

# Establishing and Updating Your Estate Plan

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Now that we're over a month into the new year, it's time for me to remind you of the one New Year's resolution you probably make every year but fail to keep, and that is to establish your estate plan. If you've heard all this before from me, I'm not at all surprised. People just seem to never get around to it. So, here I go again to try to convince you why it is important to have a Will, Living Will and Power of Attorney.

A Will is your instructions for distribution of your estate. In Pennsylvania, the only formal requirement is a document that is "signed at the end thereof." It doesn't need witnesses, it doesn't need to appoint an executor, and it doesn't have to be dated or notarized. You can handwrite "This is my Will – Everything to my spouse" on a cocktail napkin, and it will be enforceable if you sign it at the bottom. Somewhat surprisingly, that is not what will happen if you die without a Will (intestate), because in Pennsylvania, if you also have surviving children, your spouse and your children each inherit a share of your estate. And, if your children are under age eighteen, expensive guardianship proceedings could be necessary in getting your estate settled. You do not want to create that kind of problem.

Basically, a Living Will is your instructions for your medical care if you are permanently incapable of making such decisions yourself. It was invented to override the Hippocratic Oath in so far as to require doctors to do everything in their power to keep you alive (guess who pays for that), even if you are brain-dead. The document empowers your chosen agent to "pull the plug" and allow you to die.

A Power of Attorney is a document that empowers your chosen agent to do things on your behalf aside from matters covered by your Living Will. Its important characteristic is that it survives your incapacity, thereby preventing the necessity of a guardianship proceeding for you.

You cannot handwrite a Living Will or Power of Attorney on a cocktail napkin, although the online form Living Will (though rather complex) is essentially self-explanatory. There are lots of online Will forms, too, but they aren't really any more useful than what you can do on a cocktail napkin, because a competently drafted Will can accomplish much more than merely specifying who gets what. A Power of Attorney is a complex document that must be prepared and executed in strict compliance with statutory requirements to be legally valid. You are going to need a lawyer's assistance to some extent in preparing your estate plan, so don't put it off any longer. Call and make an appointment.

If you already have a Will, Living Will and Power of Attorney, you should probably have your attorney review them every five years to see if any changes in the law have occurred that impact your estate plan. Also, if your family circumstances change (as for example by death, estrangement, additions to the family, divorce or attainment of adulthood), your documents may need to be updated to reflect your current wishes. Don't put off doing so. Call your lawyer for an appointment. Happy New Year!