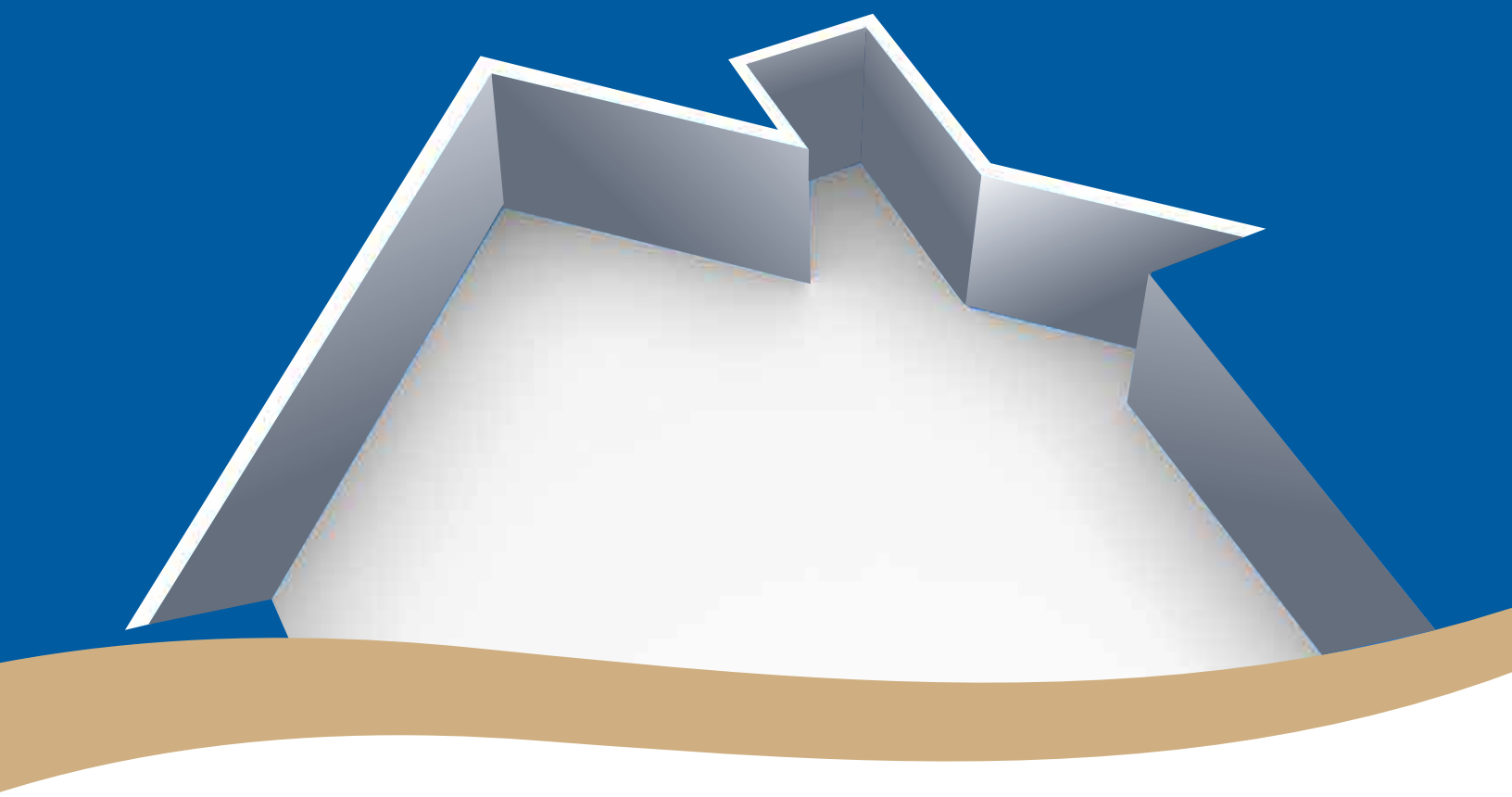
ESTATE

Planning Guide



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Estate Planning Report:
How to Create a Road Map for Your Future

I
What is Estate Planning?

Estate planning is a phrase most everyone has heard, but not everyone may have a clear sense of what it really entails. Indeed, what it means to create a plan for one's estate may be different to different people, depending on each person's individual life experiences and circumstances. To some people, it may mean drafting a last will and testament. To others, it may involve creating a revocable living trust. Regardless of the documents used, many people associate estate planning with creating a plan for the distribution of your assets upon the occasion of your death. The reality is, though, truly complete estate planning involves much more than that.

At its most basic level, estate planning does involve the universal constant that is death. As we've all heard, death, like taxes, is inevitable, meaning that everyone will need an estate plan when they die. That's why many people, when they do think about estate planning, think of it as a set of legally recognized instructions for your loved ones to guide them in making decisions about your assets after you die, and to name the person or people in charge of carrying out those instructions.

But, did you know that the benefits of a complete estate plan go far beyond just guiding the distribution of your assets or dealing with circumstances that take place after you die? Estate planning may also serve you if you become mentally incapacitated and cannot make decisions for yourself, an outcome facing an ever-increasing number of people, especially seniors.

Consider the following questions

- Whom do you prefer to make health care decisions for you if you become incapacitated?
- Do you desire to receive life-saving or life-extending treatment if you are terminally ill?
- Do you have a preference regarding burial, cremation or donating your body when you die?
- Whom do you wish to serve as the guardian of your minor children?

Additionally, a comprehensive estate plan will instruct your loved ones about more than just your assets. These, and other matters that have nothing to do with money or assets, may all be dealt with through estate planning. Additionally, estate planning also can involve other life events besides death or incapacity. For example, proper estate planning may provide invaluable benefits to you in the area of retirement and/or Medicaid planning.

Proper estate planning also involves an ongoing commitment. Many people have a misconception that estate planning is a "once and done" proposition. Much like a car, a house or a computer, an estate plan that the owner neglects to maintain properly likely will not function as well as it could, or should. Life is often full of unexpected events, and none of us have a foolproof crystal ball to know what lies ahead. Estate plan maintenance is the process of ensuring that your plan continues to reflect the current state of your life, both personally and financially.

Estate planning often involves creating numerous legal or financial documents. Depending on your situation, your estate planning documents may be very complex or extremely straightforward. This probably sounds like a lot to digest and, honestly, it is. Estate planning touches a variety of aspects of your life beyond what you may think, and definitely beyond just distributing your assets after you die.

Did You Know?
Between 55 and 70 percent of adult Americans have not created an estate plan.

It involves many issues and, chances are, one or more of those issues are things that matter to you greatly. That's why estate planning is so important, and why, whether you're rich, poor or middle-class; young, old or middle-age, you need an estate plan. This report will walk you through the various options, and how each may (or may not) benefit you.

II

Your Asset Distribution Options

As we discussed above, thorough estate planning involves much more than just planning to distribute your assets when you die. However, that is certainly an essential part of any estate plan, so we shall start by discussing the various options for accomplishing this goal. Each has its own unique set of potential advantages and disadvantages, which we will go over generally.

a. Intestate succession: You already have an estate plan, you just may not know it yet...

As you probably already know, at least implicitly, the law (regardless of the state in which you live) gives you the right to create an estate plan and state who gets your assets when you die (with a few restrictions.) If you think about it, the ability to leave a legacy to your surviving loved ones, and control how that occurs, seems incredibly important and seems like a power most people would want to seize.

Note that the above statement says "created an estate plan." That's because everyone has an estate plan, whether they created it or not. If you fail to create an estate plan of your own, the government has one for you. It's called "intestate succession." Intestate is a legal word meaning the state of dying without a valid will. Intestate succession is a group of laws, created by your state's government, that decree who receives your probate assets, and in what proportions.

Each state has its own intestate succession laws, but each set is generally similar, distributing your assets to your next of kin, depending on what relatives you have who survive you. These statutes attempt to distribute assets in a way most people would want (for example, leaving everything to a spouse, if he/she survives you, or everything equally to your children if you have children but no surviving spouse,) but the government designed them to address a very diverse population; namely, anyone who resides in your state. These laws cannot, and do not, reflect the sort of unusual, unique or nuanced circumstances that almost every family has. This is especially true today, where families are more "Modern Family" and less "Ozzie and Harriet." While this may produce a desirable distribution in some situations, such

as a beloved spouse who survives and receives everything, it often yields results the deceased never imagined. Consider the case of Roman Blum, reported by the New York Times earlier this year. Blum, a Holocaust survivor and multi-millionaire real estate developer from Staten Island, spoke to his accountant many times about recognizing the importance of estate planning but, when he died at age 97, he had not created a plan. An administrator assigned to his case searched for surviving relatives, both in America and Blum's native Poland, but to no avail. As a result, who became the sole beneficiary of the man's nearly $40 million estate? The State of New York! While Blum may have been a strong supporter of many of the public programs and services provided by the state, it is highly unlikely he actually wanted to leave everything he owned to the government! That is but one of many possible unintended and undesirable outcomes that can occur when you leave your estate plan up to the laws of intestate succession.

The advantage of intestate succession is that it requires no effort on your part. To avail yourself to this plan, you literally have to do nothing except die. The clearest, and potentially most catastrophic, disadvantage is that the plan created by your state's intestate succession laws probably isn't the one you would have created for yourself. While you may not end up leaving your entire estate to your state's government, like Mr. Blum did, your "plan" will probably leave assets to someone you did not intend, and neglect others whom you did desire to leave an inheritance.

As you can see, the potential risks of this "plan" will often dramatically outweigh the possible benefits. That is why, in most situations, using intestate succession is not the estate plan a legal professional will recommend to you.

b. Last Will and Testament: The Traditional Option for Asset Distribution

Almost everyone is at least generally familiar with wills and, in fact, for a very long time, estate planning for many planning consisted simply of creating and executing a will. A will is a legal document that can accomplish several estate planning objectives.

Your will, however, can do more than just those things for you, though. For example, if you have children who are minors or are disabled, and for whom you are still legally responsible, you can use your will to name the person you prefer to step in as the legal guardian for those children. The law requires the courts to select, as a legal guardian for a minor or disabled person, whomever the judge believes is in the "best interests" of that child or disabled person.

Most people know that a will can do certain things such as:

- Name who your beneficiaries are
- State which of your assets each beneficiary should receive
- Do you have a preference regarding burial, cremation or donating your body when you die?
- Name who will serve as your executor (the person who will carry out the directions in your will)

Judges take this responsibility very seriously, but without your input, they're simply making their best educated guess. However, if you name a proposed guardian in your will, courts will strongly consider that person to be in that child's best interests in most cases.

As a parent, taking an active role in controlling who cares for your minor or disabled children after you die may be one of the most important decisions you make and one of the most essential motivations for creating an estate plan.

Your will can also protect beneficiaries to whom you wish to leave an inheritance, but do not want to distribute the assets to that person directly, by creating a "testamentary trust," which we will discuss in greater detail later in this report.

As with many estate planning documents, you retain a high degree of control over the decisions you make in your will. If you change your mind about your estate plan and you are still mentally competent, you can make changes to parts of your will, or you can start over from scratch and replace your will entirely.

One key aspect to understand about wills is that, once you die with a will, the process is not as direct as your executor simply carrying out the instructions you placed in your will. Instead, your will must go through what's called "probate administration" before anything can happen. This is a process through which a court reviews your will, determines if it is legally valid, and grants permission to your executor to distribute your assets to your beneficiaries.

c. Revocable Living Trust: An Alternative to Probate

Here in the U.S., most people historically thought of wills as the only legal means for asset distribution other than intestate succession. Only in the last few decades have revocable living trusts achieved greater notoriety in this country and a larger number of people begun to use them to distribute their estates. Even though their wider use is recent phenomenon, living trusts are hardly new; they have existed for centuries. These types of trusts are called "living" because they are living documents, meaning that their terms are not "set in stone," so to speak. As long as you are mentally competent, you can change the terms of your living trust at any time.

Additionally, as the name "revocable" implies, you can also choose to revoke the trust in its entirety whenever you want, as long as you're competent.

So how does a living trust work? To begin, you have to understand that, under the law, the trust is its own legal entity, somewhat like a partnership or a corporation. A living trust, during the lifetime of its creator, generally is managed very differently from corporations and partnerships, though: it does not have its own tax identification numbers, it does not file its own separate income tax returns, and so forth. The trust nevertheless is a separate legal entity from you as an individual.

The trust agreement spells out several key terms, including:

- The name of the trust
- Who will serve as the trustee of the trust
- Who are the beneficiaries of the trust
- What distributions your beneficiaries will receive, and when they will receive them

Another important piece of information to keep in mind is that, although the trust is its own legal entity, you can construct your trust so that you have total control over it as long as you are alive and competent. Living trusts are very flexible documents in that they can be designed in a variety of ways. There are a few constants to them. However, they begin when a grantor (that's the trust's creator) executes a trust agreement to the trust.

The name of a living trust is usually simply based on your name, such as "The John Doe Revocable Living Trust." Naming the trustees of your trust involves multiple components. The trust must have an initial trustee, who manages the trust during your lifetime. In most living trusts, you, as the grantor, are also the initial trustee, so that you can maintain total control over all the assets you place in your trust. Additionally, you need to name someone to serve as the trust's successor trustee.

This person takes over managing the trust if you become incapacitated, and manages the trust and distributes the trust's assets when you die.

The asset distribution terms you include in your trust only have meaning if the trust owns assets. This process of transferring ownership of assets from your name to the trust's name is what's called "funding" your trust. This may sound complicated or risky.

With a properly drafted trust agreement it is neither. Think of your trust like a cup of water in your hand. You are not physically holding the water; the cup is. However, you, by grasping the cup, have complete control over the cup and, in turn, have total control over the water in it. When you die, the successor trustee you named in your trust simply takes control and pours out your assets to your beneficiaries in the way you instructed in the trust agreement.

You may have seen articles online or in print media stating that "everyone should have a will." This remains good advice even if you create a living trust. At this point, you may be thinking, "How can this be — I thought that my living trust replaced the need for a will?"

In reality, your living trust can control many of the instructions you would normally include in a will, thereby eliminating the need for a traditional will. That's why, in most cases, an estate plan with a living trust also contains a special kind of will, called a "pour-over will." A pour-over will is your safety net against the unexpected. While you may have been extremely diligent in the trust funding process, ensuring that you transferred ownership of the necessary assets to your trust, you may still have other assets to deal with.

Perhaps you forgot about an asset, owned an asset that you did not know about (and was only discovered after your death,) or received a new asset shortly before your death which you were unable to transfer to your trust.

In any of these situations, these assets must be distributed through the probate process.. If, for any reason, you do not get an asset (or assets) funded into your trust, your pour-over will steps in and directs that the assets be distributed to your living trust. Those assets will have to pass through probate administration, but you will at least have the peace of mind knowing that they will be included under the asset distribution instructions you carefully laid out in your living trust.

Additionally, you can use your pour-over will to deal with certain instructions not related to asset distribution, such as naming the person you desire to serve as the legal guardian for your minor or disabled children. This provision in a pour-over will works just the same as it would in a traditional will.

d. Other Asset Distribution Vehicles

Wills and trusts are not the only way to distribute your assets. With many types of assets, you may choose to own them with another person, or people, as "joint tenants with right of survivorship."

Asset Distribution Vehicles

Joint Tenants with Right of Survivorship
Each "tenant" is a co-owner of the asset and, when one co-owner dies, the remaining one (or ones) assumes ownership of the asset

Pay-on-death
The beneficiary you name under your policy is paid the policy's benefit amount upon the occasion of your death.

This means that each "tenant" is a co-owner of the asset and, when one co-owner dies, the remaining one (or ones) assumes ownership of the asset without requiring that the asset pass through some sort of estate administration process.

The surviving co-owners simply demonstrate that they are the rightful co-owners (by producing the asset's ownership documents) and that the other co-owner has died (by producing a death certificate.)

This type of ownership offers the benefit of a very direct, inexpensive and orderly transfer when an owner dies. As another benefit, when a tenant dies, his/her creditors lose any rights to make a claim against that asset. However, this type of ownership also has drawbacks. Generally, each owner has equal rights to the property, meaning he/she can take out a loan and pledge the asset as collateral. Also, if a court issues a civil judgment against any one of the co-owners, the asset could be at risk from that judgment creditor, as well.

Furthermore, if you simply re-title your asset to "add" an additional co-owner, you actually have given that person a fraction of the value of the asset. If that person paid you nothing in exchange, then your re-titling the asset is legally a gift for taxation purposes, which could have negative consequences for you and the recipient.

Another asset transfer method is the "pay-on-death" or "transfer-on-death" designation. State laws are steadily increasing the number of assets on which you may place such a designation. These designations work much like the death benefit on your life insurance policy. The beneficiary you name under your policy is paid the policy's benefit amount upon the occasion of your death. To receive the asset, the beneficiary need only prove that you have died, and that he/she is the person named as the beneficiary. Assets like bank accounts or stock accounts have long permitted the creation of these death beneficiary designations.

In recent years, an expanding number of states have created laws that permit owners to create "transfer on death deeds" on their real estate assets, as well. These are special types of deeds that permit the owner to retain ownership during his/her lifetime, then transfer that property directly to the named death beneficiary when you die, without requiring probate. Which types of assets may legally have death beneficiary designations attached to them varies from state to state, depending on each jurisdiction's laws. Depending on where you live, and what type of assets you own, it may be possible to distribute virtually your entire estate using only pay-on-death or transfer-on-death beneficiary designations.

III
Additional Elements of an Estate Plan

As we stated previously, too many people make the mistake of thinking that estate planning pertains only to distributing your assets when you die. An estate plan that addresses only those issues is really an incomplete one; think of it like a car that has only an engine under the hood. Without a transmission, a radiator and alternator and numerous other parts, it won't function the way it really should, and leave you stuck without transportation. Similarly, an estate plan without all the parts you need in it can leave you at risk of suffering unnecessary and expensive court proceedings that may yield results contrary to your preferences and goals.

One of the reasons people make this mistake is because they think that estate planning doesn't matter until they die. This is untrue, and in fact, statistics show that it is getting more and more-untrue every day. That's because one of the most vital roles your estate plan can serve, in addition to asset distribution, is ensuring that the person who makes decisions for you, when you can no longer do so for yourself, is the person you want in that role.

According to the Alzheimer's Association, the number of people with dementia, including those with Alzheimer's disease, will continue growing every year as more and more people live further into their senior years. Did you know that one out of every eight people in the U.S. over the age of 65, or more than 5 million seniors, have Alzheimer's Disease? With medical technology continuing to lengthen the lives of Americans, the likelihood of becoming mentally incapacitated at some point in one's life is higher than it has ever been. As a result, the possibility that you'll need someone with the legal authority to make decisions on your behalf is greater than ever before.

a. Powers of Attorney

One way to do this is through a power of attorney. A power of attorney is a legal document that you sign that names someone to serve as your "attorney in fact," or agent with the power to make a particular set of decisions.

Did You Know?
1 out of 8 people in the US age 65 and over have Alzheimer's Disease. That's more than 5 million seniors.

The scope of those decisions over which your agent has authority is also spelled out in your power of attorney document.

Does this mean that you have to use a licensed attorney as your agent? No. Don't be confused by the name "attorney in fact," which is completely independent of being an "attorney at law." Generally, you can name anyone you want to serve as your agent under the terms of a power of attorney, subject to competency, age and (in some cases) residency restrictions.

In the world of estate planning, there are two general types of powers of attorney: ones that govern finances, and ones that deal with health care decisions. Both types of estate planning powers of attorney typically are durable powers of attorney. In this context, "durable" simply means that the power of attorney document retains its validity even if you become mentally incapacitated. That can be very important since the occasion of your becoming mentally incapacitated may be the exact time you need your power of attorney to function.

A power of attorney for financial matters may, depending on its wording, allow your agent to manage a wide variety of matters. At a minimum, you will need someone to manage your basic monetary issues, like paying your monthly bills, depositing income you receive into your bank accounts, managing properties you own, and so forth. You can choose to make these powers very narrow (perhaps only authorizing your agent to pay bills and deposit checks into your bank account,) or extremely broad. With broad powers, your agent can pay bills, sell assets you own, buy new assets for you, invest your money in stocks or bonds, buy or sell insurance policies, run your small business or fund or defund trusts you've created (as long as the trust agreement permits such transactions.)

A power of attorney for health care matters has a similar range of breadth. A health care power of attorney could, for example, simply permit your agent to authorize your health care providers to administer medicine or conduct diagnostic tests, or be as broad as to allow your agent to decide whether to place you in a nursing home (or other care institution) or to order your health care providers to withhold life-sustaining treatment (including feeding tubes) when you're diagnosed as terminally ill.

As you can see, these powers touch upon a lot of decisions. You may be asking, "What happens if I have no powers of attorney... someone has to make those decisions, right?" This is true and, without a valid power of attorney, the way that is accomplished is through a legal process known as guardianship (or, in some cases, it's called conservatorship.) In a guardianship proceeding, someone who professes to have a recognizable interest in your well-being must go to court, allege that you are no longer capable of making your own decisions, and ask the court to name a person to serve as a guardian over you. The person who goes to court may nominate him/herself to serve as your guardian, or may suggest a third person to the court.

The powers granted to a guardian, much like those of an attorney-in-fact, may be very narrow or very broad, depending on what the court considers appropriate. This means that you could possibly find yourself in a situation where a person, whom you would never select for yourself, has the legal authority to buy and sell your assets, or manage all your financial or bank accounts, or even decide to place you in a nursing home (or other institution,) and select what institution that will be.

b. Living Wills

A living will, unlike a last will and testament, has no relationship to the distribution of your assets. Instead, a living will is a document that contains your instructions to your health care providers regarding what types of treatment you would, or would not, like to receive to prolong your life. Advances in modern medicine now allow health care providers to sustain, and prolong, the lives of their patients under even the most dire of circumstances sometimes. Cases like the Terri Schiavo legal drama in Florida point to doctors' abilities to sustain life, even after severe and massive damage to the brain, if the body is otherwise healthy.
For some patients, the quality of this type of prolonged life is not worth living. They consider dying without such life-extending treatments more dignified and, ultimately, less painful for themselves and their families. A living will gives you the option to instruct health care providers which treatments to administer, and which to withhold, in the event you are diagnosed as terminally ill or in a permanent vegetative state.

c. Other Documents

Depending on the state where you live, there may be additional documents available to you to craft an even more thorough and comprehensive estate plan. We've covered managing your assets after your death, managing you assets if you are alive and mentally incompetent, and managing your personal and health care matters if you are alive and incompetent. For some, another element of planning that is extremely important and extremely personal pertains to a non-financial post-death matter: their funeral and final arrangements.

Many people have intense and passionate objectives for their funeral and final arrangements. Some people convene "dress rehearsals" for their

funerals during their lifetime, to ensure that the service transpires in the way they want. Others, while perhaps not that intense, may still hold strong desires regarding the choice of music, pall bearers or the person to deliver the eulogy. Alternately, you may not have a strong preference regarding the disposition of your body. Whether you desire to be buried, cremated and interred or cremated and your ashes scattered at a favorite location, your estate plan can help you provide your loved ones with these instructions.

In some states, you can execute a legal document that formalizes your final arrangement preferences. Indiana has a document called a funeral planning directive and Wisconsin law has a document called an authorization for final disposition. These are but two examples, and not all states have such legal documents. For those that do, generally the documents permit you to express certain planning preferences regarding your funeral and/or final arrangements, and also to name a person to act as your representative.

Your representative has the authority to work with your funeral or burial service providers and make binding decisions regarding the conduct of those services, and the purchases or other financial transactions necessary to carry out those services. Even if your state does not have a similar legal document, it may still be possible to record your funeral and final arrangement preferences in writing with your estate plan, so that your loved ones will have a written record to follow to ensure that they may honor your wishes by carrying out the funeral and burial as you wanted.

IV
Taxes, Retirement and Government Benefits

a. Taxes and Estate Planning

Yet another essential element to a successful estate plan, in addition to planning for the distribution of your assets, your final arrangements and the possibility of your mental incapacity, is planning to minimize taxes, and to maximize your financial well-being in your retirement years. With the enactment of the federal "fiscal cliff" legislation at the beginning of 2013, the estate tax exclusion amount is set at $5.25 million per person. That means that, if your total taxable estate is less than $5.25 million, your estate owes no federal estate taxes when you die.

The new federal law also permits a spouse to transfer his/her unused estate tax exemption amount to his/her surviving spouse without having to create special trusts to gain the benefit. So, if your spouse dies before you with an estate of $1 million, and properly ports his/her remaining exemption to you, then your estate can be as large as $9.5 million and you would still owe no federal estate taxes.

Even though this transfer of the unused balance to a surviving spouse no longer requires special trust planning, it still necessitates special planning to make it happen. The executor of the estate of the first spouse to die must fill out an estate tax return and submit it to the Internal Revenue Service in which the estate "elects" to port the unused estate tax exemption amount to the surviving spouse. However, even if you don't expect you'll ever accumulate that much wealth, it still pays to plan ahead when it comes to "death" taxes.

Some states have estate and inheritance taxes, and many of those impose a tax liability at lower asset levels than the federal limits. If your estate is large enough to trigger a possible state estate or inheritance tax liability, your attorney may be able to create special provisions in your estate plan that lessen, or even eliminate, the amount of state "death" taxes your estate will owe. The more you plan and the more your planning saves in taxes, the more your estate will have left to pass on to your loved ones.

b. Retirement planning

Your estate plan may also assist you with an exciting, but also uncertainty-filled, life event: retirement. A huge chunk of the wealth accumulated by Americans resides in their retirement accounts, such as IRAs and 401(k)s.

Integrating these accounts with the rest of your estate plan is a wise move if you want to avoid the possible tax impact on your beneficiaries., in the event that you die before you use up the funds in your retirement accounts.

While most inherited property does not trigger a tax liability to the beneficiary, retirements accounts are an exception because these accounts are income on which the government never previously collected income taxes.

While your beneficiaries cannot escape these income taxes, they do have the opportunity to defer paying this tax liability, if you've planned properly. You and your estate planning attorney can construct your retirement accounts such that your beneficiaries can postpone withdrawals from the accounts, thereby delaying the associated tax bill. Additionally, did you know that you can name your trust as the beneficiary of retirement accounts?

Naming your trust as your designated beneficiary is highly complex, and isn't a good idea for many people.
However, if you and your estate planning attorney decide that your circumstances are among that group of people where the reasons in favor of naming your trust outweighs the considerable time and cost of creating such an arrangement, then using your revocable trust as the contingent beneficiary of your retirement accounts may benefit you.

Examples of situations where including your trust as a beneficiary might make sense include retirement plans where no life-expectancy payout option or spousal rollover option exists, or situations where a beneficiary might have creditor or money management issues and a trust's creditor (or spendthrift) protection benefits might help.

If, however, the beneficiary of your retirement accounts is a special-needs child on government benefits, then naming a trust (not the child) is essential. Naming the child directly could result in his/her becoming ineligible (based on his/her wealth) for the continued receipt of essential benefits and services.

Estate planning also involves creating a financial plan for your retirement, too. Should you place your retirement assets in insurance products (such as annuities and certain life insurance policies,) investment products (like stocks and bonds,) other asset types, or a mixture of all of the above?

In addition to obtaining answers to questions like these, it is also important to understand how your retirement investments interact with your estate plan.

For example, if you have a major change in your life, such as divorce, spouse's death, remarriage or birth or death of a child, you may wish to alter the terms of your estate plan. It is imperative that you and your estate planning professionals ensure that these changes are reflected, not only in your will, trust and powers of attorney, but also in your insurance, investment and other assets not controlled by your will or trust.

In a recent U.S. Supreme Court case, a man from Virginia inadvertently left his entire life insurance policy to his ex-wife, to the exclusion of his current wife, because he never updated the death beneficiary forms on his insurance policy to remove the ex-wife and name his current one. The court decided that since the beneficiary forms clearly named the ex-wife, she was the legally proper beneficiary.

c. Medicaid planning

Another aspect of retirement planning is Medicaid planning. For many retirees, Medicaid is essential, especially if the retiree requires nursing home care. To qualify for Medicaid, a person must meet certain asset and income requirements. If a person has too much wealth, or too much income, he/she does not qualify.

If ruled ineligible, he/she must reduce his/her assets and/or income in order to become qualified. This is called the "spend down" process. Following federal legislative changes regarding Medicaid in 2005, qualifying became harder than ever, as the spend-down rules became stricter than ever.

The rules surrounding Medicaid eligibility and spend-down are exceedingly complex but, within these complicated laws and regulations are several rules relating to spend-down that can be used for the retiree's benefit.
Specifically, the rules identify several types of assets that do not count against the Medicaid applicant's total asset amount. By using his/her assets on non-countable expenditures or assets, a retiree may be able to spend down successfully and go from ineligible to eligible.

Also, did you know that you may be able to purchase an annuity that counts as a "non-countable" asset? Depending on your state's Medicaid eligibility rules, and the structure of the annuity, you may be able to use that annuity purchase as part of your spend-down process. Medicaid eligibility rules are very tricky, though, and it is vital to work with a professional who is highly experienced and knowledgeable about Medicaid qualification law and protocol.

Non-countable Expenses/Assets
• prepaid funeral expenses
• paying off your mortgage
• repairing your home
• replacing your automobile
• purchasing a new home

V
Selecting Your Estate Planning Documents

a. The Relative Advantages and Disadvantages of Wills vs. Living Trusts

Each traditional wills and living trusts, have their own individual set of relative advantages and disadvantages. Meshing the benefits and drawbacks of each, along with your planning needs and goals, can help lead to determining what type of estate plan will work for you.

Traditional wills have their share of drawbacks, mostly tied to probate administration. A traditional will must go through probate administration, as we discussed previously. This can be very expensive and very time consuming sometimes. In some cases, probate administration can cost thousands of dollars and years to complete. In some states, even a "relatively swift" probate administration may take six months to run its course.

While probate administrations may vary substantially in terms of cost, almost all probate administration proceedings are public records. That means that anyone who requests a copy of your probate court file can obtain certain information about you, your family and your assets that were disclosed as part of the court record in your probate case.

If you own real estate in multiple states, your estate must undergo a probate administration proceeding in every state where you own property (unless that property is titled in such a way that makes it a non-probate asset, such as a transfer-on-death deed.) If you own a home in Illinois, a cabin in Tennessee and a condo on the beach in Florida, your estate could possibly face three probate proceedings and three times the cost! Furthermore, your will will provide you with no benefits if you become mentally incapacitated. While a living trust may offer a relatively seamless transfer of the management of assets if you become incompetent, your will has no legal effect until you die.

On the other hand, probate administration does have some advantages. The law regarding probate states that the creditors of your estate (the people to whom you owe money when you die,) only have a certain limited period of time to file a claim with your estate asking to be paid. If they wait too long, they cannot receive payment. Opening a probate administration case "starts the clock" on that time period.

Probate administration also can be either unsupervised or supervised (by the court.) You may have specific circumstances regarding your loved ones or your assets for which the direct supervision of a probate judge over the collection and distribution of your assets may be a distinct benefit, not a drawback.

Additionally, wills are generally less expensive to set up, as the legal fees associated with creating them are usually lower than those associated with creating a living trust. Wills are also lower maintenance than trusts. With a will, once you create it, you have to do nothing more to it for it to be ready to be fully functional, until you encounter any life changes that might necessitate changing or replacing your will.

Also, you can name a proposed guardian for your minor or disabled children in your will. Living trusts are generally advantageous in the long term in terms of cost savings. Trusts are more expensive to set up initially but, if properly drafted and funded, will avoid probate, meaning that you will save the cost of a probate proceeding. Since that cost will often exceed the difference between the legal fees of creating a trust (and pour-over will) as opposed to just a traditional will, the overall expense associated with a will will eventually exceed that of a trust.

A fully funded living trust avoids probate in all states. So, if you own real estate in multiple states, your trust can not only save your loved ones time, but also the considerable expense of conducting probate administrations in two or three (or more) states.

Your living trust can also benefit you while you are alive, unlike a will. If you become mentally incapacitated, your living trust will simply transfer trusteeship from you to the successor trustee you named in the trust agreement, meaning that the management of all assets funded into your trust will transition directly from you to the person you designated to take over for you, all without the cost or stress of a legal guardianship proceeding.

Trust settlement (the process of distributing your trust's assets to the named beneficiaries on the occasion of your death,) is generally not a court-monitored proceeding and is therefore private. The process is completed without court involvement in most cases and does not create a public record of you, your family or your assets. Trust settlements are also generally less complex and legally intricate than probate administration proceedings. While your successor trustee may benefit from the assistance of an attorney as he/she goes through the settlement process, a layperson has a better chance of successfully navigating a trust settlement than a probate administration without an attorney. (In fact, some locations require using an attorney to complete a probate administration.)

On the negative side for trusts, they do cost more up-front to get "up to speed." Not only do the legal fees of creating a living trust usually exceed those of a will, living trusts come with another expense at the beginning, which is the price of trust funding. As we've discussed, living trusts must be funded in order to function properly, and that process typically involves filling out several forms to transfer ownership of your assets. That process requires a certain time commitment and also in

volves filing many of those forms with companies, court or government agencies. In many cases, the filing process also comes with filing fees, which can become somewhat expensive if you own a large number of assets that require transfer documents with filing fees.

Relatedly, some people may lack the physical or logistical resources to complete the trust funding paperwork (such as physically traveling to certain offices to sign documents, and so forth.) For these people, using a trust may be excessively complicated, as an unfunded or improperly funded trust may be worse than no trust at all.

Funding certain assets may be complicated in some situations, especially if the asset is financed. Funding a vehicle subject to an auto loan means coordinating with both vehicle titling agency and your lender. Funding a real estate asset subject to a mortgage means coordinating with the property titling agency and your mortgage lender. Some lenders may balk at cooperating due to a lack of understanding of living trusts and a fear of losing their secured interest in the asset.

It is also essential to ensure you work with your lender with regard to a mortgaged property, though, to make sure you do not accidentally trigger a "due on sale" clause that could permit your lender to demand that you pay the entire balance of the loan immediately. Similarly, some jurisdictions may seek to remove the homestead tax exemption from your home if you transfer it into your trust. You should take profound care in completing this funding process and consult with your attorney to ensure you are not jeopardizing any tax exemptions.

Finally, while you cannot designate a guardian for your minor or disabled children, this is only a minor disadvantage, as you can place such a designation in your pour-over will that likely would accompany your living trust.

b. How Do You Choose?

"So how do I know what estate planning documents, and techniques, to choose that are the best plan for me?" That really is, as the old game show would say, the "$64,000 Question," isn't it?

If you set out to get answers to these questions, it is very possible that you will receive as many different responses as there are people you ask. This is particularly true when it comes to very basic estate planning questions like "Do I need a living trust and should I seek to avoid probate?" Many people will espouse to have the answer to this and other questions. There are two things to keep in mind, though, when someone purports to give you an "informed" reply to these questions.

Firstly, beware of anyone whose answer falls into the "one size fits most" category. A concept called the "law of the instrument" says that "if all you have is a hammer, everything looks like a nail."

If someone tells you that "everyone needs a living trust," or "only billionaires need a living trust," take that with a grain of salt because, chances are, they've diagnosed your estate planning needs as a nail precisely because they have a hammer they wish to sell to you, or because the only technique they have perfected, and the only skill in which they are confident of their own competence, is hammering nails.

That's why, as you may have noticed, this report is long on discussion and short on answers. The purpose of this report is not to tell you what you need. What each person needs from his/her estate plan, and the shape his/her plan should take, is in some respects as unique as the individual him/herself. What documents you need, and what provisions those documents should include in them, depend on an enormous list of variables specific to your exact situation.

You might have a very large estate, but the nature of your assets, along with your distribution goals, and your ability to handle trust funding, might indicate that a living trust is not necessary and perhaps unhelpful in your case.

Important Questions

Do you need a living trust or just a traditional will?

Do you need powers of attorney with broad powers or narrow ones?

Should you try to place pay-on-death or transfer-on-death designations on as many of your assets as your state's law will allow or is this an excessively risky technique?

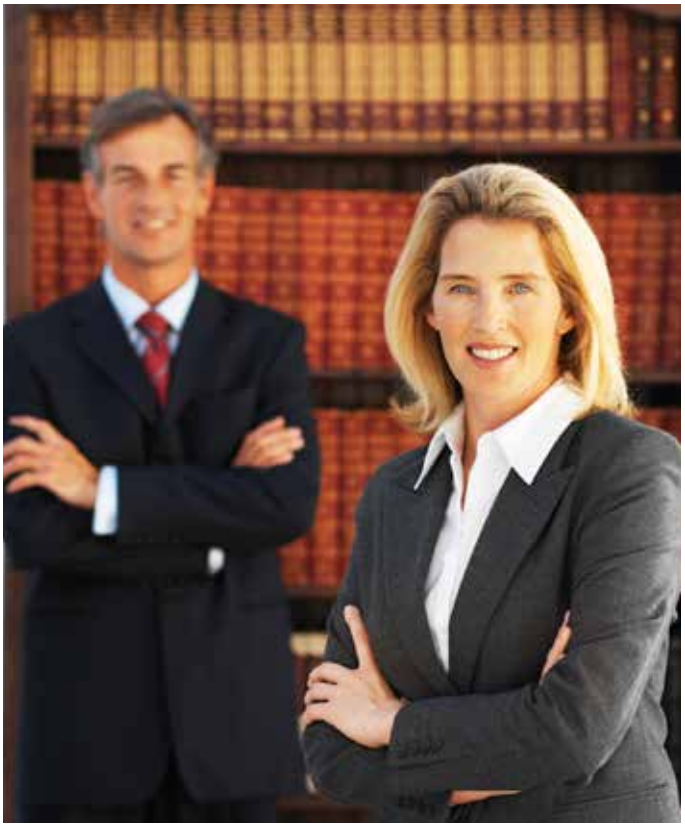
Should I give away all my assets during my lifetime in order to ensure I am eligible for Medicaid, or will this plan fail to qualify me?

Alternately, you might have a very modest estate, but may have certain special needs (such as a child with disabilities who receives government benefits or a loved one with money-management problems,) which might favor creating a living trust as part of your estate plan.

The simple truth is that, without a detailed review of your unique circumstances, and extensive training and education in the law of estate planning, there is no way to answer the question about exactly what type of estate is best for you.

Secondly, and relatedly, to make sure that you get that personalized and customized estate plan designed just for you, be sure to work with someone who is an accomplished professional in the area: namely, a capable attorney who is educated and experienced in estate planning.

The staff at your auto body shop may be brilliant at rebuilding cars, but that does not mean that you should consult them about putting an addition on your house. Similarly, your financial advisor may be a wizard at handling investments, but that does not mean that he/she has the skill, experience or education to allow him to make a truly competent diagnosis about how to meet your estate planning needs in the best manner possible.



What's more, it is not enough just to go out and retain a lawyer. You wouldn't seek out a podiatrist to treat you during your pregnancy, and consulting a general practice physician is probably not the best way to deal with your urology problem. To ensure you receive the best advice possible, and obtain the best possible estate plan for satisfying all of your needs and goals, you should make sure you are working with, not just an attorney, but an attorney who is skilled, educated and experienced in crafting estate planning documents of all types and advising clients on estate planning matters.

Just like an expert golfer knows how to use every club, and is confident in using each one, an attorney skilled and experienced in estate planning has the full range of estate planning documents and techniques in his/her bag, because he/she has spent years working to perfect each one of those options.

If you sought to climb Mount Everest for the first time, you would certainly engage in considerable exercise and training before you started, wouldn't you? But, no matter how much you trained, you would still likely need the aid of a wise Sherpa who knows the lay of the land and can guide you safely to the top. Similarly, while it is important to educate yourself and "do your homework" to prepare yourself for the process of estate planning, your chances of true success increase exponentially if you retain the assistance of a qualified, knowledgeable expert who can guide you along the path and help ensure you arrive safely and confidently at your goal.

The key to estate planning, is not to have all the answers about exactly what documents you need; it is to know where to go to access the resources you need to make that successful plan happen. With something as complex and as important as estate planning, you don't need to know how to write your plan. You just need to know who to call upon to guide you through the process, and to take that first step to put the process in motion.

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