

Estate planning: an overview



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Although we may not want to face it, we will all pass away at some point. Planning ahead clearly has its benefits: it is informative, provides peace of mind, and creates efficiency. You should take the time and effort to prepare yourself and your family for the inevitable. From an estate planning perspective, this involves getting your financial affairs in order, establishing a plan for the ultimate distribution of your assets, and communicating your last wishes.

Why should I take the time to plan?

Planning for the end stages of your life can involve many emotionally taxing considerations. How you would like to be cared for in your time of need, who you would like to have speak on your behalf in the case of your incapacity, and how you would like your assets distributed once you have passed are just a few of the many topics to consider. If you fail to make decisions now while you are alive and well, you risk that those decisions will be made for you by others (e.g., your grieving family members, state intestacy laws, or by a court of law) and that those decisions may or may not align with your wishes.

Questions and considerations

- Whom do I want to make financial or medical decisions for me if I were unable to make them myself? Should more than one individual make these decisions?
- What life-sustaining procedures would I like to receive if I am terminally ill or injured, (e.g., CPR or mechanical ventilation)?
- Would I like a funeral? Do I want to provide specific burial instructions?
- Will my family be financially cared for if I were to pass away?
- Do I have a succession plan in place for the family business?
- What assets do I want to leave to my spouse, my children, and charity?
- How can I better protect the assets that I leave to my family from creditors and potential divorcing spouses?
- How can I minimize taxes while maximizing what I leave to my family and charity?

How do I get started?

Perhaps one of the most important steps in developing your estate plan is assessing what you have in place today. By creating an inventory of your current assets, liabilities, insurance policies, and legal documents, you are better positioned to perform regular reviews of your current net worth and estate plan. This step is essential in organizing, analyzing, and evaluating your current financial condition.

A balance sheet can provide details regarding asset composition (e.g., liquid financial assets, retirement assets, corporate benefit plans, and businesses), asset ownership, and titling. A detailed balance sheet can help uncover planning opportunities. For example, it may identify an area of financial concentration, such as employer stock, a business entity, or real estate position, that may require additional planning considerations to avoid a fire sale by your estate or a liquidity issue. Creating a comprehensive balance sheet is an essential first step in determining the proper estate planning strategies to meet your individual goals.

As an example, upon reviewing your comprehensive balance sheet you may realize that a majority of your assets are owned as joint tenants with rights of survivorship (JTWROS) with your spouse. The benefit of this form of ownership is that upon the death of one of the owners, the assets will pass automatically to the survivor, bypassing the probate process. This is a very common form of ownership and allows uninterrupted control (i.e., access and decision-making authority) over the assets in the event of death. However, you may unintentionally circumvent your estate plan that you have worked so hard to put in place by holding assets as JTWROS. In this scenario, in order to ensure the jointly owned assets pass according to the terms of your estate planning documents, you may wish to consider retitling those assets as tenants in common (TIC), community property (if applicable), or in the name of your RLTL. The advantages and disadvantages of one form of titling over another should be carefully considered.

Gathering information, identifying inconsistencies, and confirming beneficiary designations are only a few of the benefits of creating a comprehensive balance sheet. The balance sheet should provide an inventory of your assets, liabilities, and insurance policies for your executor, estate advisors, and surviving beneficiaries. To further assist, you may also wish to create a list of important contacts (e.g., executor, trustee, attorney, accountant, financial advisor, corporate benefits and insurance benefits), online accounts and passwords (e.g., bank and brokerage), income and expense information (e.g., pensions, annuities, bills to pay and debts to settle) and the location of your estate planning documents.

Having this information organized and easily accessible will greatly reduce the stress placed on your loved ones, at a time when paperwork is likely the least of their concerns.

What documents should I have in place?

An estate plan should address your specific goals. While maximizing the transfer of assets may be the motivation for one individual, for another it may be preserving their privacy. Regardless, the first thing that many people think of when they hear estate planning is death. However, estate planning involves more than simply planning around one's demise.

Estate planning may also involve the efficient transfer of assets during your lifetime, the delegation of authority during a period of incapacity, or the authorization of a specific medical procedure if death is imminent. Estate planning should be comprehensive, yet customized.

For this reason, it is imperative that you periodically meet with your estate planners to review and update the documents that you have put in place. These documents typically include those discussed below. Remember to review your estate planning documents and designated beneficiaries regularly to ensure the individuals you have named continue to be appropriate.

Planning checklist

Category	Document/information
Legal documents	<ul style="list-style-type: none"> – Will – Trusts – Power of Attorney for Property – Power of Attorney for Healthcare – Healthcare directive – Living will – Letter of instruction
Accounts	<ul style="list-style-type: none"> – All bank accounts – All usernames and passwords – Automatic payments – Safe deposit boxes and keys – 401(k) accounts – IRA and Roth IRA accounts – Pension documents – Annuity contracts – Social Security information – Royalties – Brokerage account information – Savings bonds – Stock certificates – Home insurance policies – Car insurance policies – Health insurance policies – Disability insurance policies – Long-term care policies – Life insurance policies
Other documents	<ul style="list-style-type: none"> – Housing, land, cemetery deeds – Mortgage accounts – Proof of loans made – Vehicle title and registration – Business contracts – Marriage license and divorce papers – Additional contact information

Last will and testament

Your last will and testament is a legal document in which you appoint an individual to administer your estate upon your death. The nomenclature varies from jurisdiction to jurisdiction, but this individual is most often referred to as an **executor** or a **personal representative**. In addition to outlining how your estate will be distributed, your will can also designate a guardian for your minor children. Maintaining an up-to-date will is essential to ensure your estate plan remains aligned with your current wishes. Dying without a will is referred to as dying **intestate**. If this occurs, the state will determine who should care for your minor children, and your assets will pass according to your state's intestacy laws. These default state laws may or may not be consistent with your wishes.

For example, New York's intestacy laws require the distribution of a deceased spouse's estate to a surviving spouse and descendants as follows: the first \$50,000 plus one-half of the remainder of the estate to the spouse and the rest to the descendants. This result could be devastating for a New York couple who intended for the estate to pass entirely to the surviving spouse.

Executing a valid will can solve this issue by enabling you to decide how your assets will be distributed. Additionally, your will can include provisions that create certain types of trusts (e.g., credit shelter trust and marital trust) upon your death. Depending on the circumstances, these trusts may provide several benefits such as estate tax reduction, asset protection, and additional control over future distributions. Provisions such as these can be written into your will with respect to assets titled in your individual name that do not pass pursuant to a valid beneficiary designation. As discussed below, assets properly titled in the name of your revocable living trust will be held and administered according to the trust's terms.

Revocable living trust

A revocable living trust (RLT) agreement is a legal document that functions similar to a will. You can appoint an individual to make investment decisions and administer the assets held in your RLT. This individual is referred to as a trustee. You may act as the trustee of your RLT during your lifetime if you wish. A RLT can provide directions on

administration of the trust in the event of your incapacity. These provisions may be used to assign the responsibility for management of trust assets to another individual (i.e., a co-trustee or successor trustee).

Unlike a will that must be administered by a probate court a RLT may enable your estate to avoid the probate process all together, along with the time and fees often associated with probate. Proceedings occurring in probate court, along with any documents filed with probate court, are open to the public. Therefore, a RLT is particularly appealing to those with privacy concerns.

For a RLT to work effectively, the trust must be funded. This means you will need to retitle your assets from your individual name (or JTWRROS, TIC, etc.) to your RLT. All too often, individuals will establish a RLT but fail to retitle assets in the name of the trust. Assets that remain in your individual name will be subject to probate. As such, it is important to ensure that your assets are titled appropriately after you establish your RLT. However, it is worth noting that some assets are difficult, if not impossible to title in the name of a RLT.

Power of attorney of property

A power of attorney for property allows you to name an individual to make financial decisions on your behalf. This individual is referred to as your agent or your **attorney-in-fact**. Your designated agent will be able to pay bills, authorize transactions, and manage your overall financial affairs. In many jurisdictions, you can name more than one individual to act as co-agents on your behalf. You should also consider naming a successor agent to act if your initial agent is unable to act.

A standard power of attorney becomes invalid upon your incapacity. However, you can create durable power of attorney ("DPOA") so that the document remains in force throughout incapacity until your death or until it is revoked. Your agent's powers under your DPOA may become effective as soon as it is signed, as is often the case with married couples that would like the convenience of standing authority, or it may spring into action if you are declared incapacitated by a doctor (or upon some other triggering event).

Overview of applicable documents

Life event	Document	Purpose
Period of incapacity	<ul style="list-style-type: none">– Durable power of attorney (DPOA)– Revocable living trust– Healthcare power of attorney– HIPAA (Health Insurance Portability and Accountability Act) release	<ul style="list-style-type: none">– A DPOA gives someone you designate the power to make financial decisions on your behalf when you are incapacitated– A revocable living trust allows your successor trustee to manage trust assets for you in the event of incapacity– A healthcare power of attorney gives someone you designate the power to make healthcare decisions for you– A HIPAA release allows your medical provider to share your medical information with each designated person making decisions on your behalf
Terminal period	<ul style="list-style-type: none">– Durable power of attorney (DPOA)– Healthcare power of attorney– Living will– DNR (do not resuscitate)	<ul style="list-style-type: none">– A living will gives you the option to choose which life- sustaining measures are or are not acceptable to you (mechanical ventilation, feeding tube, etc.)– A DNR gives you the option not to be resuscitated in the event you are incapacitated.
Death	<ul style="list-style-type: none">– Last will and testament– Revocable living trust– Letter of instruction	<ul style="list-style-type: none">– A will designates the executor of your estate, the guardian of your minor children, if applicable, and how your probate estate is to be administered– Revocable living trusts, in addition to the characteristics of a will, may avoid probate, preserve privacy, and provide protection in the case of incapacity– A letter of instruction allows you to detail which specific items of tangible personal property are going to whom (a level of detail not always covered in the will)

Medical directives

Advance medical directives enable you to plan for your medical treatment in advance of needing it. Through the use of directives, you may authorize specific medical procedures or name another individual to make decisions on your behalf if you are incapable. Advance directives may include a living will, healthcare power of attorney (e.g., healthcare proxy or medical power of attorney) and do not resuscitate (DNR) orders.

Living will (healthcare declaration or healthcare directive)

This document is put in place to specify the type of life-sustaining medical treatment you would or would not like to receive. For example, it may specify whether or not you would like to be placed on a ventilator, have a feeding tube or be resuscitated.

Healthcare power of attorney (medical power of attorney or healthcare proxy)

By establishing a medical power of attorney, individuals name the person they would like to speak on their behalf about making medical decisions in the case of their incapacity. Since a living will typically focuses on life-sustaining measures, a medical power of attorney is necessary to enable your attorney-in-fact to make other types of decisions regarding your care.

Do not resuscitate (DNR) order

This directs medical professionals to refrain from performing cardiopulmonary resuscitation (CPR) in the event of heart failure.

Health Insurance Portability and Accountability Act (HIPAA) release

This form will enable your physician to discuss the details of your medical condition with another individual (i.e., someone not directly involved in your medical treatment) without violating the HIPAA privacy rules that were put in place to protect your health information. Your power of attorney for property or medical directives may incorporate HIPAA provisions within the document, thereby eliminating the need for a separate HIPAA release form.

Other considerations—Review your life insurance

Life insurance is often considered in conjunction with an estate plan, whether it is a single life policy for the purpose of providing for the needs of the surviving spouse and family members or a survivorship policy, often used as a wealth replacement vehicle. Review your life insurance policies to determine whether the insurance amount and type of policy continue to meet your current needs. Policies that were originally purchased as a means of income replacement for a surviving spouse or for the care of a minor child may no longer be necessary if you are now retired or your children are fully grown. Consider whether a survivorship (i.e., second-to-die) life insurance policy that pays a death benefit upon the passing of the surviving spouse is appropriate. A survivorship policy can be used to provide liquidity to pay estate taxes, to replace the assets that were used to pay estate tax or to create additional wealth for your heirs. Reevaluate the purpose for the insurance you currently have in place and review the type, term, and amount of insurance to ensure it is appropriate.

Review the ownership and beneficiary designations of your policies to ensure they are aligned with your overall estate plan. The death benefit of an insurance policy owned in your individual name will be included as part of your estate for purposes of calculating your estate tax. This is true regardless of who actually receives the insurance proceeds (e.g., your estate will not receive the insurance proceeds if your child is the named beneficiary but the death benefit will be included in your estate for estate tax purposes if you are the owner of the policy). However, if your insurance policy is owned by a properly structured irrevocable trust, it should not be included in your estate.

I've created an estate plan; now what?

Once you have met with an attorney and established an estate plan, it is important to preserve the documents you have put in place and communicate your plan with your loved ones. The location of the original documents should be communicated to the appropriate individuals (e.g., attorney-in-fact, executor, or trustee) to prevent future confusion.

Often, the first place many individuals will think to keep their documents is their safe deposit box. However, pay close attention to how your safe deposit box is titled prior to housing your documents there. In certain states if the box is titled in your name alone and you pass away, your executor may need to obtain a court order to access its contents. Therefore, it is important to explore alternative storage options prior to depositing your documents and explore alternative storage options. Your documents should be placed somewhere that is not only safe, but easily accessible and their location should be communicated accordingly.

Conclusion

Estate planning involves more than simply preparing for the inevitable. It involves outlining goals, organizing your financial affairs, ensuring you will be cared for appropriately, planning the distribution of your estate, and communicating your intentions. Although creating an estate plan may seem overwhelming, it is essential to ensuring that you and your family are well prepared. With preparation, peace of mind will follow.

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