

# The Biggest Estate Planning Mistake People Make

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If you are like most people, when you hear the words “estate planning,” you probably think of writing a will, to explain who will get what you own when you die. The problem is, a will has little or nothing to do with *you*. It’s all about planning for someone else. In reality, estate planning is about much more than writing a will; it’s also about taking care of *you* while you are alive, should you become incapacitated and unable to make your own decisions.

What follows is a rundown of the key disability documents to complete as part of your estate planning, even before writing a will. Although their names vary from state-to-state, the following are essential “*me first*” documents.

An **Advanced Health Care Directive**, sometimes called a **Medical Power of Attorney** This document lets you choose who will make decisions about your health care if you become too ill or injured to make them yourself. This person is referred to as your *health care agent*.

A **Living Will** A living will spells out the kinds of medical care and treatment you do and don’t want to receive if you are close to death and there is no hope of your recovery. Your health care agent will have the power to make sure your wishes are complied with. In some states, a living will is part of an Advanced Health Care Directive; in others,

they are two separate documents.

A living will also spares your family members from having to second guess your desires and can help avoid emotionally difficult fights among your loved ones over what to do (or not do). Worst case scenario: Without a living will (and a Medical Power of Attorney), decisions about your end-of-life care could end up in the hands of a judge who knows nothing about you, and your loved ones could be completely shut out of the judge's deliberations.

**A Durable Power of Attorney** If you become incapacitated, your bills still must be paid, your investments managed and so on. A Durable Power of Attorney helps ensure that during your incapacitation there will be someone to manage your finances. This individual, your agent, will be able to write checks, deposit and withdraw money from your accounts on your behalf and speak with your financial advisers, among other things. Be sure to pick as your financial agent someone you trust and who will act in your best financial interest.

Don't confuse a Durable Power of Attorney with a **Power of Attorney**. The latter ceases to be legally valid as soon as you become incapacitated. You need a *Durable* Power of Attorney

A caveat: Despite the importance of a Durable Power of Attorney, many financial institutions and real estate title companies don't like them. They worry the document may have been revoked by its creator and replaced with a different one and that the individual claiming to be your financial agent may be trying to steal money from you. So it may be difficult for your financial agent to use your Durable Power of Attorney.

The more recent the power of attorney, the more likely it will be honored, but this varies from state-to-state. Also, financial institutions and title companies have their own criteria for when they will accept a Power of Attorney document.

Before you prepare yours, find out the criteria of your financial institutions and real estate title companies. Also, check with the companies that hold your retirement accounts to see if they have their own Power of Attorney forms; if they do, use theirs.

**A Revocable Living Trust** To avoid problems with Powers of Attorney, some people set up a revocable living trust, which essentially acts like a *super* power of attorney. Financial institutions are legally obligated to comply with their terms. Generally, a revocable living trust is most appropriate for estates worth more than \$1 million.

When you set up a revocable living trust, you transfer your assets to the trust and designate yourself as trustee. This way, you can continue to manage and benefit from those assets as you did before they were in the trust. If you can no longer act as the trustee because you become incapacitated, the individual you designated as your successor trustee manages the trust. Most people choose their spouse or partner, a close relative or a trusted friend.

A living trust doesn't eliminate the need for a Durable Power of Attorney, however. You'll still need that document to identify the person you want to manage your retirement accounts, like your 401(k) and your IRAs, because these kinds of accounts cannot be transferred into a living trust.

**A HIPAA Release** HIPAA is the acronym for the federal Health Insurance Portability and Accountability Act. Doctors may prefer, or require, you to give them written permission to share or discuss your health information with family members and friends involved in your care or payment for your care. But HIPAA does not require you give your health provider written permission; you may want to ask about your provider's requirements, says the federal Office of Civil Rights.

**An Organ Donation Authorization** You may want to donate your organs when you die so someone can benefit from them. If so, make your wishes known on your driver's license or register with an organ bank or with your hospital. Be sure to make your family and your health care agent aware of your wishes.

By [Brad Wiewel](#)

Brad Wiewel is a Texas estate planning attorney who teaches in the University of Texas CFP training program, and has taught continuing education classes to CPAs at St. Edward's University.



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