

Get Your Docs in a Row:

It is the beginning of a New Year. We all have our New Year's resolutions in front of us -maybe you are like me, keeping a few of them so far. However, with all the lists, pledges, and other online reminders, most of our clients have let many lapse. My writing today is to help you, as Client Advisors refocus on your clients' personal goals and control what really matters. There are outcomes or impacts that you have the power to assist your clients with change...now! I am talking about the five (5) legal documents we all should have reviewed or updated to protect families, spouses and partners, and the client. These specific documents that I am referring to are:

- Letter of Wishes
- Wills
- Durable Power of Attorney
- Health Care Power of Attorney
- Beneficiary forms for Qualified Plans/IRAs

LETTER OF WISHES	2
WILLS	2
DURABLE POWER OF ATTORNEY	2
HEALTH CARE POWER OF ATTORNEY	3
BENEFICIARY FORMS FOR QUALIFIED PLANS/IRAS	3
SUMMARY	4

About the Author

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Letter of Wishes:

A letter of wishes is a document that allows your client to express specific goals for their assets or the management and direction for a trust that may be formed and funded by the execution of the will. The information included can vary, but they usually offer directives about how they want the trust to be administered by giving the trustee insight into their state of mind, opinions on distributions, and issues that may arise with the trust's beneficiaries.[1] While not legally binding, these letters can serve two separate but equally important purposes. First, a letter of wishes can give your client a sense that the trustee fully understands the client's goals for the trust and the trustee can administer it in accordance with those goals. Second, letters of wishes can give a trustee something to proverbially hang their hat on when looking for guidance as to whether to make a distribution as the letter can clarify a trust instrument's general terms.[2]

Wills:

All adults should have a will in place, regardless of their age, health, and wealth. A will is important for accomplishing the following:

- Naming a personal representative to administer the will and avoid costly court fees
- Protecting family
 - Naming a guardian of minor children
- Securing your client's belongings and choosing beneficiaries
 - Including protection of digital assets and other "cloud" property
- Communicating wishes, including making funeral and burial arrangements
- Beginning or continuing charitable philanthropy by supporting and/or giving to various Not for Profit entities and organizations outright or through a trust

The primary role of a last will and testament is to identify how assets and liabilities will be handled after the person creating the will dies. After payment of the debts, taxes, and expenses of administering the estate, the remaining assets that pass through the will are distributed according to its terms. Wills also serve to identify who will oversee the handling of the estate and take care of administrative tasks like safeguarding assets, paying final expenses, settling, and paying valid debts, and filing and meeting any final tax obligations. All this occurs before any distributions to named beneficiaries and heirs are made. The person in charge of handling the estate is called different things in different states, but most commonly that person is known as the personal representative or executor of the estate [3].

Durable Power of Attorney (POA):

While it is often confusing, it is part of our jobs as professional advisors to know the key differences. There are two different powers of attorney: one for finances and property and the other for health care. Both documents should be reviewed and updated if needed. Each provides separate and distinct protections for your client and their loved ones. A durable power of attorney form is used to give another person the power to make important decisions on your client's behalf, including decisions regarding financial, real estate, and business affairs.[4] By allowing for the individual or organization to step in promptly and make discretionary decisions regarding asset management, paying bills and needed distributions takes pressure off the health crisis. This is an important way to help ensure that the important matters in your clients' lives will be handled how they want; should they become incapacitated and not able to do it themselves.

Health Care Power of Attorney:

The Health Care POA takes a similar tack. A health care power of attorney allows your client executing the document, called the principal, to designate an attorney-in-fact to make healthcare decisions when they become incapacitated and too sick to do so. This is often used when the principal wants to limit the power of the attorney-in-fact to only medical decisions.[5] A health care proxy form allows your client to appoint another person, called a "proxy," to make medical decisions on their behalf when they are unable to do so. This form often includes several medical decisions or pivot points in your client's future health. Some may even specify wishes concerning organ donation and funeral arrangements.

Depending on the state where you live, you may see different names used for the healthcare power of attorney. No matter the name, they all refer to the same document. A few of the other names for health care power of attorney are:

- Medical power of attorney
- Advance directive
- Advance health care directive
- Durable power of attorney for health care [6]

Regardless of the State or the title of the document; the point here is that filing a health care power of attorney is how your client ensures that someone they trust can speak on their behalf at a critical time in their life.

Often, we see married couples naming each other as POA for both financial and health care matters, to cover their bases, should one of them succumb to illness or incapacity.

Cannon Nugget:

As financial professionals, we should also suggest having a standby power of attorney, possibly naming a son or daughter or other trusted family member, as a standby POA, should both parties become ill or incapacitated at the same time. This has certainly been the case most recently amplified during the COVID-19 outbreak. And, as you know, if your clients do not have any of these key documents in place, the courts may end up making decisions for them.

Beneficiary forms for Qualified Plans /IRAs

With my 40 years plus experience in the financial services arena, this is one area where I continue to focus like a hawk, and you as Advisors, may as well. Please make sure your client's beneficiary designations on retirement, brokerage and life insurance accounts are up to date. If the clients have trusts, work with their attorney to confirm assets are properly titled in their trust. Many of your clients and potential clients have several different retirement plans, in various locations, with different providers. This may be a good time to consider suggesting consolidation of plans with your organization, offering simplification to a complex plan or IRA environment for both the client and their heirs. The client should update account beneficiary information promptly whenever personal material information changes. For example, something may have changed in their lives due to marriage/divorce, a geographical move, or a change in their beneficiary wishes.

Cannon Nugget:

- *Make a periodic review of all your client's beneficiary forms an annual event. Consider that "check-up" now, between receiving year-end statements and tax filing time since many of their financial records are readily available. Here is the perfect opportunity to also include other banks, CD's, and investment accounts in the review*
- *As it relates to the beneficiary, we should make certain that should names change due to a marriage or divorce, for example, the information is transcribed over properly into the account/plan's beneficiary form in a timely manner.*

SUMMARY:

Finally, I suggest that your client seek professional help. No, not that kind; You are the professional help! Certainly, there are many programs out there to allow the client to DIY (do it yourself). However, with you as the quarterback and working with an attorney who has a background in trust and estates or an accountant / CPA that has a tax and life planning background would be strongly suggested should your clients want to get this done right the first time. This team of professionals, with you on point, will ensure that their plan is valid and that the changes they may be making are compliant with all local laws. The last thing you want is for someone to not get what your client wanted them to have simply because we did not discuss changes with their attorney or have this important decision updated on various estate planning documents in the proper form.

So, no matter where the Capital Markets take us in 2021 and beyond when you take on these 5 tasks with your client relationships, you are all, collectively, on the right path. You are assisting them to focus on controlling what they can control and not being distracted by variables that we cannot. As noted previously, experts say that you may want to consider reviewing these documents annually and updating them every three to five years should your client's personal situation change, or they have other changes of heart. Also, make sure those parties that are named in these various legal documents (i.e., Trustee, POA, Healthcare Proxy, etc.) are informed of their possible future duties and that a family member or close friend be provided a copy of these directives as well or know where they can be located if needed.

This disciplined review process allows your clients to quiet many of the "how /what abouts" or the "what ifs" "and can be very comforting and mind settling. It also puts you, as the advisor, front and center as you guide the conversation and add significant value.

That is how I am starting the year off; with a thorough review with my clients of these important intents and decisions after they are gone. [How about you? Are your Client's Docs all in a row?](#)

Citations

[1] – Alexander A. Bove, Jr., The Letter of Wishes: Can We Influence Discretion in Discretionary Trusts? 35 ACTEC J. 38, 39 (2009).

[2] - <https://hmlaw.com/blog/trusts-and-estates/trusts-and-estates-checklist-of-information-to-be-maintained>

[3] – <https://www.legalnature.com/guides/estate-planning-when-to-update-your-plan-and-why>

[4] <https://www.investopedia.com/terms/p/powerofattorney.asp>

[5] - TRENT S. KIZIAH, ESQ., PRACTICAL ISSUES ARISING DURING TRUST ADMINISTRATION Spokane Estate Planning Council <https://www.spokaneepc.org/>

[6] - <https://www.daveramsey.com/blog/what-is-a-medical-power-of-attorney>

Please let us know how these important client discussions go and how else we can help?

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