

# Wills and Financial Planning

DEVNW WORKSHOP

Will Form Example	4	What Happens During the Propate Process	16
Advanced Directive Form Example	10	Estate Planning Tasks in 7 Steps	17





DEVELOPING THRIVING COMMUNITIES

## Vocabulary

**Advanced Directive (Living Wills)** – An advanced directive is a document in which a person appoints a “health care representative” to make medical decisions such as living arrangements and treatment options when they become incapacitated and unable to make their decisions. An advance directive can be used to indicate whether you wish to have life support, tube feeding or other heroic measures when you are close to death

**Conservatorship** – Conservatorship is the legal process for management of your property and providing for your financial needs when you become incapacitated. If a court determines you can no longer handle your financial affairs, a conservator is appointed. The conservator must list your assets in the court file, manage your property under court supervision and file periodic accountings with the court.

**Estate and Inheritance Taxes** – Estate taxes are the taxes that need to be paid out of your estate after you die. These are based on the total amount of assets that you own at the time of your death. There are federal estate taxes as well as taxes due to Oregon.

**Financial Power of Attorney** – A power of attorney may be created for any purpose, but most commonly an elderly person will nominate a close friend or family member to be their agent to help manage their money. Because this power can be abused, it is wise to seek the advice of a lawyer before signing a power of attorney.

**Guardian** – A guardian generally makes decisions about health care and other personal matters, but not about significant financial matters. A guardian must honor a person’s advance directive for health care.

**Intestate:** an adjective that describes the state of a person that dies without a valid will in place.

**Intestate Succession:** When a person dies without a valid will, his or her property passes by the laws of intestate succession. Effectively, this means that the laws of the state will decide where your property goes after you die.

**Lineal Descendant** – a person who is in direct line to an ancestor, such as child, grandchild, great-grandchild and on forever. A lineal descendent is distinguished from a “collateral” descendant which would be from the line of a brother, sister, aunt, or uncle.

**Personal representative (PR)** – If your estate needs management, a personal representative (“executor”) will be appointed by the court. Having a will lets you decide who that person will be. You may choose someone familiar with your property and affairs or a professional who can serve as a personal representative.

[devNW.org](http://devNW.org)



212 Main Street  
Springfield, OR 97477

257 SW Madison Avenue #200  
Corvallis, OR 97333

437 Union Street NE  
Salem, OR 97301

421 High Street, Suite 110  
Oregon City, OR 97045



DEVELOPING THRIVING COMMUNITIES

**Probate** – Probate is a legal process whereby a court oversees the distribution of assets left by a deceased person. Assets are anything a person owns with value, such as real and personal property and cash, for instance.

**Representative Payee** – For the person who is no longer able to understand enough to sign documents, other legal tools are available. For example, the Social Security Administration and the Veterans Administration can appoint a representative payee to receive and handle the benefit checks on behalf of a person who is mentally or physically unable to handle money.

**Revocable Living Trust** – A revocable living trust is a legal device that can be used to manage your property during your lifetime and to distribute your property after your death.

**Trust** – A trust is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints someone (a “trustee”) to manage your property and gives detailed instructions on how the property will be managed and distributed. A trust is one way to take care of a minor child, an elderly person or someone who needs help handling money.

**Trustee** – In Oregon any competent adult can be the trustee, including the person setting up the trust. An Oregon bank or trust company can also act as trustee. A professional fiduciary that is not an Oregon bank or trust company can act as trustee, if a court appoints it and it posts a bond. You can appoint more than one trustee, delegating different duties to each trustee if you wish, and you can retain the power to remove the trustee and appoint a new one.

**Will** – A will is a set of instructions that explains how you want your property distributed after your death. In Oregon, you must be at least 18 years old and of sound mind to make a will. If you are married, you can make a will before you turn 18.

<https://www.osbar.org/public/legalinfo/1116>YourWill.htm>

<https://www.osbar.org/public/legalinfo/1122/PowerofAttorney.htm>

<http://www.osbar.org/public/legalinfo/1117/probate.htm>

<https://www.osbar.org/public/legalinfo/1196/RevocableTrusts.html>

devNW.org



212 Main Street  
Springfield, OR 97477

257 SW Madison Avenue #200  
Corvallis, OR 97333

437 Union Street NE  
Salem, OR 97301

421 High Street, Suite 110  
Oregon City, OR 97045



DEVELOPING THRIVING COMMUNITIES

## Vocabulary

**Advanced Directive (Living Wills)** – An advanced directive is a document in which a person appoints a “health care representative” to make medical decisions such as living arrangements and treatment options when they become incapacitated and unable to make their decisions. An advance directive can be used to indicate whether you wish to have life support, tube feeding or other heroic measures when you are close to death

**Conservatorship** – Conservatorship is the legal process for management of your property and providing for your financial needs when you become incapacitated. If a court determines you can no longer handle your financial affairs, a conservator is appointed. The conservator must list your assets in the court file, manage your property under court supervision and file periodic accountings with the court.

**Estate and Inheritance Taxes** – Estate taxes are the taxes that need to be paid out of your estate after you die. These are based on the total amount of assets that you own at the time of your death. There are federal estate taxes as well as taxes due to Oregon.

**Financial Power of Attorney** – A power of attorney may be created for any purpose, but most commonly an elderly person will nominate a close friend or family member to be their agent to help manage their money. Because this power can be abused, it is wise to seek the advice of a lawyer before signing a power of attorney.

**Guardian** – A guardian generally makes decisions about health care and other personal matters, but not about significant financial matters. A guardian must honor a person’s advance directive for health care.

**Intestate:** an adjective that describes the state of a person that dies without a valid will in place.

**Intestate Succession:** When a person dies without a valid will, his or her property passes by the laws of intestate succession. Effectively, this means that the laws of the state will decide where your property goes after you die.

**Lineal Descendant** – a person who is in direct line to an ancestor, such as child, grandchild, great-grandchild and on forever. A lineal descendent is distinguished from a “collateral” descendant which would be from the line of a brother, sister, aunt, or uncle.

**Personal representative (PR)** – If your estate needs management, a personal representative (“executor”) will be appointed by the court. Having a will lets you decide who that person will be. You may choose someone familiar with your property and affairs or a professional who can serve as a personal representative.

[devNW.org](http://devNW.org)



212 Main Street  
Springfield, OR 97477

257 SW Madison Avenue #200  
Corvallis, OR 97333

437 Union Street NE  
Salem, OR 97301

421 High Street, Suite 110  
Oregon City, OR 97045



DEVELOPING THRIVING COMMUNITIES

**Probate** – Probate is a legal process whereby a court oversees the distribution of assets left by a deceased person. Assets are anything a person owns with value, such as real and personal property and cash, for instance.

**Representative Payee** – For the person who is no longer able to understand enough to sign documents, other legal tools are available. For example, the Social Security Administration and the Veterans Administration can appoint a representative payee to receive and handle the benefit checks on behalf of a person who is mentally or physically unable to handle money.

**Revocable Living Trust** – A revocable living trust is a legal device that can be used to manage your property during your lifetime and to distribute your property after your death.

**Trust** – A trust is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints someone (a “trustee”) to manage your property and gives detailed instructions on how the property will be managed and distributed. A trust is one way to take care of a minor child, an elderly person or someone who needs help handling money.

**Trustee** – In Oregon any competent adult can be the trustee, including the person setting up the trust. An Oregon bank or trust company can also act as trustee. A professional fiduciary that is not an Oregon bank or trust company can act as trustee, if a court appoints it and it posts a bond. You can appoint more than one trustee, delegating different duties to each trustee if you wish, and you can retain the power to remove the trustee and appoint a new one.

**Will** – A will is a set of instructions that explains how you want your property distributed after your death. In Oregon, you must be at least 18 years old and of sound mind to make a will. If you are married, you can make a will before you turn 18.

<https://www.osbar.org/public/legalinfo/1116>YourWill.htm>

<https://www.osbar.org/public/legalinfo/1122/PowerofAttorney.htm>

<http://www.osbar.org/public/legalinfo/1117/probate.htm>

<https://www.osbar.org/public/legalinfo/1196/RevocableTrusts.html>

devNW.org



212 Main Street  
Springfield, OR 97477

257 SW Madison Avenue #200  
Corvallis, OR 97333

437 Union Street NE  
Salem, OR 97301

421 High Street, Suite 110  
Oregon City, OR 97045

**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

**LAST WILL AND TESTAMENT  
OF  
JANE DOE**

I, *Jane Doe*, a resident of Lane County, Oregon, declare this is my Last Will and Testament and revoke all prior wills and codicils.

**ARTICLE 1  
FAMILY**

I am unmarried and I have no children.

**ARTICLE 2  
FIDUCIARIES**

I nominate *Jim Doe* as my personal representative to serve without bond or other undertaking. If *Jim Doe* fails to qualify or ceases to act as my personal representative, I nominate *Steve Doe* as my personal representative to serve without bond or other undertaking.

**ARTICLE 3  
ESTATE ADMINISTRATION**

I direct my personal representative to pay out of the residue of my estate all expenses of administration of my estate.

**ARTICLE 4  
DEATH TAXES**

I direct my personal representative to pay out of the residue of my estate, without apportionment, all estate, inheritance, and other death taxes payable by reason of my death upon property passing under this Will. All death taxes on property not passing under this Will shall be apportioned according to Oregon law.

**ARTICLE 5  
SPECIFIC GIFTS**

I direct my personal representative to sell any interest I have in household goods and furnishings, personal vehicles, recreational equipment, clothing, jewelry, personal effects and

**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

other tangible personal property for personal or household use, together with any insurance on this property. I direct that the proceeds of this sale be added to the residue of my estate to be administered and distributed according to Article 6.

## **ARTICLE 6 RESIDUE**

I give the residue of my estate to my sister *Sally Doe*. If *Sally Doe* does not survive me, I give the residue of my estate to my brother *Jim Doe*.

## **ARTICLE 7 CONTINGENT BENEFICIARIES**

If there is any portion of my estate or of a trust created by this Will for which there is no named or described beneficiary, then the portion is to be distributed to the persons who would be entitled to receive my intestate property if I died at the time of the distribution, as determined by Oregon law at that time.

## **ARTICLE 8 PERSONAL REPRESENTATIVE**

1. No bond shall be required of any individual named in this Will as my personal representative.
2. I give my personal representative all powers conferred on a personal representative by Oregon law as now existing or later amended, whether or not those powers are exercised in Oregon.
3. If any interest passes under this Will to a person under the age of twenty-one (21) years, I authorize my personal representative to transfer that interest to a custodian for that person under the Oregon Uniform Transfers to Minor Act.
4. I authorize my personal representative to make any election or decision available to my estate under federal or state tax laws, to make pro rata or non-pro rata distributions without regard to any differences in tax basis of assets distributed, and to make distributions in cash, in specific property, in undivided interests in property, or partly in cash and partly in property. The good faith decisions of my personal representative in the exercise of these powers shall be conclusive and binding on all parties, and my personal representative need not make any adjustments among beneficiaries because of any election, decision, or distribution.

**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

**ARTICLE 9  
GENERAL ADMINISTRATIVE PROVISIONS**

1. A beneficiary under my Will shall be considered to survive me only if the beneficiary is living on the sixtieth (60th) day after the date of my death.

2. The validity and construction of my Will shall be determined under Oregon law in effect on the date my Will was signed.

3. If any person contests or challenges, or attempts to contest or challenge, the validity of this Will for any reason or upon any ground whatsoever, or shall participate, directly or indirectly, in any such contest, challenge or attempt, then such person shall forfeit his or her entire interest under this Will, under any trust created by me or by intestacy, and the share to which the person would otherwise be entitled by virtue of the provisions of this Will, any trust created by me or by intestacy shall stand revoked and be void, and the property covered by the revoked gift, beneficial trust interest or intestate share shall pass as if such person predeceased me without any surviving lineal descendants, it being my intent that neither the person challenging or contesting, or attempting to challenge or contest, the validity of this Will or any trust created by me or any of their terms, nor his or her lineal descendants, receive any part of my estate or have any rights of whatsoever kind or nature with respect to my estate or any trust created by me.

IN WITNESS WHEREOF, I execute this my last Will on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
*Jane Doe*



**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

On the date last above written, *Jane Doe*, declared to us, the undersigned, that the foregoing instrument consisting of four (4) typewritten pages, including this page signed by us as witnesses, was her Will and requested us to act as witnesses to it. Each of us saw her sign this Will, all of us being present at the same time. At the time this Will was signed, we believe that *Jane Doe* was of legal age, of sound mind, and not acting under any restraint, undue influence, duress, or fraudulent misrepresentation. We now, in her presence, and in the presence of each other, subscribe our names as witnesses.

\_\_\_\_\_ Residing at \_\_\_\_\_, Oregon

\_\_\_\_\_ Residing at \_\_\_\_\_, Oregon

**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

**AFFIDAVIT OF ATTESTING WITNESSES**

STATE OF OREGON            )  
  ) ss.  
County of Lane             )

We, the undersigned, being sworn, each say:

We are the attesting witnesses to the Will executed by *Jane Doe*, dated \_\_\_\_\_, consisting of four (4) typewritten pages, not including this page. The Will was executed in our presence and in the presence of *Jane Doe*, who declared the instrument to be her Will and requested us to sign our names as witnesses, which we did. To the best of our knowledge and belief, at the time of executing the Will, *Jane Doe* was of legal age, of sound mind, and not acting under any restraint, undue influence, duress, or fraudulent misrepresentation.

\_\_\_\_\_  
\_\_\_\_\_

SUBSCRIBED AND SWORN to by each of the affiants above named this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:\_\_\_\_\_

**THIS IS A SAMPLE DOCUMENT FOR GENERAL INFORMATION AND BACKGROUND PURPOSES ONLY. THIS DOCUMENT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE FOR ANY PARTICULAR FACTS OR CIRCUMSTANCES. THIS DOCUMENT SHOULD BE TAILORED TO MEET YOUR SPECIFIC REQUIREMENTS. YOU SHOULD CONSULT LEGAL COUNSEL BEFORE USING THIS SAMPLE DOCUMENT.**

SAMPLE

## ADVANCE DIRECTIVE (STATE OF OREGON)

This form may be used in Oregon to choose a person to make health care decisions for you if you become too sick to speak for yourself. The person is called a health care representative. If you do not have an effective health care representative appointment and become too sick to speak for yourself, a health care representative will be appointed for you in the order of priority set forth in ORS 127.635(2).

This form also allows you to express your values and beliefs with respect to health care decisions and your preferences for health care.

- If you have completed an advance directive in the past, this new advance directive will replace any older directive.
- You must sign this form for it to be effective. You must also have it witnessed by two witnesses or a notary. Your appointment of a health care representative is not effective until the health care representative accepts the appointment.
- If your advance directive includes directions regarding the withdrawal of life support or tube feeding, you may revoke your advance directive at any time and in any manner that expresses your desire to revoke it.
- In all other cases, you may revoke your advance directive at any time and in any manner as long as you are capable of making medical decisions.

### 1. ABOUT ME.

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Telephone numbers: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

### 2. MY HEALTH CARE REPRESENTATIVE.

I choose the following person as my health care representative to make health care decisions for me if I can't speak for myself.

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Telephone numbers: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

I choose the following people to be my alternate health care representatives if my first choice is not available to make health care decisions for me or if I cancel the first health care representative's appointment.

First alternate health care representative:

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Telephone numbers: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Second alternate health care representative:

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Telephone numbers: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Cell) \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

### **3. INSTRUCTIONS TO MY HEALTH CARE REPRESENTATIVE.**

If you wish to give instructions to your health care representative about your health care decisions, initial one of the following three statements:

\_\_\_\_\_ To the extent appropriate, my health care representative must follow my instructions.

\_\_\_\_\_ My instructions are guidelines for my health care representative to consider when making decisions about my care.

\_\_\_\_\_ Other instructions: \_\_\_\_\_

### **4. DIRECTIONS REGARDING MY END OF LIFE CARE.**

In filling out these directions, keep the following in mind:

- The term "as my health care provider recommends" means that you want your health care provider to use life support if your health care provider believes it could be helpful, and that you want your health care provider to discontinue life support if your health care provider believes it is not helping your health condition or symptoms.
- The term "life support" means any medical treatment that maintains life by sustaining, restoring or

replacing a vital function.

- The term “tube feeding” means artificially administered food and water.
- If you refuse tube feeding, you should understand that malnutrition, dehydration and death will probably result.
- You will receive care for your comfort and cleanliness no matter what choices you make.

A. **Statement Regarding End of Life Care.** You may initial the statement below if you agree with it. If you initial the statement you may, but you do not have to, list one or more conditions for which you do not want to receive life support.

\_\_\_\_\_ I do not want my life to be prolonged by life support. I also do not want tube feeding as life support. I want my health care provider to allow me to die naturally if my health care provider and another knowledgeable health care provider confirm I am in any of the medical conditions listed below.

B. **Additional Directions Regarding End of Life Care.** Here are my desires about my health care if my health care provider and another knowledgeable health care provider confirm that I am in a medical condition described below:

a. **Close to Death.** If I am close to death and life support would only postpone the moment of my death:

INITIAL ONE:

\_\_\_\_\_ I want to receive tube feeding.

\_\_\_\_\_ I want tube feeding only as my health care provider recommends.

\_\_\_\_\_ I DO NOT WANT tube feeding.

INITIAL ONE:

\_\_\_\_\_ I want any other life support that may apply.

\_\_\_\_\_ I want life support only as my health care provider recommends.

\_\_\_\_\_ I DO NOT WANT life support.

b. **Permanently Unconscious.** If I am unconscious and it is very unlikely that I will ever become conscious again:

INITIAL ONE:

\_\_\_\_\_ I want to receive tube feeding.

\_\_\_\_\_ I want tube feeding only as my health care provider recommends.

\_\_\_\_\_ I DO NOT WANT tube feeding.

INITIAL ONE:

\_\_\_\_\_ I want any other life support that may apply.

\_\_\_\_\_ I want life support only as my health care provider recommends.

\_\_\_\_\_ I DO NOT WANT life support.

c. Advanced Progressive Illness. If I have a progressive illness that will be fatal and is in an advanced stage, and I am consistently and permanently unable to communicate by any means, swallow food and water safely, care for myself and recognize my family and other people, and it is very unlikely that my condition will substantially improve:

INITIAL ONE:

- \_\_\_\_\_ I want to receive tube feeding.
- \_\_\_\_\_ I want tube feeding only as my health care provider recommends.
- \_\_\_\_\_ I DO NOT WANT tube feeding.

INITIAL ONE:

- \_\_\_\_\_ I want any other life support that may apply.
- \_\_\_\_\_ I want life support only as my health care provider recommends.
- \_\_\_\_\_ I DO NOT WANT life support.

d. Extraordinary Suffering. If life support would not help my medical condition and would make me suffer permanent and severe pain:

INITIAL ONE:

- \_\_\_\_\_ I want to receive tube feeding.
- \_\_\_\_\_ I want tube feeding only as my health care provider recommends.
- \_\_\_\_\_ I DO NOT WANT tube feeding.

INITIAL ONE:

- \_\_\_\_\_ I want any other life support that may apply.
- \_\_\_\_\_ I want life support only as my health care provider recommends.
- \_\_\_\_\_ I DO NOT WANT life support.

C. Additional Instructions. You may attach to this document any writing or recording of your values and beliefs related to health care decisions. These attachments will serve as guidelines for health care providers. Attachments may include a description of what you would like to happen if you are close to death, if you are permanently unconscious, if you have an advanced progressive illness or if you are suffering permanent and severe pain.

## 5. MY SIGNATURE.

My signature: \_\_\_\_\_

Date: \_\_\_\_\_

**6. WITNESS.**

COMPLETE EITHER A OR B WHEN YOU SIGN.

**A. NOTARY:**

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed or attested before me on \_\_\_\_\_, 2\_\_\_\_\_, by\_\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Oregon

**B. WITNESS DECLARATION:**

The person completing this form is personally known to me or has provided proof of identity, has signed or acknowledged the person's signature on the document in my presence and appears to be not under duress and to understand the purpose and effect of this form. In addition, I am not the person's health care representative or alternative health care representative, and I am not the person's attending health care provider.

Witness Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**7. ACCEPTANCE BY MY HEALTH CARE REPRESENTATIVE.**

I accept this appointment and agree to serve as health care representative.

Health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_



First alternate health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

Second alternate health care representative:

Printed name: \_\_\_\_\_

Signature or other verification of acceptance: \_\_\_\_\_

Date: \_\_\_\_\_

# What happens during the probate process?

1. If the deceased person had a will, the will is “proved” and delivered to the court.  
The deceased person’s will can be proved by an affidavit made under oath by the witnesses to the will. If such an affidavit is unavailable, the personal presence of the witnesses may be required in court to testify that at the time the will was signed, the deceased person was of sound mind and knew what he or she was doing.
2. A personal representative is selected. A personal representative is someone who handles the deceased person’s affairs. A will generally names a personal representative who, if willing to serve and otherwise qualified, will be approved by the court. If a person dies without a will, the court will select the personal representative, usually the spouse, an adult child or another close relative. If none of those people are available or willing to be the personal representative, the court may choose a bank, trust company or a lawyer.
3. A notice to creditors is published in a local newspaper. This public notice to creditors tells the creditors that they have four months to bring any claim against the estate for debts the deceased person owes them. The personal representative also gives written notice to all known and possible creditors
4. The heirs and people named in the will are notified of the probate proceeding.
5. Assets are identified and an inventory is prepared and filed with the court. The personal representative works to identify and value the deceased person’s assets. Depending upon the type of assets and the kind of records left by the deceased person, this step can be quite straightforward — or more difficult and time consuming.
6. Debts are paid. The personal representative ensures that creditors are paid. Creditors must be repaid from the estate before the remaining estate assets can be distributed to the rightful beneficiaries.
7. The personal representative prepares state and/or federal tax returns and any inheritance, gift and estate tax returns and pays any taxes due.
8. The personal representative prepares and submits an account to the people named in the will, the heirs of the deceased person and the court.
9. The account shows all money paid out from the estate and all money collected by the estate. It also contains a narrative explaining the important actions taken in connection with the probate of the estate.
10. After court approval of the account and payment of all unpaid probate expenses, the deceased person’s assets are distributed to the people and entities (such as charities or trusts) named in the will or, if the person died without a will, to the heirs of the deceased person.

[http://www.osbar.org/public/legalinfo/1117\\_probate.htm](http://www.osbar.org/public/legalinfo/1117_probate.htm)

# Estate Planning Tasks in 7 Steps

CONSUMER REPORTS NOVEMBER 2013 MONEY ADVISOR

**Step 1: Sign a will** Let's face it: We all know that a will is important. You need one to ensure that your chosen heirs will get the assets that you want to leave to them. In your will, you name an executor who will have the power and responsibility to pay your debts and distribute the remainder of your estate according to your wishes. If you die without a will, your property will pass to your survivors based on your state's laws of intestacy. In most states, that means that your spouse and your children will split your legacy. If you are single, your assets will go to blood relatives even if you would have preferred a friend to inherit them. Yet only 43 percent of adults in the U.S. have a will, according to a 2011 Harris Interactive survey.

You can also use a revocable living trust to pass property to your heirs after your death. Unlike wills, living trusts avoid probate, the process by which a court determines that a will is valid. In some states probate is costly and time-consuming. But even if you create a living trust, a will should still be the cornerstone of your estate plan if you have minor children, because you also use it to name a guardian for them. If you die without a will, a judge will decide with whom your children will live after you're gone.

You should also safeguard the assets that you leave minor children by creating a trust for their benefit in your will. In it you name a trustee who will follow your instructions for managing the assets that you leave to your kids. The trustee can be a relative, friend, or professional such as a banker or lawyer. If you fail to establish a trust in your will for your minor children, a court will name a guardian to oversee the property they inherit.

**Step 2: Name beneficiaries** It is important to understand that not all of your assets will pass to your survivors through your will, because some types of property do not go through probate. For instance, if you own a house jointly and your spouse has the right of survivorship (a type of ownership that is spelled out in your house deed), he or she will get your share of the home when you die. If you open a payable-on-death savings or brokerage account, the cash and securities in those accounts will go directly to the beneficiary that you name on the bank or brokerage house's forms. Moreover, your 401(k), individual retirement accounts, and life-insurance policies will pass to beneficiaries you designate in those documents.

**Step 3: Leave a letter** Sometimes everything you want to tell your survivors does not belong in your will. If you want to describe what type of funeral arrangements you desire, for example, you can do so in a separate letter. You can also use the letter to list items of sentimental value that you want certain heirs to inherit. Give the letter to a trusted relative, friend, or your attorney. Some states do not recognize such letters as legal documents, but your family members and other loved ones are likely to respect your wishes.

**Step 4: Draw up a durable power of attorney** Estate planning is not only about taking care of your survivors. A complete estate plan should also insure that your wishes regarding your money and your health care prevail even if you become too sick to make your own decisions. Create a durable power of attorney (DPA) so someone can manage your money if you are ever too sick to do so. In this document, you name a trusted relative or friend to take charge of your finances when you cannot. Unlike an ordinary power of attorney, a DPA remains in effect after you can no longer manage your own affairs. If you do not have a DPA and become incapacitated, a relative or friend will have to ask a judge to appoint a conservator or guardian to manage your assets and pay your bills.

# Estate Planning Tasks in 7 Steps

CONSUMER REPORTS NOVEMBER 2013 MONEY ADVISOR

**Step 5: Create an advance health care directive** To maintain control over the type of medical care you receive when you are near death, you should sign a living will and a DPA for health care. (In some states, a health care directive combines the two documents.) With a living will, you state the type of medical procedures that you do or do not want. In a DPA for health care, you name a health care agent or proxy who makes sure that doctors and other medical professionals carry out your wishes if you are too sick to speak for yourself.

Your attorney should also prepare a so-called HIPAA release form. Without it, privacy regulations in the federal Health Insurance Portability and Accountability Act of 1996 may prevent health care personnel from releasing your medical records to your health care proxy. Also make sure that your lawyer includes a clause in your living will and health care DPA stating that you give your health care agent the right to receive information about your health status and medical care under HIPAA rules.

If you have not given much thought to what type of medical care you want, the American Bar Association's "Consumer's Toolkit for Health Care Advance Planning," is a useful guide.

[http://www.americanbar.org/groups/law\\_aging/resources/health\\_care\\_decision\\_making/consumer\\_s\\_toolkit\\_for\\_health\\_care\\_advance\\_planning.html](http://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/consumer_s_toolkit_for_health_care_advance_planning.html)

**Step 6: Organize your digital and paper files** Your executor will remember you more fondly if you organize your estate-planning paperwork and financial records, and store them in a safe yet accessible place. Keep the original documents in your lawyer's vault or in a bank safe-deposit box or home safe. Be aware that if your spouse or someone else is not the co-owner of your safe-deposit box, your executor may have to file a petition with the court for permission to open it.

Pull together any of the documents your executor will need, such as the deed to your burial plot; insurance policies; statements from your bank, brokerage house, and mutual-fund accounts; and pension and other employee-benefit information. Maintain an up-to-date list of your assets, the names and telephone numbers of your legal and financial advisers, and an inventory of the items in your safe-deposit box. Store such documents at home in a locked, waterproof, and fireproof metal box, file cabinet, or safe. Do not forget about your digital assets, such as an online accounts and passwords.

**Step 7: Review and Update:** And finally, review your estate plan at least every five years. Make sure all of your documents still reflect your desires, and that your beneficiaries and financial and health care proxies are still willing and able to serve. In addition, you should revisit your estate plan if Congress revises the estate-tax law or whenever there is a major change in your life, such as a birth, death, marriage, or divorce.

Adapted and abridged from Consumer Report's: "How to create a bulletproof estate plan: we've broken down this seemingly daunting task into 7 steps." <http://www.consumerreports.org/cro/2013/11/how-to-create-a-bulletproof-estate-plan/index.htm>