



Estate Planning

Primer





What is an estate?

When people hear the word “estate,” they usually imagine a large home with ivy growing on it, perhaps with a maze garden in the backyard—something that has been in a wealthy family for generations upon generations. However, with respect to estate planning, an estate is the general term used to describe everything you own. This includes bank accounts, stocks, real estate, household items and furniture, automobiles, copyrights, and cryptocurrency. This also includes liabilities such as a mortgage, lease, or loan.

What is an estate plan?

An estate plan is your personal set of instructions that dictate what will happen to you and your stuff (your estate) at your death. If you have a minor child, your estate plan allows you to nominate who will be the guardian for your child. Estate planning documents also allow you to dictate who manages your finances when you cannot and who will make medical or end-of-life decisions when you are unable to communicate them yourself. Some common documents that are part of an estate plan include a last will and testament, financial power of attorney, medical power of attorney, advance directive or living will, and Health Insurance Portability and Accountability Act (HIPAA) authorization form.

Why do I need an estate plan, and what happens if I do not have an estate plan in place?

Technically, you already have an estate plan. If you do not create a personalized estate plan, state laws dictate who will receive your money and property and the amount each heir will receive. Intestacy laws vary by state, but generally, your money and property will go to your nearest blood relative; that is, your children, grandchildren, parents, siblings, nieces and nephews, and so on. If you are married, most states provide that your spouse will get everything, provided that any children you have are from that marriage. If you have a blended family, the default rules are a lot more convoluted.

Additionally, without a personalized estate plan, the court will step in and appoint someone to make financial or medical decisions on your behalf when you are unable, whether or not you would have chosen that person yourself. This process can be incredibly time-consuming, expensive, and public.

Lastly, if you have a minor child and the other legal parent is no longer living or fit to care for your child, a court will be charged with finding an appropriate guardian for your minor child. This may or may not be the person you would have chosen. This could also cause arguments among family members when trying to decide who will care for your child.

Is creating an estate plan expensive?

As you begin the estate planning process, you may find that the cost of having a comprehensive and personalized estate plan prepared by an attorney is a little more than you expected. Consider, however, that this cost can be significantly less compared to the court costs and attorney's fees your loved ones will incur to arrange care and choose decision makers at your incapacity or to wrap up your affairs at your death without an estate plan.

Are there cheaper alternatives to an attorney-prepared estate plan?

Yes, but a word of caution: While there are several do-it-yourself options available on the internet or at your local library, completing these documents without the advice of an experienced attorney could leave your loved ones in a sticky situation if something should go wrong. First, an estate plan is more than just one document. To make sure that you and your loved ones are protected no matter what circumstances come your way, several documents may be needed, and they all must sync together and not contradict each other. Second, if you get something off of the internet, there is no guarantee that the document will conform to the specific rules of the state you live in. Third, the document you prepare may not address all of the possible situations that occur or change in your life nor is it likely to take into account your specific family situation or goals. Forms are basic and are meant to address the most common scenarios. Lastly, creating an estate plan yourself could lead to mistakes in the execution of the documents. Even if your documents explain everything perfectly, if they are not executed (that is, signed, witnessed, and notarized) correctly, your loved ones will have additional hurdles to overcome in trying to carry out your wishes, which will cost them money. So even though you may be saving money today, your loved ones could end up spending more (in money, time, and stress) when wrapping up your affairs if you utilize some of these cheaper alternatives.

What do I look for in an estate planning attorney?

Estate planning is a very personal process. Therefore, the first thing you should look for in an estate planning attorney is someone you are comfortable with. To properly plan for you and your loved ones, you may need to divulge sensitive information. If you are uncomfortable discussing with the attorney your family situation, financial matters, medical wishes, goals for your future, or how your money and property will pass on, it will impede the attorney's ability to create a proper estate plan.

Next, you should look for someone who is a good listener. The attorney must understand what you are saying (or not saying) to make sure that the right solution is provided to meet your needs. A skilled attorney can match your desired outcome with the right planning techniques to carry it out.

Lastly, you should look for a problem solver and not a document producer. With the increasing number of do-it-yourself estate planning options, it is becoming easier to just fill out a form. However, an experienced estate planning attorney is not selling you a set of documents. The attorney is there to provide you with counsel and a comprehensive solution to the worries that keep you up at night and that motivated you to begin the planning process. Estate planning is not a one-size-fits-all solution. You are unique and deserve a plan that captures your needs and wants.

What can I expect from the estate planning process?

Once you have decided to move forward with the estate planning process and have made your call to the attorney's office, here are some things you can expect:

You will likely be asked to fill out a questionnaire. This asks for information such as your name and address, the names and addresses of your loved ones, contact information for your financial and tax advisors, descriptions of what you own (property and investment accounts), and your goals or concerns. This will allow the attorney to get a sense of who you are, what you have, and what some of your goals are.

During the meeting, the attorney may ask you questions to expand upon the information you provided in the questionnaire. Standard questions include the following:

- *Who would you like to make financial or medical decisions for you in the event you are unable to make them yourself?*
- *Who would you like to care for your minor child if you are unable?*
- *How do you want your loved ones to receive their inheritance: all at once, over a period of time, or upon achieving certain milestones?*

Once you have met with the attorney, the attorney will prepare the necessary documents and schedule a time for you to review and sign them. At the signing meeting, the attorney will remind you of the purpose of each document and invite a notary and witnesses to attend as you sign the documents. Once the signing is complete, you will likely receive your original executed documents with instructions for any follow-up tasks that may need to be completed.

How do I get started?

To take the next step in planning for your and your loved ones' futures, visit www.estateplanning.com to learn more about estate planning or to find an experienced estate planning attorney in your area.



Glossary of Terms

Administrator

A person appointed by a court to administer an intestate estate. Some jurisdictions refer to this person as a personal representative.

Agent

A person with authority to legally act on behalf of another person, typically named in a power of attorney document; also known as agent-in-fact or attorney-in-fact.

Asset

Any interest in property that can be owned, including real property; checking, savings, and investment accounts; retirement accounts; pension plans; stocks and bonds; life insurance; annuities; interests in corporations, limited liability companies, partnerships, and other business entities; oil, gas, and mineral interests; loans, promissory notes, and other receivables; tangible personal property such as furniture, jewelry, art, clothing, and collectibles; and intangible personal property such as patents and trademarks.

Beneficiary

An individual, trust, or other entity that receives assets from a will or trust.

Beneficiary Designation

A form, paper or electronic, in which the owner of the account or policy lists individual(s), a trust, or other entity to receive the benefit upon the death of the owner. Typically used for life insurance policies, retirement accounts, and financial accounts.

Conservator or Guardian

A person appointed by the court to make financial or healthcare decisions on behalf of someone who lacks the ability (also known as capacity) to make those decisions for themselves. A conservator who makes financial decisions is called a conservator of the estate (or guardian of the estate); a conservator who makes healthcare decisions is called a conservator of the person (or guardian of the person).

Conservatorship or Guardianship

A court-supervised legal relationship in which a conservator, appointed by a court, cares for a person who is unable to manage his or her own affairs due to incapacity. A conservator's duties and title can vary by state or type of conservatorship. Also called a guardianship.

Contingent Beneficiary

A person or organization named to receive assets if the primary beneficiary named in the decedent's will, trust, or beneficiary designation (for life insurance or an account) dies before the decedent.

Decedent

A dead person, especially one who has died recently.

Devise

As a noun, a testamentary disposition of real or personal property. As a verb, a means to dispose of real or personal property by will.

Distribution

A payment of cash, one or more assets, or a combination of both to a person or entity who is entitled or authorized to receive it.

Durable Power of Attorney

A form of power of attorney that survives the principal's incapacity.

Executor

A person named in a will and appointed by a court to administer a testate estate. Also referred to as a personal representative in some jurisdictions.

Fiduciary

A person who acts on behalf of another person under a legal duty to act in that person's best interest; failure to act appropriately is a breach of fiduciary duty.

Funding

The act of transferring title of the grantor's assets to the trust. This can be done by changing the ownership from the original owner to the original owner as the trustee of the owner's trust or by naming the trust as the beneficiary on a beneficiary designation.

General Power of Attorney

A legal transfer of authority that gives the agent broad authority to transact business on the principal's behalf. Also called a financial power of attorney.

Gift

A transfer of property from a living person to another person or entity for nothing or less than full fair market value in return. May be taxable or nontaxable.

Grantor

The person who establishes a trust. The grantor is also known as the settlor, the trustor, or the trustmaker.

Healthcare Directive

See Medical Power of Attorney.

Heir

Someone who, under the laws of intestacy, is entitled to receive an intestate decedent's property. Also termed legal heir, heir at law, lawful heir, heir general, or legitimate heir.

Incapacity

The inability of a person to effectively manage his or her property or financial affairs. This could be due to a determination by an attending physician, court determination, or if the person has an unexplained disappearance or absence for more than thirty days or is detained under duress.

Inheritance

The assets received from someone who has died.

Intestacy

The quality, state, or condition of having died without a valid will.

Joint Ownership

A form of ownership in which two or more persons own the same asset together. Types of joint ownership include joint tenants with right of survivorship, tenants in common, and tenants by the entirety.

Joint Tenants with Right of Survivorship

A form of joint ownership in which the deceased owner's share of the asset automatically and immediately transfers to the surviving joint tenant without a probate being required.

Limited Power of Attorney

A form of financial power of attorney that restricts the power of the agent to act on behalf of the principal to certain transactions that are identified in the document.

Medical Power of Attorney

Permits an agent to make healthcare, end-of-life, and postmortem decisions on behalf of the principal when the principal is unable to do so on their own.

Personal Property

May be tangible or intangible. Tangible personal property includes furniture, household items, clothing, jewelry, automobiles, artwork, and collectibles. Intangible personal property includes patents, trademarks, and copyrights.

Personal Representative

A gender-neutral term used in some states to refer to executors and administrators of an estate.

Pour-Over Will

A type of will used in a trust plan where the beneficiary under the will is a trust set up by the testator, used as a fail-safe mechanism to ensure that the testator's assets are distributed according to the provisions of the trust in the event certain property is not titled correctly in the name of the trust before the testator's death.

Power of Attorney

A document that grants an agent legal authority to make financial or healthcare decisions on behalf of another person, known as the principal. See also General Power of Attorney and Limited Power of Attorney.

Principal

In the context of a power of attorney, the person who grants to another person the ability to act on their behalf if they become incapacitated.

Probate

The process of administering a decedent's estate, including having a personal representative appointed, determining if there is a valid will, paying claims, filing any necessary tax returns, and distributing assets.

Revocable Living Trust

A written legal document that creates a trust during an individual's lifetime to which that individual transfers ownership of his or her assets. Contains instructions for managing those assets during the individual's lifetime and for their distribution upon the individual's incapacity or death. Avoids probate at death and court control of assets at incapacity. Also called a living trust, revocable trust, or inter vivos trust.

Successor Trustee

A trustee appointed to take over for the initial trustee when the initial trustee dies, relinquishes the duty, or is removed.

Tenants by the Entirety

A form of joint ownership available in some states in which a married couple owns the same property together. When one spouse dies, the deceased spouse's share of the property automatically transfers to the surviving spouse without requiring a probate.

Tenants in Common

A form of joint ownership in which two or more persons own the same asset. Upon the death of a tenant in common (or co-owner), the deceased co-owner's share of the asset transfers to his or her estate instead of being automatically transferred to the surviving co-owners. If the deceased co-owner's share was owned in his or her individual name (as opposed to a trust), the transfer of the deceased co-owner's share will require a probate.

Testamentary Trust

A trust in a will that only goes into effect at death. It does not avoid probate.

Testator

The person who creates a will.

Trust

A fiduciary arrangement set out in an instrument executed by the grantor that allows a third party, called the trustee, to hold assets on behalf of one or more beneficiaries; for example, a revocable living trust.

Trustee

A person named in a trust or appointed by a court who has legal title to trust property and a duty to administer that property in accordance with the trusts' terms.

Will

The legal expression of an individual's wishes about the disposition of their property at death; especially a document by which a person directs their estate to be distributed upon death. Also known as a last will and testament.



Questions?

Contact an estate planning attorney today.

