

**Estate Planning and Administration  
Practice Area**

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The Tennessee estate planning and administration attorneys at Hunter, Smith & Davis, LLP help individuals and families protect their futures.

Regardless of the size or complexity of their estate, most everyone needs an estate plan in order to accomplish their individual goals. Common estate-planning considerations include:

- Providing for appropriate asset management and medical concerns in case of incapacity;
- Avoiding probate and court entanglements during incapacity and at death;
- Minimizing or avoiding the cost and expense associated with estate administration; and
- Ensuring that the right people get the right property, at the right time.

Our estate planning and administration lawyers create and execute a full range of estate-related documents identified below. We also handle post-mortem planning, from tax-related activities to representation in estate tax controversies and qualified disclaimer planning.

**Durable Power of Attorney (POA)**

In a power of attorney, an individual designates another person (referred to as an “attorney-in-fact”) who can legally act on their behalf. The POA can be effective immediately or be triggered by certain future circumstances that prevent the individual from making their own decisions.

A POA often is used in cases involving guardianships, conservatorships, or the management of personal assets for an elderly person. Our attorneys guide clients on the selection and preparation of enforceable power of attorney forms.

**Durable Health Care Power of Attorney (HCPOA)**

Individuals can designate another person (their “agent”) to make health care decisions on their behalf if they become unable to do so for themselves due to illness or injury. For example, a husband and wife may want to each grant the other an ability to make health care decisions for them. The agent holding the HCPOA can then legally interact with physicians, hospitals, and other health care providers to make decisions about medical treatment.

This power of attorney is separate from the regular durable power of attorney (POA) because Tennessee has adopted specific legislation recognizing this type of power of attorney and setting forth certain requirements for their execution. Hunter, Smith & Davis, LLP helps individuals and their families protect their ability to make crucial medical decisions with the preparation of official HCPOA documents.

## **Living Wills**

Living Wills are a declaration of how far an individual wishes his or her physician and hospital to go in prolonging life by artificial means if there is no reasonable expectation of recovery from an illness. The condition must be terminal, although death need not be imminent.

## **Pour-Over Last Will and Testament**

The term “pour-over” simply means that the Will pours probate property into a revocable living trust. The Will is the appropriate document to designate guardians for any minor children. A Will is exposed to the probate process. A Will may be amended or changed through the execution of a codicil. As an example, assets may have inadvertently been left in the name of the testator or testatrix, or assets may intentionally have been left outside the trust.

## **Revocable Living Trust**

A legal trust requires a Grantor, Trustee and Beneficiary and is nothing more than a set of written instructions. In the case of a Revocable Living Trust, the person establishing the trust represents all three parties, because he or she is the Grantor, Trustee and Beneficiary during his or her lifetime. As Grantor, Trustee and Beneficiary of a Revocable Living Trust, an individual has complete and total control over their assets just like they did before they created the trust. Once executed, the Revocable Living Trust is the document that provides for the distribution of assets either at death or through trusts administered by a successor trustee after the death of the Grantor.

The Certificate of Trust provides proof of the existence of your Revocable Living Trust. Give a copy of the Certificate of Trust to banks, investment companies, etc. as proof of your trust. The Bill of Gift serves to transfer personal property to the trust. The Directive to the Trustee provides a way to pass heirlooms and specific personal property to certain people who you want to receive them. The Authorization to Disclose Medical Information provides authority for your successor trustees to obtain your medical information and records should they be needed.

## **Guardianship and Conservatorship**

A guardianship is a legal relationship that applies to minor children or incompetent adults (the “ward”). The guardian is assigned by a court or otherwise named to oversee the living arrangements and health-related needs of the ward.

A conservatorship is a similar legal relationship in which a guardian or a protector is appointed by a judge to manage the financial affairs and/or daily life of another (the “conservatee”) due to physical, mental, or age-related limitations.

## **Federal Estate Tax**

There are two fundamental concepts to understand when addressing the federal gift and estate tax.

First, any U.S. citizen can transfer, during their life or at death, an unlimited amount of assets to their spouse, if the surviving spouse is a U.S. citizen, without having to worry about federal estate or gift tax. This concept, known as the marital deduction, delays the estate tax until the second death if all the assets went to the surviving widow or widower. Depending on the size of the estate, this may not be the best tax avoidance strategy.

The second approach is based on the applicable exclusion amount (or the “unified credit”). A credit is simply a dollar-for-dollar offset against federal estate tax liability. There is no federal estate or gift tax payable on an estate that is equal to, or below, the then applicable exclusion amount or credit. The estate and gift tax exemption is \$11.4 million per individual and \$22.8 million for a married couple in 2019. The annual gift exclusion amount for 2019 is \$15,000.

### **Federal Estate Tax vs. Tennessee Estate Tax**

Tennessee’s estate exemption amount is not the same as the federal exemption amount. There are ways to minimize and/or avoid Tennessee estate taxes while still sheltering assets from the federal estate tax.