

## What is estate planning?

Your estate is comprised of the assets you accumulate during your lifetime: your home, car, bank accounts, investments, jewelry, furniture, a business and so on.

You already know you can't take it with you when you die, so there has to be some way of distributing your assets to those who are still living. Your estate plan includes written instructions stating whom you want to receive something of yours, what they will receive and when you want them to receive it.

But good estate planning should also include planning for incapacity; a guardian and inheritance manager for minor children; transfer of a business; coordination of assets so each person receives what you wish; providing for those who depend on you; tax planning; and more. It needs to include all the areas in your life that would be affected if you were no longer here. It is a process, not a document, and it needs to change as your situation and laws change.

## Who needs estate planning?

Estate planning is something everyone needs to do—regardless of age, marital status or wealth—if you want to keep control of your assets and protect your loved ones when something happens to you.

Older people and those who have accumulated some wealth may be more inclined to think about planning. But it often means more to families with modest assets because they can least afford to pay unnecessary costs and fees. And none of us knows how long we have on this earth; we all know of someone who was cut down in the prime of life by an accident, illness or crime.

## What happens if I don't have a plan?

You're not alone. Too many people procrastinate about estate planning. They're busy, or they don't think they own enough, or they're not old enough, or they're confused and don't know who can help them. Then, when something happens, their families have to pick up the pieces.

If you own assets titled in your name and you don't have a plan when you die, your estate will go through probate and your assets will be distributed according to state law—and that is probably not what you would want.

For example, if you are married and have children, each will likely receive a share of your estate. This means your

spouse could receive only a fraction of your assets, which may not be enough to live on. Also, because state laws usually allow for the inheritance of property only by bloodline, an unmarried partner, special friend or favorite charity would be excluded.

If you have minor children, the court will appoint a guardian to raise them without knowing whom you would have chosen. It will also control their inheritances until they reach legal age, at which time they will receive the full amount. Most parents prefer their children inherit when they are older.

If you become incapacitated before you die, the court can take control of your assets and your care. If your assets are titled in your name, no one but the court will be able to conduct business for you.

## Doesn't a will help?

A will contains your instructions for what you want to happen to your assets after you die, and it lets you name a guardian for minor children. But it does not provide any help if you become incapacitated, because a will cannot go into effect until after you die. It is not a complete plan.

Also, a will does not avoid probate. In fact, it guarantees probate. Only the probate court can verify that your will is authentic, remove your name from the titles of your assets and transfer them to the new owner(s).

## Does everything I own go through probate?

Not necessarily. Many people also own some assets that transfer to a co-owner when they die and others that will be paid to a beneficiary. Generally, these do not go through probate, but there can be problems with both.

Assets in a living trust also avoid probate, which is one reason why they are so popular. But a trust in a will, called a testamentary trust, does not avoid probate because the will must be probated before the trust can go into effect.

## What's so bad about probate?

Probate is an orderly court process that makes sure your debts are paid and your assets are distributed to your heirs. But most people want to avoid it for several reasons:

- It can be expensive. Probate costs and fees, often estimated at 3-8% of an estate's gross value, must be paid from your assets before they are distributed. If you own

assets in another state (like a vacation home), your family will probably face multiple probates, each one according to the laws and costs in that state.

- It takes time, often nine months or longer. Probate moves on the court's schedule and the attorney's schedule, not on your family's schedule.

- It is a public process. Unintended heirs are invited to come forward and claim part of your estate. Court records are public, so any interested party can find out details about your estate, including who the heirs are, what they will receive, their addresses, and more.

- Your family has no control. The court has ultimate control over how your will is interpreted, how your assets are distributed, how much it will cost, how long it will take and what information is made public. This can be very frustrating for your family.

## What are problems with joint ownership?

The kind of joint ownership most people have is "joint ownership with right of survivorship." Many rely on it as a way to avoid probate, and when one owner dies, his/her share will transfer to the other owner without probate. But if the surviving owner doesn't add a new joint owner, or if both owners die at the same time (say, in an accident), the property must go through probate before it can go to the heirs. Usually joint ownership just postpones probate. There are also other risks, including:

- It could cause you to disinherit your family. You may want someone other than your co-owner (like your children from a previous marriage) to inherit your share. But if you die first, the asset will immediately transfer to your surviving owner, who can do whatever he or she wants with it—even if you have a will.

- Your assets are exposed to your co-owner's debts. For example, if you add your adult son on the title of your home and he is successfully sued, you could be forced to sell your home to pay his debts.

- It's easy to add a co-owner but difficult to take someone's name off the title. If the person doesn't agree, you could find yourself in court.

- If you add a minor as a joint owner, the only way to sell or refinance later is through a court guardianship, which will not end until the minor becomes an adult.

■ If your co-owner becomes incapacitated, you could find yourself with a new co-owner—the court. If you need your co-owner’s signature to sell or refinance and he/she is incapacitated, you’ll have to ask the court to appoint someone to act for your co-owner, even if the ill owner is your spouse. Usually the court will then stay involved to protect that owner’s interests.

### What about beneficiary designations?

Life insurance policies, IRAs, retirement plans and some bank accounts let you name a beneficiary. After you die, the proceeds will be paid directly to your beneficiary without probate. At least that’s how it’s supposed to work.

But if your beneficiary dies before you or you both die at the same time, the proceeds will have to go through probate so they can be distributed with the rest of your assets. If your beneficiary is incapacitated or is a minor when you die, the institution paying the funds will usually insist on court supervision. If you list “my estate” as beneficiary, the court must determine who that is.

If your beneficiary does receive the proceeds, he or she may not be responsible enough to handle such a large sum of money and/or may be unduly influenced by others.

### What about a power of attorney?

Most powers of attorney become invalid at incapacity. A durable power of attorney does extend through incapacity. Neither will be valid after you die and even a durable power of attorney may not work when it’s needed.

That’s because some financial institutions will not accept any power of attorney; others will insist that it be on their own forms. The reason is they have no way of knowing if you have changed your mind and they do not want to be held liable for giving access to your assets to someone you may not want to have them. If it is accepted, it still may not work the way you want. Giving someone power of attorney is often like giving that person a blank check to do whatever he/she wants with your assets.

### What about a living trust?

Assets in a living trust avoid probate at death, court interference at incapacity (yours and your beneficiaries’) and court control of minors’ inheritances. It brings all of your assets together under one plan, preventing unintentional disinheritance and ensuring the distributions

## Elements of Good Estate Planning

- Provides clear instructions for distributing your assets after you die.
- Protects your assets and gives instructions for your care should you become incapacitated.
- Names a guardian and inheritance manager for minor children.
- Provides for those who depend upon you (parents, children, pets).
- Provides for the transfer of a business at retirement, disability and death.
- Provides for family members who may be irresponsible with money or need future protection from creditors or divorce.
- Includes life and other insurance to provide for your family and protect your assets.
- Coordinates your assets so that each person receives the inheritance you want them to have.
- Is an ongoing process, not a one-time event. You should update your estate plan as your situation and the laws change.

you desire. Assets that remain in the trust are protected from beneficiaries’ creditors, ex-spouses, predators and irresponsible spending. For these reasons and more, a living trust is generally preferred over a will, and is often the perfect foundation for most families’ estate plans.

### Do I need to use an attorney?

For the best results, yes. An experienced attorney can provide valuable guidance and will prepare the documents correctly. You’ve worked hard all your life to build your estate. Having your estate plan prepared by a professional will give you peace of mind, knowing it will work the way you want to protect your assets and those you love.

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# Understanding ESTATE PLANNING

WHAT YOU NEED TO KNOW TO  
KEEP CONTROL OF YOUR ASSETS  
AND PROTECT THOSE YOU LOVE

*Your information here*

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Title

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Phone: 123-456-7890

Email address

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