

MICHIGAN ESTATE PLANNING

A Simple Guide to Wills, Powers of Attorney, Deeds, HIPAA & Trusts

The purpose of estate planning is simple:

Decide who will handle things for you if you cannot, and decide who receives your property when you die.

1. WILL

A Will says who should receive your property after your death and names the person (Personal Representative) you want to handle your estate.

A Will can also nominate guardians for minor children.

Important: A Will does not avoid Probate Court. A Will tells the Probate Court how you want your probate estate distributed.

In Michigan, a standard witnessed Will must generally be:

- **In writing.**
- **Signed by the person making the Will.**
- **Signed by at least two witnesses.**

Michigan also recognizes certain handwritten (holographic) Wills, but relying on one can create unnecessary problems.

Easy way to remember:

WILL = Who gets my property after I die?

2. FINANCIAL POWER OF ATTORNEY

A Financial Power of Attorney lets you appoint someone you trust—your Agent—to handle financial and property matters for you.

Depending on the powers you give, your Agent may be able to:

- **Pay bills.**
- **Handle bank accounts.**
- **Deal with investments.**
- **Sign documents.**

- **Handle taxes.**
- **Buy or sell property.**
- **Manage other financial affairs.**

A Durable Power of Attorney can continue to work even if you later become incapacitated.

Under Michigan's current law, proper signing formalities are important. A durable POA generally requires acknowledgment before a notary or signing in the presence of two qualified witnesses. Some important powers—such as making gifts, changing beneficiaries, or changing a trust—must be specifically granted.

Choose your Agent carefully. This person may have considerable control over your money.

Easy way to remember:

FINANCIAL POA = Who handles my money if I need help?

3. MEDICAL POWER OF ATTORNEY

Patient Advocate Designation

Michigan calls the person you appoint to make medical decisions your Patient Advocate.

Your Patient Advocate acts when you are unable to participate in your own medical decisions.

The document can address matters such as:

- **Medical treatment.**
- **Surgery and medications.**
- **Nursing and personal care.**
- **End-of-life decisions.**
- **Mental-health treatment, when properly authorized.**
- **Organ and tissue donation, if authorized.**

A Michigan Patient Advocate Designation must satisfy specific statutory requirements and generally requires two qualified witnesses. The law restricts who may serve as a witness.

Give copies to your Patient Advocate, successor advocate, doctor, and appropriate family members.

Easy way to remember:

MEDICAL POA = Who speaks to the doctors when I cannot?

4. REAL ESTATE DEEDS

Lady Bird Deed (Enhanced Life Estate Deed)

A Lady Bird Deed is commonly used in Michigan estate planning.

Generally, it allows you to:

Keep control of your home during your lifetime

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You may retain broad rights concerning the property

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At your death, the property passes to the named beneficiary

When properly prepared and recorded, this can allow the real estate to pass without probate.

This can be especially useful when the home is the major asset and the owner does not otherwise need a trust.

Michigan's Medicaid Estate Recovery program generally pursues assets that pass through the probate estate, although Medicaid eligibility, transfers, exemptions, and estate-recovery rules require individual analysis.

CAUTION: Deeds must contain the correct legal description, identify the proper parties and interests, be properly executed, and be recorded with the appropriate Register of Deeds. Mistakes can cause serious title problems.

Easy way to remember:

LADY BIRD DEED = Keep control now—property passes at death.

5. HIPAA AUTHORIZATION

HIPAA is the federal law protecting the privacy of your medical information.

A HIPAA Authorization allows the people you choose to obtain or discuss your protected medical information.

Without appropriate authority, a doctor, hospital, insurance company, or

other health-care provider may be restricted from giving medical information to family members.

A HIPAA Authorization can name:

- **Your spouse.**
- **Your children.**
- **Your Patient Advocate.**
- **Other trusted people.**

HIPAA authorization and Medical Power of Attorney serve different purposes:

Medical POA: Who can make medical decisions for me?

HIPAA Authorization: Who can receive my medical information?

Michigan MDHHS explains that authorization is generally required before it releases protected health information outside permitted purposes such as treatment, payment, and health-care operations.

6. REVOCABLE FAMILY TRUST

A Revocable Family Trust is an estate-planning arrangement that holds property for you during your lifetime and provides instructions for managing and distributing that property.

Usually:

You create the Trust

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You are the Trustee while able

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You use and control the property

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If you become incapacitated, your Successor Trustee can manage trust property

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At death, the Successor Trustee distributes the property according to your instructions.

Because the Trust is revocable, you generally may amend or revoke it while you have the required capacity. Michigan law specifically recognizes revocable trusts and provides rules governing their amendment and revocation.

A TRUST MUST BE FUNDED

Signing a Trust document alone does not automatically put your property into the Trust.

Assets that are intended to be controlled by the Trust may need to be properly titled, assigned, or otherwise coordinated with it.

For example:

House → Deed to Trust

Bank/Investment Account → Trust ownership or coordinated beneficiary planning

Personal Property → Assignment to Trust

Beneficiary designations on IRAs, retirement plans, life insurance, and other accounts also need separate consideration.

Easy way to remember:

TRUST = A container. It only controls what is properly put into or coordinated with the container.

THE BASIC ESTATE-PLANNING PACKAGE

For many Michigan adults, an estate plan may include:

- 1. Will — Who receives my probate property?**
 - 2. Financial Power of Attorney — Who handles my finances if needed?**
 - 3. Medical Power of Attorney — Who makes medical decisions if I cannot?**
 - 4. HIPAA Authorization — Who can obtain my medical information?**
 - 5. Lady Bird Deed and/or Trust — How should my real estate and other assets pass?**
 - 6. Revocable Trust, when appropriate — Who manages and receives trust property without ordinary probate administration?**
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THE MOST IMPORTANT QUESTION

Estate planning is not only:

“Who gets my property when I die?”

It is also:

“Who will help me and make decisions for me if I am alive but unable to handle things myself?”

Classroom handout — Michigan general information only. Estate plans should be tailored to the individual. Tax, Medicaid, creditor, family, real-estate, and beneficiary circumstances can substantially change the appropriate plan.