



Do I need a Will or an Estate Plan?

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Graduate Student Legal Aid Office

University of Maryland/Division of Student Affairs

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- 1988 graduate of the University of Maryland School of Law
- Member of the Maryland State and Anne Arundel County Bar Associations
- Immediate Past Chair of the Estate & Trust Law Section of the Maryland State Bar Association
- Prepare Wills and Trusts from simple to complex
- Assist families following death of loved on in the transfer of property
- Assist with gift and estate tax issues

Purpose of Presentation

Address the importance of having a Will and other legal documents that take care of your personal and legal affairs at a time of illness and at death.

- Part 1 Wills
- Part 2 Non-Probate Arrangements
- Part 3 Financial Power of Attorney
- Part 4 Health Directives

Why Plan?

No Planning

- Property in your sole name passes according to intestacy laws at death
- Appointment of your Personal Representative is determined by Maryland law
- Court ordered guardianship required for minor children
- Court ordered guardianship upon your disability
- Medical decisions made by a surrogate determined by law

Planning

- A Will governs who receives the property you own in your sole name at your death
- You choose your Personal Representative and can excuse them from posting bond
- You choose the guardians for your minor children
- You choose who handles your affairs if you become disabled
- You choose your health care agent and provide them with instructions

Part 1 - Will

What does a Will do and what does it not do?

- It directs who receives property titled solely in your name.
- It does not cover property jointly owned or which has a named beneficiary.
- It can direct for how debts and taxes get paid.
- It can appoint the person or people who handle the probate of your estate.
- It can name guardians for minor children.
- It can establish trusts for minors or disabled individuals.

Part 1 - Will

What are the requirements for a valid Will?

- It must be in writing.
- It must be signed by you in the presence of two witnesses over the age of 18.
- The witnesses must watch you sign.
- A lawyer is not required but may help guide through complicated situations such as planning for blended families or members with disabilities.

Part 1 - Will

Where should a Will be stored?

- Ensure that it can be found at your death.
- Maryland Register of Wills.
- At home in a fire proof box or safe.
- With your attorney.
- Safe deposit box at a bank – make sure others can access.

Part 1 - Will

What if I move out of state?

A Will validly executed in Maryland is valid in other states, although it is best to have it reviewed by an attorney in your new state of residency as state law may differ.

Part 1 - Will

How often should a Will be reviewed?

In addition to having a Will reviewed if you relocate, you should have a Will reviewed when your circumstances change such as getting married, having children, acquiring additional assets. It is also best to have a review every 3 years due to changes in the law.

Part 1 - Will

Should I have a trust?

- A Will can include trust provisions that appoint a trustee to hold, manage and distribute assets to your beneficiaries according to your wishes.
- This trust is a testamentary trust in that it does not exist until after your death.
- This is useful for beneficiaries who are minors or who are disabled.
- Trusts are also used for estate tax planning purposes.

Part 2 – Non-Probate Arrangements

- Jointly Owned Property
- Naming a Beneficiary
 - Life Insurance
 - Bank Account
 - Investments/Retirement Accounts
 - Vehicle <https://mva.maryland.gov/Documents/VR-471.pdf>
- Living Trusts
- Life Estate Deeds

Part 3 – Financial Power of Attorney

- A legal document that appoints an “agent” with the authority to manage your legal and property affairs if you are unable to do so yourself.
- You do not relinquish your own authority and can revoke it at any time.
- As with all legal documents, must be signed by a person who has legal capacity, signed and acknowledged before two witnesses and a notary public.
- The power of attorney terminates upon your death.

Part 3 – Financial Power of Attorney

- It can be effective immediately or spring into effect at a later time.
- Authority granted can be broad or narrow.
- You may appoint a spouse, other family member, friend or your attorney. The person you appoint needs to be trustworthy.
- The agent is a fiduciary who must act in your best interest.
- Can have more than one agent who serves concurrently or consecutively.

Part 4 – Health Directives

There are two primary health directive forms in Maryland:

- The Advance Medical Directive
- The Medical Orders Life-Sustaining Treatment (MOLST) form

Part 4 – Health Directives

Advance Medical Directive

- A legal document that speaks for you if you can no longer speak for yourself.
- May contain a health care power of attorney in which you choose someone to make your health care decisions.
- May contain a Living Will that tells people what treatments you want, for example, to ensure quality of life.

MOLST

- A medical order that is signed by your physician, a nurse practitioner or physician's assistant.
- Contains medical orders about treatments that keep you alive such as CPR, artificial ventilators, feeding tubes, etc.
- Has medical orders to carry out your treatment wishes regarding your current medical condition.

Part 4 – Health Directives

What is required for a valid Advance Medical Directive?

- Must be signed and dated before 2 witnesses.
- The witnesses may not include someone you appointed as your health care agent and only one witness may financially benefit from your death.
- Notary is not required, but may be a witness.
- An attorney is not required, but may be helpful.
- Out-of-state Advance Medical Directives are also valid in MD.

Part 4 – Health Directives

If you have an Advance Medical Directive, why would you need a MOLST form?

- A MOLST form contains orders about your current medical condition, whereas a Living Will (contained in an Advance Directive) addresses what treatments you would want for a hypothetical future medical condition.
- A health care provider signs your MOLST form for a current condition to make sure your wishes are honored immediately.
- If you do not want CPR, you must have a DNR order in a MOLST form.

Where to find information

- For general information about Wills go to: <https://www.peoples-law.org/frequently-asked-questions-about-wills>
- Further information about financial powers of attorney is available at <https://mdcourts.gov/legalhelp/lifeplanningandpowerofattorney>
- Further information about Advance Medical Directives is available at the Maryland Attorney General's website at <https://www.marylandattorneygeneral.gov/>
- Further information about the MOLST form is available at <https://marylandmolst.org/index.html>