



# TOUSSAINT LAW FIRM

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## **Power of Attorney and Living Trusts**

Estate planning is a process that involves creating a few essential legal documents that will protect you and your loved ones in case you die or become physically or mentally incapacitated. Each estate plan should include a will and a power of attorney, at a minimum, and many estate plans should also include a living trust.

### **Probate**

One of the primary reasons for creating an estate plan is to streamline the probate process. Probate occurs after you die and a judge orders compliance with your will. In other words, the judge will order distribution of your property, referred to as your estate, according to your instructions in your will. If you don't have a will, the judge will order distribution of your property according to state law. Probate without a will is risky because you have no control over what happens to your assets, so you have no way of protecting your family, friends and loved ones.

### **Living Trusts**

Even with a will, however, probate can still be a burdensome process. The U.S. legal system does not move quickly, so probate is often time-consuming and a long, drawn out process over several months. And, people can challenge the existence of your will and the contents of your will. Probate challenges are not pretty. One of the best ways to avoid probate entirely is to create a living trust. A living trust is a basic legal document that you create while you are still living.

### **Trust Basics**

A living trust is a way to own property without owning it personally. Because you don't own the property personally, the property does not have to go through the probate process. The living trust owns the property, and the trust continues to operate even after you die. When you create a living trust you will name a trustee to manage, invest and disburse the money and property that you transfer to the trust. You will also name one or more beneficiaries who can receive trust income and property disbursements, according to the terms and instructions in your trust document.

## **Power of Attorney**

A living trust helps your family in case you die, while a power of attorney helps you and your family in case you are alive but severely injured or incapacitated . A power of attorney is a legal document that gives somebody other than you the authority to make decisions for you. For example, you can name a trusted son, daughter, or sibling as your attorney-in-fact, and that attorney-in-fact will be able to manage your finances and make your medical decisions. Most powers of attorney only take effect if you are incapacitated, but you are free to give somebody a power of attorney over your property even if you are still capable of making your own decisions.

### **Special vs. General Power of Attorney**

Not all power of attorneys serve the same purpose. You can create either a general power of attorney, which basically gives your attorney-in-fact the power to make all of your decisions, or you can create a limited or special power of attorney. It is common, for example, for an estate plan to include either a limited financial power of attorney or a limited medical power of attorney, or sometimes both.

**Source:** *"Power of Attorney & Living Trusts"*

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