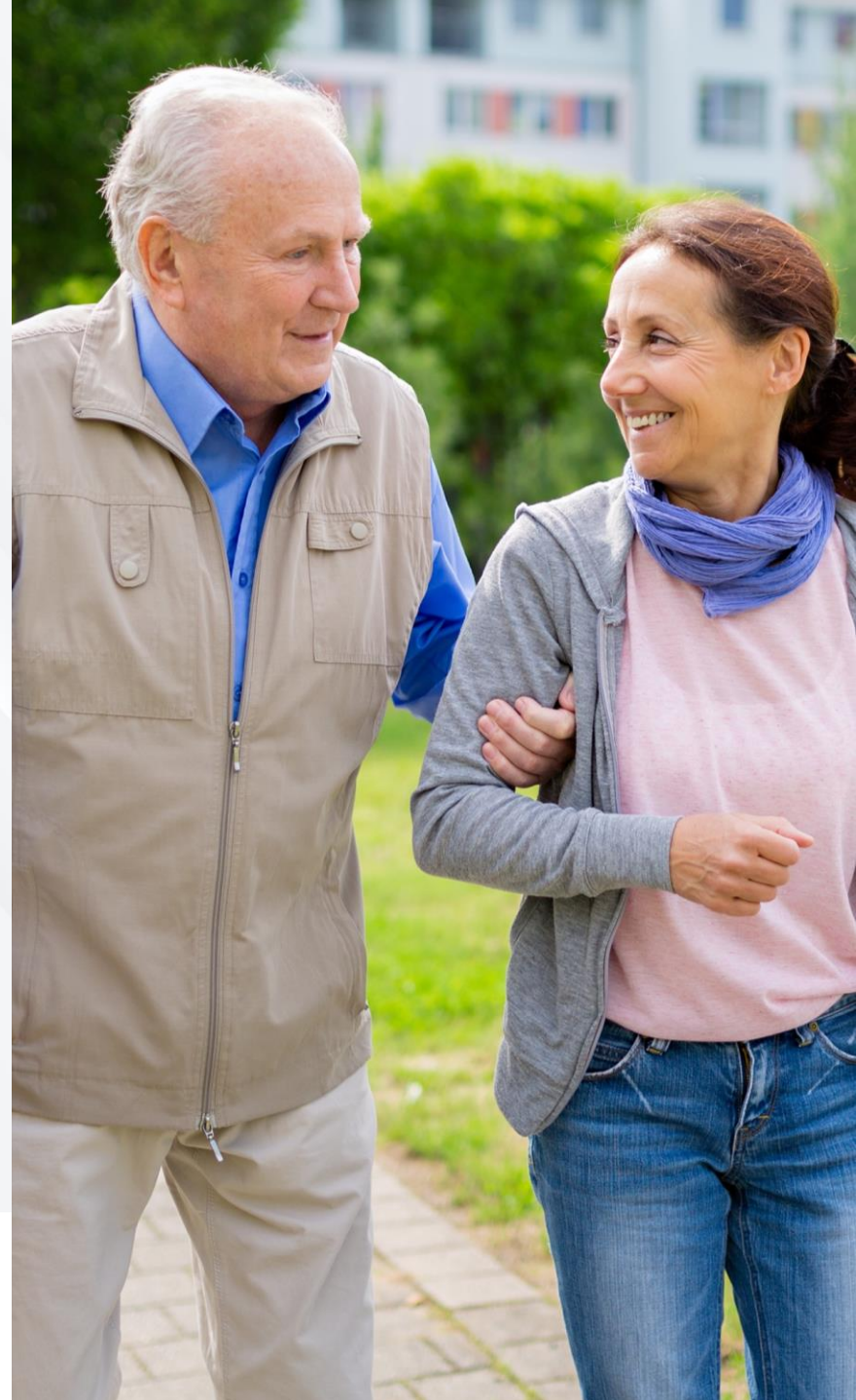
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# Probate Avoidance

How do your Clients keep  
control at death?

## What is Probate?

- Formal process of passing assets at death.
- Court appoints Executor or Administrator
- Inventories
- Accountings
- Bond



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Why should a client avoid Probate?

## The benefits of avoiding probate:

- First, Probate is not evil and can be useful sometimes.
- However, Probate Avoidance can help with:
  - Lower cost
  - Faster to administer
  - Simpler to understand



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## The Basics of Probate Avoidance

# Common Tools to Avoid Probate without a Trust

- Transfer on Death (TOD)
- Payable on Death (POD)
- Beneficiary Designation
- Joint and Survivorship (J&S)



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The details 1...

# Transfer on Death (TOD)

- Used for Real estate
- Used with Stocks/Bonds
- Used with Automobiles



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The details 2...

## Payable on Death (POD)

- Used only with Bank Accounts



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The details 3....

## Beneficiary Designation (BD)

- Used with Life Insurance
- Used with IRAs/Retirement Funds
- Used with Annuities



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The details 4....

## Joint and Survivorship (J&S)

- Used with Real Estate
- Used Stocks/Bonds
- Used Savings Bonds
- Used with Automobiles



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Should your clients avoid Probate?

## **Benefits of using TOD, POD, J&S, & BD:**

- Inexpensive
- Easy to understand
- Simple to handle
- Fast



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# Cons of using TOD, POD, J&S, & BD

- No oversight, no one person in charge—who handles things?
- No final Court determination
- Sometimes hard to name multiple beneficiaries or complex percentage ownership
- May be difficult with multiple parties owning real estate with dower releases
- J&S creates concurrent ownership
- Probate can help or maybe Trust planning is needed instead.



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## Conclusion

**There is no one size fits all for any of this planning. But being aware of these issues allows your client to control his or her assets and wishes.**



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# Thanks!

# Questions?

This seminar is intended to provide general and practical information to assist the public in understanding their options to help them make an informed decision as to how best to protect their assets and loved ones. Legal advice should only be given when the lawyer and client have an opportunity to explore fully the factual circumstances related to the client's situation and the legal options, as explained by the lawyer to the client.



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