
W PLANNING WISELY

WILLS AND ESTATE
FUNDAMENTALS



INTRODUCTION

Many people think they do not have an estate, but actually everyone has an estate and most should do some estate planning. Over half of all Americans die intestate, that is, without having a will or other legal document that determines where their assets will go after their death. Estate planning is more than providing for the disposition of your assets after your death and minimizing the amount of tax levied on your estate. Good estate planning will also provide for administering and protecting your assets during your lifetime and for decision making in the event you are sick or disabled.

ESTATE PLANNING

Estate planning is simply the process of deciding what will happen to your assets and belongings after your death. You can also use the planning process to make long-term care arrangements. Planning before your death gives you control over what happens to your assets when you die and can protect those assets if you need long-term care. Lawyers, financial planners and accountants can help you plan. There are also a variety of do-it-yourself information in books and computer software.

Your estate consists of all your property, such as real estate, personal property, any business, bank accounts, life insurance, pensions, investments, as well as all of your debts. Assets that pass through beneficiary designation are not considered part of your estate for probate purposes, but are part of your estate for tax purposes.

Estate taxes are an important concern that planning can address. Estates with a total value of less than \$675,000 (in 2000) incur no federal estate taxes. This limit will be raised incrementally to \$1 million by 2006.


Important tools in making an estate plan:

- **LIFE INSURANCE** can provide cash to your beneficiaries for purposes such as paying estate taxes or taking care of minor children.
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- **PAY-ON-DEATH ACCOUNTS AND JOINT OWNERSHIP** can be useful tools for avoiding probate, and may be the only tools you need for a small and simple estate. The contents of a bank account with a pay-on-death provision go to the person you name. Items such as a car or real estate can be owned in joint tenancy with rights of survivorship. Upon your death, your co-owner becomes the full owner of the property. Be sure that the co-owner is the person you want to inherit these goods.
- **FINANCIAL PLANS FOR LONG-TERM CARE** are an important part of your estate plans. In-home, nursing home or assisted living services can cost thousands of dollars per year. Medicare provides limited assistance for this type of care, and Medicaid contributes after an individual has used up most of their assets. One way to ensure that your assets will last through a long-term illness is to buy long-term care insurance. Certain kinds of trusts, such as a supplemental needs trust, can also help to protect your assets in case of long-term care needs.
- **A DURABLE POWER OF ATTORNEY, LIVING WILL AND HEALTH CARE PROXY** help the people around you do what you want before you die. A durable power of attorney appoints a person to be responsible for financial decisions if you are disabled or no longer competent to handle your own affairs. A living will tells your family or decision makers what sort of medical treatment you want and authorizes them to make sure you get it. A health care proxy appoints someone to make health care decisions on your behalf.

WILLS

Wills and living trusts are the best known elements of an estate plan. Used separately or together, these legal documents specify your desires on how to distribute your estate. A will provides a description of your assets and who should receive them. A lawyer specializing in wills and estate planning can help you put your will together. There are also books and material on the Internet to assist you in putting together your own will, but the quality and accuracy of these materials can vary widely and become outdated.



A will must go through probate, a court procedure that determines if the will is valid. State law varies: some states have an unsupervised probate process that only determines the validity of the will, others have a supervised process that pays debts, tallies up, and distributes assets as the will directs. Depending on the schedule of the courts, this process may take up to two years to complete, and courts and attorneys involved institute a variety of fees for the process. Many states have probate exemptions, allowing a certain amount of property to pass to beneficiaries without going through the probate process.


There are some things that cannot be done in a will. Despite many movies to the contrary, you generally cannot leave money to your pets. Generally, you also cannot designate beneficiaries for accounts that already have them, such as a joint bank account or property owned jointly. Without consent, it is difficult to disinherit a spouse in most states. Anyone else will be automatically disinherited, including children, if you do not mention them in your will or living trust.

LIVING TRUSTS

Living trusts can be an important part of your estate planning process. They deal with finances only; a will is a more appropriate place to specify wishes such as guardians for minor children.

Living trusts are becoming a more common estate planning tool, because they can help your beneficiaries avoid probate, and possibly reduce estate taxes as well.

A basic living trust avoids probate only, and has no estate tax benefits. With a basic living trust, you transfer ownership of your property to a legal entity called a trust. This trust then owns your property, and you name yourself as “trustee,” or director, of the trust. In this manner, you have complete control over your assets, and after your death your beneficiaries can transfer them into their name, without probate. This kind of trust can be changed or revoked at any time. This may be the only trust you need if you are dealing with an estate that will not be subject to estate taxes. You



may still need a will, to cover assets that accumulate after you complete your living trust. Any goods not covered through the trust may need to go through probate.

There are a variety of other types of trusts, such as a marital AB trust, credit shelter trust, and others that may help those with larger estates, and may have estate tax benefits. Check with a lawyer or financial professional for more information on these trusts.

There are many ads and expensive seminars promoting living trusts as a way to pass on your assets free of probate fees and estate taxes, but these sales pitches may sell you nothing more than a general set of forms that may not apply to your specific situation. Also, trust forms may not provide the promised financial benefits. It is generally safest to get some guidance from a professional, even if you use packaged forms.

GENERAL TIPS

- Determine your assets and liabilities.
 - Determine the goals for your estate plan – do you want to ensure there is enough money for your long-term care, or to care for a minor child or grandchild?
 - Name an executor for a will.
 - Name a guardian for minor children in a will.
 - Be sure to review your plans, and your will or living trust regularly. Any assets you accumulate or major life changes you undergo after forming your plans may affect their outcome.
 - Discuss your plans with your beneficiaries, so that they are aware of what will happen when you die.
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RESOURCES

- Your local bar association, estate and trust section or elder law section, can refer you to lawyers who specialize in wills and living trusts. Also, ask for references from other lawyers or others who have used lawyers for wills and living trusts.
- Financial planners and certified public accountants can assist you with estate and trust planning, especially the tax implications of your plans. For more information about their services and how to find qualified professionals in your area, contact:
American Institute of Certified Public Accountants,
1211 Avenue of the Americas, New York, NY
10036, 888-777-7077, www.aicpa.org
Certified Financial Planner Board of Standards,
1700 Broadway, Suite 2100, Denver, CO 80290,
888-CFP-MARK, www.cfp-board.org
- For more information on making your own will or living trust document, or background information on this area of law, check with the Nolo.com Self Help Law Center at www.nolo.com.
- AARP, 601 E St., NW, Washington, DC 20049,
800-424-3410, www.aarp.org
- *The Five-Minute Lawyer's Guide to Estate Planning*,
Michael Allan Cane, 1995.
- National Association of Estate and Financial
Planning, 525 E. 4500 South, #F-100, Salt Lake
City, UT 84107, 801-266-9900, www.nafep.com

Individual circumstances vary. Check with the appropriate professional regarding your options.



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