



## ELDER LAW AND ESTATE PLANNING

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# Young parents question need for a will, durable power of attorney

**Question:** My wife and I are in our late 30s and have a 2-year-old son. Our assets are modest, two 401(k)s, our home, a small brokerage account and checking account. Everything is jointly owned or the surviving spouse is named death beneficiary. In light of this, can we assume that we don't need to establish a will or a power of attorney? What purpose would they serve?

There are compelling reasons to have both documents.

A last will and testament is essential to protect your minor child. If both of you die or become incapacitated, or one of you does and the other cannot take over, the court will appoint a guardian for your son. In your will, you may name the person you want to be his guardian. Your nomination will carry great weight in the court's decision. A will should also allow for the creation of a testamentary trust for your child's benefit if you pass away. Monies that flow into your estate will go into the trust, with the trustee you name managing the funds for your child's benefit. You can decide who will be in charge of the money, and when your son will take charge of it.

You need a durable power of attorney, too. If the owner of a retirement account passes away, the spouse beneficiary

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receives the proceeds. But what if the owner of the 401(k) doesn't die, but becomes incapacitated? Without a durable power of attorney, the spouse has no authority to access those funds. What if the house has to be sold? Again, you need the legal authority to sign your spouse's name.

You should see an estate planning attorney to review your assets, beneficiary designations, and explore any other plans that may be needed. Protecting your family is too important to leave to chance or assumptions.

*Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.*