

Estate Planning FAQ

Here are answers to five questions we hear the most at Truhlsen Elder Care Law of Nebraska.

Q: What is the difference between a Will and a Trust?

A: A Will is a legal document that spells out how you want your affairs handled and assets distributed after you die. A Trust is a fiduciary relationship in which a trustor gives a trustee the right to hold title to property or assets for the benefit of a third party. Trusts offer more control of assets, but they are more expensive, tedious to set up, and actively managed. Whether you choose a Will or a Trust, you should seek advice from a professional who can help you understand the legal, tax-related, and financial implications of your choice.

Q: Is it OK to just put one child's name on my accounts and then let that child decide how to divide things up?

A: It's not ideal. Let's assume the responsible child really will split the money among his or her siblings (and not refuse to split and keep all the money). The potential problem is that the joint tenant child is legally entitled to the funds. So, when that child tries to split the money and transfer to the siblings, there is the potential that it would be a gift subject to the requirement to file a gift tax return. There could also be income tax consequences.

Q: Why should I have a financial power of attorney if my husband and I are co-owners of our accounts?

A: The rights awarded to a spouse on the basis of the legal contract of marriage are more limited than you might think. A power of attorney will grant the spouse the authority to make decisions in the event the other spouse is unable to. In the event one spouse becomes incapacitated in some form or another via accident, aging or terminal illness, bills are still able to be paid from joint accounts. The conflict arises from the ability to sell joint assets such as homes and cars when the titles are held in both names, or the other incapacitated spouse's name. In the event your spouse does not have a power of attorney, the process to have the necessary authority is long, expensive, and arduous. To better protect your joint assets, a durable power of attorney is a fairly easy way to ensure you are ready to handle affairs should the need arrive unexpectedly one day.

Q: What is probate?

A: Probate is a legal process that takes place after someone dies. It includes proving in court that a deceased person's will is valid (usually a routine matter), identifying and inventorying the deceased person's property, then distributing the remaining property as the will (or state law, if there's no will) directs. The role of the probate court is to make sure that a deceased person's debts are paid, and assets are allocated to the correct beneficiaries.

Q: Do I really need an attorney to draft my estate planning documents?

A: While it may be tempting to save some money and plan your estate by yourself, it isn't a good idea. While a do-it-yourself Will or Power of Attorney may sound like a bargain early on, it can lead to costly mistakes in the long term that can cause legal disputes and a reduced estate for your heirs. Estate planning is full of small details that the average person will miss. Your best bet is to get professional help from a lawyer who specializes in estate planning.

Truhlsen Elder Care Law of Nebraska helps clients navigate the legal, financial, residential, and personal challenges created by expected—and unexpected—life transitions, including aging, chronic illness, and disability.

Call to schedule your consultation today.

402.426.8877

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Support through Every Season of Life*