

Four Tools of Financial Foundation

by Lee R. Phillips

Just like building a house, you can't construct a financial fortune from the roof down. You need to build a foundation first.

Have you ever noticed that some people seem to have wealth flow to them? Yes, some professions tend to pay more than others, but in every field, those with the most wealth are the ones that have a legal foundation already in place.

This foundation is set up using an understanding of the legal strategies associated with wealth accumulation. Unfortunately, many people are "taken to the cleaners" by less-than-competent lawyers who fail to educate their clients.

The basic foundation of wealth consists of four legal tools. If you understand the tools and know how to use them, your chances for success are much better. If you and/or your parents don't have the four tools already, it is time to get moving. It's worth every effort you make and every dime you spend getting the foundation in place. Here's a basic overview of the four tools:

Testamentary Will

Everyone needs a will. Even if you have a revocable trust, you need a will. The will is used as the vehicle for naming your personal representative (the executor or executrix) to manage your affairs after you are gone. The ideal person for this important job is a family member, who is geographically near the bulk of your estate, has good business sense, and can be fair with your heirs. It could be malpractice for your attorney to name himself or herself as your personal representative.

The will is also used to name the guardian for your minor children. If you have minor children or grandchildren, see to it immediately that a guardian is named in your will. The will should put restrictions on the guardians. Most wills simply state, "John and Mary guardians to my minor children."

But a better version would be, "John and Mary; provided they raise the children in our family home where the children are living at the time of my death." "John and Mary; provided they are still happily married and harmoniously living together." "Grandma and grandpa; provided they have the health to take care of the kids." "Grandma and Grandpa; provide they don't sell the kids." You get the picture.

If you already have a will and don't have a living trust, you will need a new will that goes along with your new living trust. It is called a "pour over will," because it "pours" all of

your property, not already in the trust, into the trust for ultimate distribution after your death.

Living Revocable Trust

The living trust is created to enable an estate to avoid probate, get twice the estate tax exclusion, and provide for a smooth transfer of property. It is definitely an intelligent tool for most families. Yet, there is a big argument in the legal profession between the standard will and probate faction and the living trust "hawkers."

In my book, *Protecting Your Financial Future*, (Legalees Corp. 1999), I discuss the pros and cons in detail. Frank Sinatra was called the "chairman of the board," and he knew how to handle money. His living trust provided his estate with total privacy, much to the media's chagrin. Although his estate exceeded \$130 million, the financial impact of taxes on the trust was only a few hundred thousand dollars. I favor the living trust, but it is your decision.

The problem that exists is not with the actual trust, but the lawyer and user of the trust. The trust has to be maintained, and it has to "own" all of your estate. It isn't hard to manage, but the lawyer seldom takes the time to teach you how to do the management, and you can't afford to pay the lawyer to do it for you. As a result, most individuals who establish a living trust don't get all the benefits they could from the trust.

The living trust will "overlap" with a durable power of attorney.

Durable Power of Attorney

Durable powers of attorney allow an individual to control the property of a person who is unable to control his/her own property. As you know, people of all ages, not just elderly people, fall victim to sickness or accidents and are rendered unable to control their affairs. A good living trust will have a provision that automatically lets a successor trustee to manage trust property if you become incompetent. The durable power of attorney lets the person of your choice manage all of your other business affairs if you become incapable. The power doesn't transfer until the criteria outlined in the document are met, then there is an automatic transfer of power. The durable power of attorney prevents messy court proceedings at a time of family crises, while naming a guardian/conservator for an incompetent individual.

Many powers of attorney include a section that addresses an individual's instructions and desires for health care. This is a durable power of attorney for health care, which appoints an "agent" and grants power to interface with the medical industry.

You might not have a difficult time getting what you want in a hospital. But it would be very frustrating for your spouse or children to act on your behalf without a durable power of attorney, if you are the one who suddenly becomes unable to direct your own medical care.

Living Will

A living will simply is designed to direct the doctors to keep you alive or pull the plug. You and your family need a living will, and the best place to get one is at your local hospital, where they are given away at no charge. Also, hospitals prefer you to fill out their form as opposed to one from a lawyer.

These four legal documents form the basic foundation for all wealthy people. They are always there. They are what I call the "basic tools of wealth." Use them, and it will be worth every effort you make and every dime you spend.