ROCKFLEET financial services

Estate Planning Basics

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At a Glance

Estate planning is the systematic development and updating of goals, policies, and procedures for all of the property you own.

Estate planning isn't just for older or wealth people. It isn't complex and expensive.

It can be as simple as having healthcare and financial powers of attorney, to having a will, to having a trust.

The basics to estate planning are described in further detail on the following pages. Contact a Rockfleet advisor to schedule a consultation to determine if our estate planning services can assist you and your family.

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At the heart of estate planning, people aren't as concerned about what happens to their assets; they are more concerned about what will happen to their families.

Proper estate planning allows you to:

Preserve your estate for your loved ones and stay in control for as long as possible

Direct who is going to receive your estate, including when and how much your beneficiaries will receive

Identify who oversees your finances if you're sick or disabled

Identify who makes medical decisions for you if you're sick or disabled

Ensure your wishes are fulfilled after death

Minimize and/or eliminates the costly and time consuming probate process

Establish guardianship for minor children

Provide peace of mind and reduces stress on your family

Avoid unnecessary taxes, fees and commissions

I. Introduction

Your estate consists of all the property you own, whatever it is worth, and wherever it is located. Estate planning is the systematic development and updating of goals, policies, and procedures for all of the property you own. However, estate planning isn't truly about things; it's about people. At the heart of estate planning, people aren't as concerned about what happens to their assets, they are more concerned about what will happen to their families.

Estate planning isn't just for older or wealth people. It isn't complex and expensive. Our process involves a Rockfleet advisor asking you simple questions to which you already know the answers. From there, a licensed attorney from our network helps create high quality documents that ensure that your wishes are accurately carried out. Your Rockfleet advisor can then assist you in funding your trust, if a trust-based plan is chosen.

II. The Three Basic Types of Estate Plans

Even if you do nothing, you have an estate plan, just not a very good one. According to one author, over half of the adult population as opted for this approach and done nothing. By not creating your own plan you simply force the legal system to distribute your wealth. Every state has statutes on how to distribute property when a person dies "intestate." This is the technical term for dying without a will.

The question then, is not whether you will have an estate plan, but whether you will have a cost effective estate plan of your own selection, or a costly estate plan imposed upon you by law.

So what kind of estate planning documents should you put into place?

An individual's wishes are most frequently drafted in the form of a will. You can also outline your desires in a trust. During the interview process, the first few questions in the online interview determine which documents are appropriate given your unique circumstances. You will fall into one of three general categories - estate plan built around a revocable living trust, estate plan built around a simple will, or an estate plan built around Powers of Attorney.

Trust-Based Plan	Will-Based Plan	Powers of Attorney-Based Plan
When you own real estate	**When you do not own real property, but have minor children**	**When you do not own property, have no minor children, and little or no**

In addition to their core document, every will or trust plan will include: financial power of attorney ("POA"), healthcare power of attorney, healthcare directives, and a HIPAA release form. The first few questions in the online interview, the attorney assigned to your estate plan determines the type of documents that are required.

III. Understanding the Difference Between Wills and Trusts

Everyone has heard the terms Wills and Trusts; however, many people don't understand the difference between the two. Both are useful estate planning tools that serve different purposes.

A last Will and testament is a legal document that outlines the wishes for the administration and division of an estate after passing.

A Trust is a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries. It is a legal document that is traditionally used for avoiding probate and minimizing estate taxes. Like a Will, it outlines the wishes for the administration and division of an estate plan.

With our process, you don't have make the decision on your own. Your estate planning session starts with a series of questions specifically designed by our contracted attorneys. Your answers to these questions gives the attorney the information needed to make a document recommendation.

Trusts provide advantages wills cannot:

Avoid probate

Provide creditor protection for the inheritance left to beneficiaries

Protect governmental benefits for a person with disabilities

Reduce estate taxes

Administer assets for minor beneficiaries without court intervention

A. Probate

Probate is the process of changing the title on assets when someone passes away. Assets that are owned in a deceased person's individual name and for which there is no named beneficiary, are no longer accessible once the owner of the asset has died. In order for family members to gain access to accounts or other assets in the deceased's individual name, they must file a petition with the probate court and wait for the court to approve the Will and appoint the Personal Representative. This can be a long and costly process during which bills cannot be paid and assets cannot be managed. A Trust is an excellent tool to avoid probate because assets that are owned in the name of a Trust are immediately accessible to the trust-maker's designated successor.

B. Creditor Protection

Many people worry that the inheritance they leave to their children will be lost to their children's creditors such as a divorcing spouse, unpaid credit card bills, a bankruptcy, a business loss, or a lawsuit. Sadly, this is often the case when assets are distributed to beneficiaries via a Will. A Trust allows the maker to safeguard an inheritance from the reach of the beneficiaries' creditors by keeping the assets out of the name of the beneficiary. Ownership of the assets remains in the Trust. The beneficiary will have access to the assets in accordance with the directions you leave in your Trust. You may also allow your beneficiary to serve as Trustee, allowing the beneficiary to manage her own inheritance. By leaving assets to your beneficiaries via a Trust rather than outright via your Will, you can ensure that the assets you worked so hard for will be available to your children and future generations.

C. Special Needs Protection

If you have a child, grandchild or other beneficiary with disabilities, then a Trust is a must. If you leave assets to a person who receives needs-based governmental benefits via your Will, it will place your beneficiary in the difficult position of either

A revocable living trust can provide many benefits:

Added control over your assets

Avoid the public, costly and time-consuming court processes at death (probate) and incapacity (conservatorship or guardianship)

Provide for your spouse without disinheriting your children

Save estate taxes

Protect inheritances for children and grandchildren from the courts, creditors, spouses, divorce proceedings, and irresponsible spending

losing those benefits, or transferring the inheritance into a Trust of which the state must be the beneficiary at the beneficiary's death. Unless the inheritance you are leaving is so significant that the monetary and medical benefits available to the person through programs such as Social Security and Medicaid are no longer important, then making sure that those governmental benefits continue to be available is vital. Leaving assets to a person with disabilities via a Trust is the best way to ensure those governmental benefits are preserved and that the inheritance you leave will be available to pay for expenses that are not covered by these governmental benefits.

D. Estate Taxes

For married couples, including same-sex married couples, the use of a Trust in their estate plan can significantly reduce or even eliminate both federal and state estate taxes assessed against their estates.

E. Assets for Minor Children

Leaving money directly to a minor creates an administrative nightmare because the law provides that a minor does not have the legal capacity to receive assets. The parent of the minor also does not have the ability to act as the child's legal representative until the court says so. As such, if you die with a Will that leaves money to minor beneficiaries, the court will need to appoint a Conservator to receive that inheritance for your children. The Conservator will be required to report annually to the court and the court will appoint an overseer (guardian ad litem) to make sure the Conservator is doing his or her job for your minor beneficiaries. This means huge costs and long delays in administering funds for minors. It also means that when the minor turns 18, he or she will be entitled to receive all of those assets and will be free to do with them as he or she wishes (think fast cars, spring break, and lots of shopping). Creating a Trust to receive assets passing to a minor, or even to a young adult beneficiary, is the best way to ensure that the court is not involved in the process, that the person you want to manage assets for the beneficiary is able to do so, and that the beneficiary can use the assets only for purposes you decide are important and/or at ages that you dictate.

IV. Revocable Living Trust

A. Benefits

A revocable living trust can save you time and money, as well as added control over your assets. A living trust can avoid the public, costly and time-consuming court processes at death (probate) and incapacity (conservatorship or guardianship). It can let you provide for your spouse without disinheriting your children, which can be important in second marriages. It can save estate taxes. And it can protect inheritances for children and grandchildren from the courts, creditors, spouses, divorce proceedings, and irresponsible spending.

B. What is a Revocable Living Trust?

A living trust is a legal document that, just like a will, contains your instructions for what you want to happen to your assets when you die. But, unlike a will, a living trust

can avoid probate at death, control all of your assets, and prevent the court from controlling your assets if you become incapacitated.

C. What is Probate?

Probate is the legal process through which the court sees that, when you die, your debts are paid and your assets are distributed according to your will. If you don't have a valid will, your assets are distributed according to state law.

D. What Are the Negatives of Probate?

It can be expensive. Legal fees, executor fees and other costs must be paid before your assets can be fully distributed to your heirs. If you own property in other states, your family could face multiple probates, each one according to the laws in that state. These costs can vary widely; it would be a good idea to find out what they are now.

It takes time, usually nine months to two years, but often longer. During part of this time, assets are usually frozen so an accurate inventory can be taken. Nothing can be distributed or sold without court and/or executor approval. If your family needs money to live on, they must request a living allowance, which may be denied.

With probate, your family has loses privacy. Probate is a public process, so any "interested party" can see what you owned, whom you owed, who will receive your assets and when they will receive them. The process invites disgruntled heirs to contest your will and can expose your family to unscrupulous solicitors.

Your family has no control. The probate process determines how much it will cost, how long it will take, and what information is made public.

There are several reasons to avoid probate:

Avoid legal, executor, and other fees

Avoid multiple probates if you own property in multiple states

Avoid assets being frozen while an inventory is taken

Maintain family's privacy

E. The Process

There are three participants to every trust:

Grantor	Trustee	Beneficiary
The individual who creates the trust	**The individual who manages the trust and**	**The individual who receives the benefit of all the assets**

Any legal arrangement that has these three participants — a creator, a manager and a beneficiary — is a trust.

When you create your trust using our platform, you are all three — you are the grantor, the trustee and the beneficiary. You create your trust and name yourself to manage your trust for your own personal benefit. One way to look at your trust document is simply as the instructions you are giving to yourself.

Once your trust document is created, you must formally change title to all your assets. Your trust can only control the assets that it "owns." You transfer ownership from yourself as an individual, to yourself as trustee of your trust. This process of transferring ownership is known as "funding" your trust.

For the trust to avoid probate it is essential that all your assets be placed in (i.e., funded) your trust.

The only exception is Qualified Plan Assets - IRA, 401k, 403b plans.

For income tax purposes, it is prudent that these assets be owned by you individually, not as trustee of your trust.

The beneficiary designation will ensure these assets avoid probate.

From a legal standpoint, once you transfer your assets into your trust, you no longer hold title to anything; since your assets are inside the trust. However, even though you have relinquished ownership or your assets you still control those same assets. Your control of those assets is the same as before you put them into your trust. As trustee of your trust, you still have power to buy, sell, transfer, borrow, and do whatever you wish with "your" assets.

In your trust, you name a successor trustee. This is the person who will manage your trust, and the assets owned by your trust, upon your death or incompetence. At your death, you do not own any assets, (as you have transferred all your assets to your living trust), so you have no assets subject to probate, resulting in savings of time and money. At your death, the administration of your affairs simply passes to your successor trustee without any public fanfare or governmental oversight.

Your successor trustee must be of legal age. Your successor trustee serves in a fiduciary capacity. This means that, in all matters relating to the trust and your assets, the successor trustee must act with prudence and strictly in accordance with all instructions outlined in your trust.

V. Understanding the Certification of Trust

The certification of trust is a short one page document that outlines the key issues involved in your trust. It identifies the trust name, the date the trust was signed and notarized, and confirms that the trust is indeed a legally binding document.

The certification also identifies the grantors and trustees and confirms that the trustee has the power to act on behalf of the trust. The specific powers of the trustee are reaffirmed in full and often the "Powers of Trustee" section of the trust will be attached in full.

Nothing about your beneficiaries or details of regarding the distribution of assets is included in the certification of trust.

The certification is primarily used to transfer title of assets into the trust.

VI. Understanding Pour-Over Wills

A pour-over will is only used when your estate plan is based around a living trust. If your plan included a living trust, it will also include a pour-over will.

Your living trust is the only beneficiary named in your pour-over will. Your actual beneficiaries and the details about how your assets are to be distributed are outlined in your living trust. Your pour-over will acts as a "safety net" to ensure that any assets not funded into your living trust while you were alive are transferred to your trust at your death.

Like a traditional will, a pour-over will is subject to probate process. As such you do not want to rely on your pour-over will to distribute your wealth. Your pour-over will is precautionary tool to make sure your assets are distributed as you intend.

Just as with a simple will based portfolio, guardians of your minor children are named in your pour-over will. The same execution procedures exist for pour-over

wills as for normal wills — two witnesses, over the age of 18 who are not named beneficiaries or otherwise potential heirs to your estate.

VII. Understanding the Comprehensive Transfer Form

Your living trust can only control the assets that it owns. Transferring ownership of your assets to your trust is done on an asset-by-asset basis, one asset at a time. The process is not difficult but it does take time and require close attention to detail.

The comprehensive transfer form transfers all assets that do not have a formal title. Things such as personal property, family heirlooms, collections, etc. are specifically referred to and covered by the comprehensive transfer form.

With every trust document, the attorney will create a pour-over will. The primary purpose of the pour-over will is to transfer title to assets to the living trust upon death, if assets were not transferred prior to death. Relying on pour-over will to fund the trust requires probate, however.

Like the pour-over will, another purpose of the comprehensive transfer form is to document your intent that all assets you owned when you created your trust were to be transferred to your living trust.

There have been instances where the courts have permitted the use of a comprehensive transfer form in lieu of the pour-over will for the purpose of funding a trust. The comprehensive transfer form is a precautionary document that provides the basis for request the court to waive probate, if assets were not properly funded during your lifetime.

You should not rely on the comprehensive transfer form to fund your trust. The only acceptable way to transfer title is asset-by-asset.

VIII. Understanding the Community Property Agreement

There are nine community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Alaska is an opt-in community property state that gives both parties the option to make their property community property.

Married individuals, in any of these states, can elect to own their jointly held property as community property. Upon death, holding title to your assets as community property provides significant income tax advantages for the surviving spouse. To ensure that the surviving spouse receives these income tax advantages, a community property agreement is created for all married individuals who reside in community property states.

Note: Rockfleet is currently providing estate planning services in the State of New York only.

IX. Role of the Trustee

The individual you name as trustee stands in a fiduciary role with respect to the beneficiaries of the trust, both the current beneficiaries and any remaindermen

Examples of assets to fund your revocable living trust include:

- **Aircraft**
- **Annuity**
- **Automobiles**
- **Boat**
- **Brokerage Accounts**
- **Burial Plot**
- **Certificate of Deposit**
- **Checking Account**
- **Closely Held Stock (Sub-S or Inc.)**
- **Employee Benefits**
- **General Partnership Interest**
- **Government Securities in Your Personal**
- **Possession**
- **Individual Retirement Account (IRA)**
- **Judgment**
- **Life Insurance Policy**
- **Limited Liability Company (LLC)**
- **Limited Partnership Interest**

Examples of assets to fund your revocable living trust include:

- Mineral Rights
- Motor Home
- Mutual Fund Accounts
- Patent or Trademark
- Pension and Profit Sharing Plan
- Personal Property
- Professional Corporation
- Promissory Note
- Real Estate
- Recreational Vehicle
- Royalties
- Safe Deposit Box
- Savings Account
- Sole Proprietorship
- Stock Certificates
- Timeshare
- Uniform Transfers to Minors Account (UTMA)
- Uniform Gift to Minors Account (UGMA)
- 401(k) Retirement Plan

named to receive trust assets upon the death of those entitled to income or principal now. As a fiduciary, your trustee is held to a very high standard, meaning he or she must pay even more attention to the trust investments and disbursements than for his or her own accounts.

As grantor, you should make that your trustee is familiar with the trust and its provisions. Your trustee should know who else is named as trustees, who the successor trustees are, the order in which they are slated to act, and if he or she will be acting alone or with someone else. In addition, your trustee should know where trust assets, insurance policies (medical, life, disability, long term care, etc.) and other important papers are located.

Using the "People" tab in the online platform, you can share all the necessary documents information with your successor trustee with a simple click of a mouse.

Specifically, the trustee acts as the legal owner of trust assets and is responsible for handling any of the assets held in trust, tax filings for the trust, and distributing the assets according to the terms of the trust.

X. Understanding Asset Schedules

The asset schedules are located at the very end of the trust. There is one asset schedule for a single person trust. There are three assets schedules in each married trust — one asset schedule for the separate property for each spouse and one schedule for all jointly owned assets.

Listing an asset on an asset schedule does NOT fund that asset into the trust. In order for an asset to be legally owned by the trust the trust must be formally identified as the owner of record with the institution that controls or holds title to the asset.

So what is the purpose of the asset schedule? The asset schedule, when kept current, is a great recap for your successor trustee of the assets to be included in your estate. It is a starting point identifying the assets he or she needs to confirm exist. The asset schedules are intended to be updated no less than annually.

Asset schedules can be modified as often as needed without having to make a formal amendment to the trust document. The details needed to create detailed asset schedules are entered under an entirely separate tab entitled "Assets" in the online portal. You should make changes to the asset listing whenever you buy or sell an asset.

To reinforce the need to go asset-by-asset and formally add the trust as the owner, all asset schedules show that the trust is funded with "$10 transferred from the grantor to the trustee."

XI. Creating a Personal Letter of Direction

A personal Letter of Direction is a letter you write to your beneficiaries, heirs and those charged with finalizing your affairs upon your death. Your letter of direction does not have to meet any kind of legal format or other formal requirements. It can be handwritten or printed out on plain paper.

Unlike your will or living trust, your personal letter of direction doesn't have any legal authority, but provides you a forum to express the thoughts that you want to pass on to your loved ones, executor and successor trustee.

Your personal letter of direction can also outline more personal desires, including such details as where you want to be buried and the kind of funeral that you want. You can specify location, funeral home or even what type of flowers you would like, or whether you would like your ashes to be displayed at the ceremony or even your own obituary.

Your personal letter is the best place to outline the details of how you want your personal property distributed. You can use the letter to voice other personal requests that may be inappropriate for a will or trust, such as a general sentiment about how you would like your heirs to use their inherited assets.

Finally, you can elaborate on the medical conditions under which you would like to be taken off life support in more detail than is permitted in healthcare or medical directives. You can use your letter of direction to pass down your values, beliefs and ideals to your loved ones.

The estate planning documents created using our platform direct your successor trustee and executor to refer to, and follow as much as possible, any instructions they find in your letter of direction.

XII. Last Will and Testament

The stark reality is, upon your death, all your possessions have to go somewhere. Your last will and testament provides your instructions about where your things are supposed to go. Your will is like a letter to the court, and not to your heirs, because every will must be presented to the court before it is valid. The process of administering your will is known as probate.

The person designated in your will to administer your affairs and make sure all your things get to where and whom you directed is known as your executor or executrix. The probate court oversees the process to ensure the executor does everything you requested. On average, the probate process takes about 7 to 9 months and depending on complexity of your affairs costs between 3% to 8% of your total assets. In addition, probate is a public proceeding, and as such, the details of your will become part of the public record.

To cut costs and time delays associated with probate, every state has a simplified probate process for individuals without real property and whose wealth is less than a specified amount, but on average it is approximately $50,000. Using a simplified probate process makes using a will a viable option for individuals who do not own real property and have limited wealth.

If your circumstances are such that a will-based plan, combined with properly named beneficiary designations, will not trigger unnecessary costs, our planning process will recommend that your estate plan be built around the use of a simple will. Wills are individual documents, so if you're married, your plan will contain one will for each spouse.

In order for your will to be valid, it must be signed and dated in front of at least two witnesses. Witnesses must be at least 18 years of age and not named as beneficiaries or be potential heirs.

Not all assets are subject to probate. Assets with named beneficiaries, such as life insurance, IRAs, 401Ks, jointly-held assets with rights of survivorship and financial accounts with POD (pay on death) designations all pass outside of the will directly to the named beneficiary and are not considered part of the probate process.

The role of the guardian will essentially be the role you have now as a parent — caring for your children, acting in their best interests, and providing for them physically, emotionally, psychologically, spiritually, and culturally.

Finally, and of extreme importance, in addition to outlining how your assets are to be distributed, guardians for minor children are named in the will.

XIII. Role of the Guardian

When considering who could take custody of your children, there are a number of questions to address:

- ❑ Are they willing to serve as guardian of your children?
- ❑ Do they have the maturity and stability to parent your children?
- ❑ Do they have the time and energy to take on the task of raising your children?
- ❑ Is their age or health a consideration?
- ❑ Do they know and love (or at least care about) your children?
- ❑ Do your children like them?
- ❑ Will they love your children and provide the support, comfort and nurture that your children will need?
- ❑ Will they make it possible for your children to visit their grandparents or other relatives or close family friends?
- ❑ How far away do they live?
- ❑ Do they have room for your children, or will they need extra funds to allow them to add on or buy a larger house?
- ❑ Will they need to buy a larger vehicle?
- ❑ Are their values and financial lifestyle comparable to yours?
- ❑ If your children are homeschooled, how will this be handled?
- ❑ Will one parent have to quit work in order to take care of your children?
- ❑ Do they share your religious beliefs and practices?

XIV. Understanding Powers of Attorney

Powers of Attorney are essential documents for every adult. Irrespective of wealth or marital or family status, every individual 18 years of age or older should execute both a financial and healthcare power of attorney.

If something happens, rendering you incapable of making financial and medical decisions for yourself, without a valid power of attorney, your loved ones will be required to go to court and have a judge officially name a conservator to make those decisions on your behalf. This process is both time consuming and costly. More importantly, it can be avoided altogether by executing two simple documents: a financial power of attorney and a healthcare power of attorney. Upon death, your powers of attorney are null and void.

A. Financial Power of Attorney

A Financial Power of Attorney empowers someone to make financial decisions for you in the event you are incapacitated or otherwise incapable of making them for yourself. Only one person can serve at a time; however, you may add up to three backups.

B. Healthcare Power of Attorney

A Healthcare Power of Attorney empowers someone to make healthcare decisions for you in the event you are incapacitated or otherwise incapable of making them for yourself. Only one person can serve at a time; however, you may add up to three backups.

The following important healthcare documents are included with your Healthcare Power of Attorney

- Living Will. You will receive a Living Will based on the state of your legal residence. A living will is a document that allows you to outline the care and medical procedures you approve of to attempt to preserve your life. It includes end-of-life care so you can control what happens to you when you are unable to speak for yourself.
- Organ Donor Card. Allows you donate your organ to others in need when you die.
- HIPAA Release Form. The HIPPA release form authorizes healthcare providers to provide the individual you named as the agent of your health care power of attorney access to your medical records so that he or she can adequately perform the job as required to do on your behalf.
- Intent to Return. For Medicaid to cover the expenses associated your long-term care, you are required to spend down your personal assets including your primary residence. Your residence can be excluded from this if you formally declare that it is your intent to return to your primary residence if and when you become physically able to do. (This document is only included if you own your own home.)
- State Specific Health Care Directives. Each state has its own health care directive. State Specific Health Care Directives include the naming of health care agents (redundant with healthcare power of attorney), also includes outlining specific guidance to health care providers about your wishes about the type and level of terminal care you desire, DNR orders, whether or not you desire pain medication, nutrition, hydration, organ harvesting, etc. These issues are more medical in nature than they are legal. We provide the state specific form but feel that completing it should be done with the guidance of your medical professional not your legal or financial advisors.

C. Springing POA vs. Durable POA

One decision around powers of attorney is determining when they will into effect. The attorneys with whom we work on creating your estate planning documents have determined the best course of action is to make them effective immediately.

There is often some confusion about the term "living will," especially when your estate plan includes a living trust. The term "living will" first became part of the public dialogue in 1990 when the U.S. Supreme Court confirmed our constitutional right to die in the Nancy Cruzan Case. Living will is a layman's term, coined by the media, for the document that outlines your wishes regarding terminal care. Since the Cruzan Case the idea of creating living will has expanded beyond simply outlining your issues about end-of-life instructions and as a result the more accurate name for this document is a Health Care Directive.

With a springing power of attorney, the POA "springs" into effect should you be declared incompetent, unable to make your own decisions, or unable to take care of your financial needs

Many people like the idea of springing powers of attorney because cause they're uncomfortable with making their power of attorney effective while they can still manage their own affairs. However, in practice, using a springing power of attorney can cause more problems than it solves. For example:

- Delay. Instead of being able to use the power of attorney as soon as the need arises, the agent must get a "determination" of your incapacity before using the document. In other words, someone – usually a doctor – must certify that you can no longer make your own decisions. Family members or friends could challenge your incapacity in court, This could take days or weeks and disrupt the handling of your finances.
- HIPAA/Privacy Issues. State and federal laws, including the Health Insurance and Portability Act ("HIPAA"), protect your right to keep medical information private. This means that doctors can release information about your medical condition only under very limited conditions. To certify your incapacity, your agent will need to provide proof that the doctor may legally release information about you to your agent. You may be able to resolve this issue by completing a release form before you become incapacitated. However, your agent could still run into problems caused by bureaucracy or by the doctor's confusion about what is legally required. Navigating these issues could cause serious headaches and delays for your agent.
- Definition of Incapacity. If your power of attorney requires you to be incapacitated, then you'll have to be incapacitated before your agent can help you manage your finances. But what does "incapacity" mean, and to whom? If you make a springing power of attorney, your document will have to define incapacity. Then, when it comes time for the determination, your doctor will have to agree that you meet that definition. But how do you know now what health changes will cause you to need help managing your finances? What if you want help before you become incapacitated as defined by your document? What if you have some good days and some bad days? What if your agent or your lawyer believes you no longer have capacity, but your doctor disagrees? These gray areas may make it difficult, if not impossible, for your agent to help you when you need it. A springing POA should state who will declare you incapacitated, and whether the POA requires one or two doctors to declare incapacity. If this isn't spelled out clearly in your POA, then the decision could end up in court, so it's crucial to define what constitutes your incapacitation.

You can avoid all of these problems by making a durable power of attorney that takes effect as soon as you sign it. Just make sure your agent understands exactly when and how you want the document to be used. This degree of trust is a basic requirement for naming an agent.

XV. Role of the Agent in Your Health Care Power of Attorney

A health care agent also may be called a health care proxy or surrogate or an attorney-in-fact. Your healthcare agent is the person you choose in advance to make healthcare decisions for you in the event that you become unable to do so for

yourself. Your health care agent will help make medical decisions on your behalf at the end of life or any other time you are not able to communicate, such as if you are severely injured in an accident.

State laws vary regarding the specific types of decisions health care agents can make. In general, a health care agent can agree to or refuse treatment and can withdraw treatment on your behalf. Your health care agent can use the information in your treatment directive (also known as a living will), statements made by you in the past, and what he or she knows about you personally to make these decisions. For example, your agent can consent to surgery, refuse to have you placed on life-support, or request that you be taken off life support.

It is important that you choose someone you trust. Your agent needs to be willing and able to make potentially difficult decisions about medical treatment for you. Discuss your desires, values, fears, and preferences about medical care in various situations. Consider including the details about your medical wishes can be included in your final letter of instruction. The more your agent knows about you and your values, the more likely he or she will be to make the kinds of decisions you would make if you were able.

If you don't trust your agent to handle the power of attorney exactly as you intend, you should choose someone else to handle your finances.

XVI. Role of the Agent in Your Financial Power of Attorney

Your agent is the person you choose in advance to act on your behalf on financial and legal matters in the event you become unable to do so for yourself. Typically, this includes paying bills, making investment decisions, conducting real estate transactions and other relevant matters.

The powers granted to the agent may be broad or limited. Your agent's responsibilities could include:

- ❑ Handling your finances
- ❑ Selling real property, if not excluded by the POA document
- ❑ Filing your taxes
- ❑ Investing for you
- ❑ Selling vehicles
- ❑ Paying bills and debts
- ❑ Continuing to operate your business or do what's best for you under the circumstances, such as close your business, if warranted
- ❑ Collecting Social Security or other income for you
- ❑ Handling insurance by either buying or changing policies

Since this person will have legal authority to act on your behalf, it's very important that this person is trustworthy and will act in your best interests. When considering who to name as your agent in your financial power of attorney, there are a number of questions to address:

If you ever become unsure of your agent's trustworthiness or if a conflict of interest arises, you should terminate your financial power of attorney and create a new one

- ❑ Do you trust this person with your important financial and other legal affairs?
- ❑ Is this person financially responsible? How does he or she manage his or her own financial and legal affairs?
- ❑ Will the potential agent charge you a fee? Family members usually perform the service gratis, but if you pick a lawyer or accountant, a fee is usually involved.
- ❑ Will this person agree to serve as your Power of Attorney agent? You should discuss your decision with your agent, who should agree before you officially appoint him or her.

If you ever become unsure of your agent's trustworthiness or if a conflict of interest arises, you should terminate your financial power of attorney and create a new one.

XVII. Document Packages

Your first step in creating your estate plan is to answer a series of questions with your Rockfleet advisor. These questions will provide the attorney in our network with the information needed to make a document recommendation. The attorney will recommend either a Will Package or a Trust Package based on the answers given.

The Will Package	The Trust Package
Last Will and Testament	Revocable Living Trust
Financial Power of Attorney	Certification of Trust
Healthcare Power of Attorney	Pour-Over Wills
Attorney Assigned to File	Financial Power(s) of Attorney
Cloud Storing and Sharing	Healthcare Power(s) of Attorney
	Attorney assigned to file
	Cloud Storing/Sharing

Estate plans may look the same, but the truth is, not all estate planning documents are created equal. Our process creates high quality, custom documents:

- ❑ Age-based distributions. Assets can be held in trust and distributed to beneficiaries over time. Distributions can be "sprinkled" or occur at any age as determined by the Grantor.
- ❑ Behavioral Conditions on Distributions. Our documents allow the Grantor to impose behavioral conditions on distributions so that beneficiaries do not receive their inheritances if they have severe addictions.
- ❑ Accelerated Distributions. This allows the trustee to advance funds held in trust to any beneficiary as necessary for purposes of "health, education, welfare or general support."
- ❑ First Right of Refusal. Gives any beneficiary a first right of refusal to purchase any asset before trust assets are sold in the open market. Permits beneficiaries who are children to preserve property tax basis if they need to buy out other

beneficiaries and purchase property within the trust. This is essential for Medicaid planning purposes.

- ❑ Special Needs Trust. Empowers trustee to create a "special needs trust" and hold a disabled beneficiary's assets in trust, if the receipt of the inheritance would jeopardize the beneficiary's ability to receive state or federal aid.
- ❑ Qualified Plan Language. If the trust receives assets from a qualified plan, IRA, 401(k), etc., the trustee is given flexibility in regards to distribution of qualified accounts. The trust does allow for the accumulation of qualified assets during the current Secure Act 10 year rule.
- ❑ Power to Determine Income and Principal. Permits the trustee to allocate trust income to principal to minimize the income tax liability of the trust.
- ❑ Power to Employ Investment Advisors. Permits trustee to retain the services of a financial advisor to assist them in managing trust assets.
- ❑ Power to Elect Minimum Distributions for IRAs. Works in conjunction with Section 1.038 to ensure that trustee optimizes the current income tax advantages associated with qualified plan assets.
- ❑ Power to Operate a Professional Corporation. Critical provision for grantors who are professionals such as doctors, dentists, pharmacists, architects, lawyers, etc. (where licensure is a requirement for continued operation of the business). Permits trustee to hire someone to run professional corporation while transitioning business ownership and/or management.
- ❑ Power to Own a Sub-S Corporation. Critical provision for grantors who own or operate small business.
- ❑ Power to Qualify for Smallest Generation Skipping Transfer Tax. Critical for large estates whenever a distribution skips current generation — grandchildren as named beneficiaries with no inheritance given to children.
- ❑ Power to Qualify for Federal and State Assistance. Permits the trustee to arrange assets, make distributions, withhold distributions, etc., as necessary to optimize federal or state financial aid on behalf of any beneficiary.
- ❑ Power to Manage Digital Assets. Permits the trust to access and manage digital accounts of all kinds.
- ❑ Trust Contests. Empowers trustee to disinherit a beneficiary who formally contests the will or trust.
- ❑ Power to Probate an Asset. Empowers the trustee to open a formal probate proceeding if deemed it necessary. This can be a useful to formally terminate creditor rights or otherwise make a formal court record of death without forcing all assets into the probate process.
- ❑ Power to Change Situs or Place of Administration. Permits the trustee to change the legal jurisdiction responsible for the administration of the trust. It is often more convenient for the trustee if the place of administration is the same state where trustee resides. Modifying the situs may also result in lower income tax burden at the state level on assets held in trust.

Our process creates high quality, custom documents.

A trust allows the maker to safeguard an inheritance from the reach of the beneficiaries' creditors by keeping the assets out of the name of the beneficiary

XVIII. Frequently Asked Questions

What is the definition of a legal residence?

A legal residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return; every person is compelled to have one and only one domicile at a time.

What happens if I already have a living trust?

Our contracted, licensed attorney will make a recommendation as to the best way to bring your documents up to date.

Can more than one person act as a successor trustee at the same time?

The successor trustee takes over management of the trust when the trustee has become incapacitated or died.

Add the first successor trustee, then determine if you would like to add another one to act if the first one is unable to serve. When two successor trustees are added, you will need to indicate if you want them to serve alone in the order listed, or together as co-trustees. Co-trustees can complicate matters. If co-trustees are chosen, consider their relationship and if they will work well together.

Our platform allows you to add up to four total successor trustees. When more than two are added, they serve in the order listed.

How does disinheritance work?

Any person can be disinherited. Ex-spouses are automatically listed in the disinherited section.

What is included in personal property?

Personal property refers to items like furniture, clothes, jewelry, appliances, cars, etc.

How do I handle specific bequests?

Specific bequests are typically expressed as cash amount or as assets of monetary or sentimental value, such as an automobile of a piece of art.

What are beneficiaries for the balance of the assets?

These are the people who you want to inherit the financial and real estate assets of your estate.

How do I forgive debt?

If a beneficiary owes money to the trustee, you have the option of subtracting the amount from the distribution, or forgiving the debt.

What are age-based distributions?

Unless the trust dictates otherwise, upon reaching age 18, beneficiaries will receive their entire inheritance in a lump sum. Alternatively, you can continue to hold their assets in trust with delayed distributions over time as your beneficiaries mature.

You can select up to 3 different ages and the percentage to be distributed at each age.

What are behavior-based distributions?

Assets can be held in trust until certain behavioral conditions are met. You can choose one or more of the following behaviors:

- ❑ Drug Free
- ❑ Alcohol Free
- ❑ Gambling Free

There is specific language in the trust that addresses who is responsible for determining these conditions and how they are enforced.

Can I update my trust if circumstances change?

Yes, you can change or amend your trust as often as you wish. Your estate plan should change to stay updated as your life changes. These major changes could include:

- ❑ Marriage
- ❑ Divorce
- ❑ Birth or adoption of a child
- ❑ Death of a beneficiary
- ❑ Change or add a beneficiary
- ❑ Change the trustee or successor trustee
- ❑ Change the way the property is distributed
- ❑ Change which property is part of the trust
- ❑ Change your name
- ❑ Having acquired new property that you want to add to the trust
- ❑ Having moved to another state where the inheritance laws are different
- ❑ You can amend your trust through our platform for typically much less than a standard attorney charges.

What if I already have a trust, but it is old and things have changed?

The answer depends on a couple of things, such as the age of the trust and the amount of changes or amendments it requires. Likely, the most cost effective option is to have the original attorney review and amend the trust as needed. If that is not possible, the next best option may be to create a new trust through our platform which encompasses all of your current wishes and makes any updates needed. Typically, to have a new attorney review a trust done by someone else is more expensive than creating a new trust on our platform.

If you leave assets to a person who receives needs-based governmental benefits via your will, it will place your beneficiary in the difficult position of either losing those benefits, or transferring the inheritance into a trust of which the state must be the beneficiary at the beneficiary's death

"It is the part of a wise man to keep himself today for tomorrow, and not venture all his eggs in one basket."

- Miguel Cervantes

How do I give others access to the online estate plan documents?

Your Rockfleet advisor can email an invitation to the any of the other parties mentioned in your estate plan (children, spouses, successor trustees, and beneficiaries).

Is it possible to set up the Financial Power of Attorney so it only goes into effect when I become incapacitated?

The attorneys who power our platform have determined the best course of action is to make your powers of attorney effective immediately. However, you can choose between either a durable or springing power of attorney. See Section XIV. Understanding Powers of Attorney for a more detailed discussion on the pros of cons of your choice.

Do I need to transfer accounts with a POD / TOD into the Trust?

While not required, if accounts with a POD or TOD are transferred into the Trust, the grantor (you) can have more "control from the grave" over those accounts. The Trust does allow for sprinkling of assets over time and allows for behavioral conditions on the payouts.

XIX. Glossary

Beneficiary – One entitled to profit, benefit, or advantage from a contract or estate.

Codicil – A written addition or amendment to a will.

Conservatorship – A formal proceeding in which the court appoints a conservator to act on behalf of another in business and or personal matters.

Contingent Beneficiary – One entitled to profit from a contract or estate only upon the occurrence of a specific event, usually one who received assets at the death of the primary or lifetime beneficiary.

Decedent – A deceased person.

Descendants – Persons who follow decedent in line of descent.

Estate – The assets and liabilities, real and personal property, left by a decedent.

Estate Tax – Inheritance Tax.

Execute – The act of signing and notarizing trust documents.

Executor/Executrix – Person or institution named in a will to carry out the will's instructions.

Fiduciary – Of, relating to, or involving a confidence or trust.

Gift Tax – Tax levied on gifts of property, to supplement estate and inheritance tax.

Grantor – One who creates a trust; the trustor, the settlor.

Intervivos – "Between the living" or "while living."

Intestate – One who dies without a will.

Issue - Lineal descendants.

Joint Tenancy – A holding of property by several persons in such a way that any one of them can act as owner of the whole and take the property by survivorship.

Last Will and Testament – An instrument whereby one makes a disposition of his property to take effect after his death.

Life Interest/Life Estate – An interest in property which is to terminate upon the death of the holder (or some other designated person) of the interest.

Living Will – A document which formally expresses your wish to forgo extraordinary medical treatment when you become terminally ill.

Marital Deduction – Exempts from estate tax all property passing from one spouse to the other by reason of gift or death.

Pour Over Will – Instrument which provided that property not previously transferred into a revocable living trust is to be transferred to the trust at the death of the Grantor.

Powers of Appointment – Power vested in an individual to make decisions affecting disposition on distribution of assets.

Power of Attorney – Formal instrument by which an agent is appointed to act on your behalf.

Principle of Representation – Permits the descendants of a deceased beneficiary to receive the same share collectively that the deceased beneficiary would have taken if he had been living.

Probate – The process of proving a will.

Probate Court – Court established for the administration of the estates of decedents, and the control of the adoption and guardianship of minors.

Remainderman – A person who inherits or is entitled to inherit property upon the termination of the estate of the former owner. Usually this occurs due to the death or termination of the former owner's life estate, but this can also occur due to a specific notation in a trust passing ownership from one person to another.

Revocable Trust – A trust in which a contingent interest is given to another and in which the Grantor retains a present interest, ownership, and control.

Sprinkling Power – The power vested in a trustee to distribute income to others over time.

Successor Trustee – Individual who succeeds to the power to manage trust assets.

Trust – A right of property, real or personal, held by one party for the benefit of another.

Trustee – One appointed to manage a trust.

Unified Credit – The dollar amount an individual can transfer free of tax. The credit is $11.2 million per individual. A married couple will be able to shield 22.4 million from taxation. (2018)

"It does not matter how slowly you go so long as you do not stop."

- Confucius

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About Us

Rockfleet Financial Services, Inc. (Rockfleet) is an SEC and FINRA registered broker/dealer, a New York State-registered investment adviser, and an SEC and MSRB registered municipal advisor. Established in 2008, it is a woman-owned and led firm. Rockfleet has registered representatives and advisors located strategically around the U.S..

Rockfleet provides services to both public and private sector issuers, institutional clients and high net worth individuals. Since its inception, the firm continues to be a very active player in the in the capital markets with a long history of the underwriting and sale of new issue securities.

In additional to the firm's capital markets business line, Rockfleet works with a very select group of early stage businesses, helping them secure the capital needed for their growth.

Rockfleet's municipal advisory teams focus on multiple sectors, including transportation, healthcare, education, and infrastructure, assisting municipalities and other public entities with their funding and financing needs.

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