

LEGAL

Life and Estate Planning

This week I heard from a widow whose husband never signed a will or estate plan. She was unable to access his investment accounts. The good news is that their value was over \$100,000. However, that means the only way she can deal with his assets is by first going to court and filing an intestate probate case. That will involve paying court filing fees, a bond premium, and attorney's fees.

Another surprise for many widows and widowers is that if their spouse died without a will and had children, even from a prior marriage, half of the deceased spouse's assets go to their children. When you die without a will, state law decides how your assets will be divided. These are some of the reasons why you should have a will and a life and estate plan for your financial resources.

A basic estate plan frequently includes a revocable trust, a pour-over will, a power of attorney for property, and a power of attorney for health care. A pour-over will "pours over" assets into the trust upon death. Thus, with a pour-over will, the important details of your estate plan are in your trust agreement.

Important planning decisions include whom you select to be the executor of your will, the successor trustees for your trust, and the agents under your powers of attorney. Don't assume that your first choice will always be available for any of those roles. It's best to have at least three or four persons selected for each position. That way, if your first or second choice is not able to serve, you will have a backup selection. It is also important to discuss in advance the responsibilities you are asking these persons to accept.

The persons selected for successor trustee of your trust, executor of your will, and your agent under your power of attorney for property can be the same. What are the differences between these roles? Under

a revocable trust, you can be your own trustee and can revoke the trust, as long as you are able to make your own financial decisions. Then the successor trustee takes responsibility. The successor trustee may be your spouse, another relative, close friend, or a trusted professional adviser.

Some, most, or all of your assets may be in the trust. The same is true of a financial power of attorney, which is also known as a power of attorney for property, but there are important differences. A person's revocable trust becomes irrevocable when they die. The trust does not automatically end or terminate at death, but the financial power of attorney is automatically terminated.

In a time-sensitive situation, you may not be available, or able, to make important health care or financial decisions. For that reason, many people choose to make the financial and health care powers of attorney effective immediately. The persons you want to handle your assets may not be the same persons you want making your health care decisions. Thus, a person's financial power of attorney designates different agents than those selected for their health care power of attorney.

How might things have been different for the widow whose husband died without having a will, a trust, and an estate plan? If his investment account had been in the name of his trust with his wife designated as his successor trustee, upon his death, his widow would have been able to sell volatile stocks without the delay, the risk of loss, and the expense of having to first file a probate case, go to court, and be appointed by the court.

S. Keith Collins is an attorney with over thirty years of diverse experience, including estate planning, succession planning, commercial and residential real estate, banking, lending, litigation, loan workouts, and transactions.

Keith is a member of the American Bar Association, LawyersConnecting, and the Illinois State Bar Association. Learn more about Keith Collins on LinkedIn at [linkedin.com/in/skeithcollins](#). His e-mail is keith@collinslawyer.com, or call his office in Northbrook at 847-831-2178. This article is meant for general educational purposes only. It is not meant to offer legal advice and it does not create an attorney-client relationship with the reader. Neither a question from a

reader nor a response creates an attorney-client relationship. Hire an attorney for legal advice.

