

# The Beginner's Guide to Estate Planning



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Estate planning is about telling the government, specifically the probate court, “I don’t need you” to supervise your family as they make decisions for you if you can no longer make them on your own. If you have a health problem (unconscious, dementia, Alzheimers, stroke, etc.) then let your family know:

- Who you want to make medical / financial decisions
- How you want those decisions made

Most people associate the common Last Will and Testament with estate planning, and that is an important part of the process. However, a Will does not do anything for you while you’re alive, it only works after you’re gone. Estate planning is more than just a Will.

While the main point of estate planning is going to be making sure everything is in order if you become incapacitated or after you pass away, it will have many other benefits when you are living as well. A good estate plan will help you to better keep track of all your assets and can even help you to minimize your taxes and other expenses so you can keep more of your money. When starting your estate plan, you will likely need to understand the following basic terms and use many of them to maximize your benefits.

## **Last Will & Testament**

The Last Will and Testament, typically just referred to as a Will, is the first and most basic estate planning tool. A Will explains how you want your assets to be distributed, and how this should be done. Every adult should really have a Will in place, even if they don’t have a lot of assets that will need to be distributed upon their death. The Will is a fairly simple document and offers few benefits beyond

ensuring your assets are distributed as you see fit. If a Will is all you have when it comes to estate planning, your estate will still need to go through the probate courts before they are distributed.

## **Probate**

If you die without any estate plan in place, or with only a Will or other basic estate planning, your estate will have to go through the probate courts before it is dispersed to your heirs. Probate is a process where the courts will go through all of your assets and liabilities and distribute them as is appropriate. They will make sure that any money that you owe to other parties is paid out of your estate first, and all remaining assets are distributed according to your wishes.

If you don't have a Will in place, the courts will make an attempt to distribute your assets properly. Of course, they won't know your family dynamic or personal desires, so it is almost impossible for them to do exactly what you would have wanted. In most cases, your family members will be able to make claims on your assets, and the courts will decide who gets what. Whenever possible, it is wise to use estate planning tools to help keep your estate out of the probate courts.

## **Using Trusts**

One of the best ways to reduce the need for your loved ones to go through probate court is to use a trust. There are several different types of trusts, each of which can be used for different things and will offer different advantages and disadvantages. The following are some of the most common types of trusts used in estate planning:

- **Revocable Trusts** – This is a type of living trust where you will retain full control over the assets kept within it. You are free to change the terms of the trust, or revoke it all together, at any point you desire.
- **Irrevocable Trusts** – This is another form of a living trust, but you will not be permitted to make changes or revoke the trust without the consent of the beneficiary. The biggest advantage of an irrevocable trust is that all appreciated assets are exempt from estate taxes.
- **Special Needs Trusts** – If you have an adult special needs child who will need care, you can create a special needs trust to ensure the assets required to pay for the care are available without jeopardizing their eligibility for government assistance.
- **Firearms Trust** – Placing your firearms in a trust will make it much easier to pass them along to loved ones, and can even help them to avoid legal challenges.

There are many other types of trusts as well, each with a different set of benefits. Using the right trust (or multiple trusts) for your situation will benefit you and your loved ones today and after you pass away.

## **Healthcare Directives**

Another important aspect of estate planning is looking at what type of healthcare you will want in different situations. In most cases, you will be able to decide what treatments you would like to receive as the need arises. If you should become physically or mentally incapacitated, however, these decisions have to be made

in other ways. One option is using a healthcare directive, which identifies what type of care you would like in specific situations.

This directive can also name someone to have healthcare power of attorney, which means that if you are unable to decide on your own, they can make healthcare decisions on your behalf. This will help ensure someone you trust is making these decisions based on your best interests.

### **Financial Powers of Attorney**

Another key component of an estate plan is the Financial Power of Attorney (POA) which enables you to designate an agent to make certain financial decisions on your behalf. A durable POA remains effective even if you become incapacitated. However, a non-durable POA expires once you are deemed incapacitated and is typically used for very specific purposes. A POA can also be general or limited depending on the scope of the authority conferred to your agent. A general POA gives your agent broad powers to make financial decisions on your behalf, whereas a limited POA authorizes your agent to act with regard to a specific event or time period. It is generally advisable to have a springing durable POA in place that will kick in should you become incapacitated. In the absence of a valid POA, a court-appointed conservator may be required to take financial decisions on your behalf should you be unable to.

### **Estate Planning for Business Owners**

If you are a business owner, your estate plan can become quite a bit more complex. You will want to do everything you can to ensure your business is transitioned to a new owner smoothly so that there are as few problems as possible. This can start with succession planning so you have someone in place

who can lead the company should you pass away. If you are a silent partner in the business, you will need to decide who will inherit your ownership portion, and what that means for the business itself.

### **Always Get the Legal Help You Need**

When done properly, estate planning can save you a lot of time and money. Often more importantly, it can also help save your loved ones a lot of time, money, and heartache after you are gone. In order to ensure you have the right estate planning in place, you need to work with an experienced attorney. Contact us to set up an appointment to get your estate planning started today.

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