LegalShield®

The Complete Guide to Estate Planning

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- Indicates a Question with an Answer
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The Fundamentals of Estate Planning

What is an estate plan?

To understand an estate plan, let's first cover what an estate is. An estate — in this case, your estate — is the collection of all your personal belongings. This includes your home, car, cash, bank accounts, investments, dividends, interest, real estate and other personal property such as antiques, collectibles and family possessions. In essence, absolutely everything you own.

The main purpose of estate planning is to ensure that your assets are passed on in the way you intend while minimizing taxes and other costs. Simply put, to ensure your wishes are carried out. Estate planning also helps avoid conflicts and legal disputes among your living family or heirs and avoid losing your assets to the government.

In addition, an estate plan specifies your healthcare wishes if you cannot make your own decisions. It tells your loved ones and caretakers what to do regarding health care, long-term care, managing your finances and taking care of your children, among other situations.

Basically, an estate plan is a set of legal documents specifying in writing what happens to your estate when you pass away or can no longer care for yourself.

Who needs an estate plan?

Everyone can benefit from an estate plan regardless of wealth or age. If you think you don't have many assets to pass on, you should know that estate planning is essential for individuals and families of all income levels.

Estate planning is not just about distributing your assets after death, it also includes fundamental arrangements for guardianship of minor children, healthcare decisions and management of affairs in the event of incapacity.

The following are some common situations where estate planning is particularly important:

- If you have children and/or grandchildren.
- If you have an elderly parent or family member with special needs.
- If you own property, such as a house, a car, or land.
- If you have assets in bank accounts, investments, or retirement plans.
- If you own a business.
- If you have a blended family.
- If you have family heirlooms —possessions passed down a family for generations.
- If you have a pet(s)

What happens when you don't create an estate plan?

In the unfortunate event that you die without an estate plan, your estate will go through the probate process in which a court decides what happens to your assets.

Understanding Probate

Probate is the legal process by which a court oversees the distribution of your assets after you pass away. Probate aims to ensure that your debts are paid, and your assets are distributed to the appropriate beneficiaries according to your Will.

If you don't have a Will, you're considered to have died intestate, in which case the court uses local intestacy laws to decide who inherits your assets. The laws of intestacy vary from state to state, but typically assets are distributed to surviving family members. However, your estate will go to the government if you don't have family members.

The Probate Process:

1. The court appoints an administrator/executor — to manage the distribution of the deceased person's estate through probate.
2. Identify and inventory the deceased person's assets.
3. Pay off any outstanding debts or taxes owed by the estate.
4. Distribute the remaining assets to the proper beneficiaries.

Probate can be lengthy and costly, as it involves court fees, legal fees and potential estate taxes. Having an estate plan can reduce the time and expense of probate administration. An estate plan won't prevent your estate from going through the probate process, but it will certainly make it go faster and smoother because the court simply follows your wishes.

Not to mention that intestate death can cause mourning family members a lot of anguish and stress. Without clear instructions on distributing assets, family members may disagree and your assets may go to unintended beneficiaries. An estate plan can ease your family members' burden and ensure your wealth stays with them.

Finally, you should know that probate proceedings are public, meaning anyone can access information about the deceased person's assets and beneficiaries.

Not creating an estate plan can lead to additional stress, costs and complications for family members during an already difficult time. It's important to take the time to create an estate plan to ensure that your assets are distributed according to your wishes and to minimize potential conflicts among family members.

Types of Estate Planning Documents

What documents are included in an estate plan?

There are different types of documents that you can create for estate planning. However, the specific documents that you need will vary depending on your unique circumstances and goals. In this guide, we will focus on the five most essential and common documents you need to create to have a comprehensive estate plan.

1. Revocable/Irrevocable Trust

A trust is a legal arrangement in which a trustee manages assets on behalf of the beneficiaries named in the trust. Usually, the person writing the trust (grantor) is the trustee, keeping control of the property of the trust until death. Then, the successor trustee takes charge —the person named by the grantor— and distributes the trust's assets according to the grantor's wishes.

What is the difference between a revocable and irrevocable trust?
The purpose of a trust is that it allows you to transfer ownership of your assets into a trust while still maintaining control over them during your lifetime.

A ***revocable living trust*** can be amended or revoked at any time during your lifetime, providing flexibility. This is the most common type of trust seen in estate planning. On the contrary, an irrevocable trust is set and can't be altered.

Did you know you can name your trust as your life insurance beneficiary?

What are some of the main benefits of creating a trust?

- ***Avoiding probate:*** Assets held in a trust are not subject to probate (as they are already owned by the trust and managed by the trustee appointed by the grantor), which can help avoid delays, costs and potential disputes associated with the probate process.
- ***Privacy:*** Trusts provide privacy for you and your beneficiaries, as they don't need to be made public through probate.
- ***Asset protection:*** Assets held in a trust are generally protected from creditors, which can help provide an additional layer of protection for your assets.

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Types of Estate Planning Documents

2. Last Will/Testament

The last Will, formerly known as the Testament, is a legal document that outlines how your assets will be distributed after your death. It also names a guardian for minor children and an executor to manage your estate.

A Will only goes into effect upon an individual's death, and it must go through the probate process to distribute the estate to its beneficiaries.

What is the difference between a Will and Trust?
Mainly, a Will only takes effect after your death, while a trust can take effect during your lifetime. In addition, a trust offers more flexibility and control over how assets are distributed, while a Will must follow the probate process and is subject to court oversight.

3. Power of Attorney

A power of attorney (POA) is a legal document that grants someone else (called the agent) the legal right to make financial, legal, or health care decisions on your behalf. You get to choose what kind of authority the agent has and for how long. You can also change or cancel the power of attorney if you're still able to make decisions for yourself.

There are various types of POAs, the most common one for estate planning is the ***durable power of attorney***, which ***remains in effect*** when you're unable to make decisions. This type of POA is also considered a Financial POA since it specifies financial decisions.

Can you revoke a Power of Attorney?
Yes, you can revoke a power of attorney at any time as long as you can still make decisions for yourself. The simplest way to do it is to create a new power of attorney document and name a new person; this will revoke all previous POAs.

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Types of Estate Planning Documents

4. Healthcare Power of Attorney

A healthcare power of attorney is a legal document that lets you choose someone to make medical decisions on your behalf if you cannot make them for yourself.

The person you choose, also known as a healthcare proxy or directive, will work with your doctors to ensure you get the care you want. It's important to pick someone you trust and who understands your wishes for medical treatment.

It's hard to think you may become incapacitated at some point in your life, but it's a possibility. You can choose what kind of decisions your healthcare proxy can make and when their authority begins and ends.

5. Living Will

A Living Will, also known as an advance directive, is a legal document that allows you to express your wishes about end-of-life medical treatment if you become unable to communicate them yourself. It typically deals with end-of-life issues, such as what medical treatments you prefer if you're in a terminal condition or a persistent vegetative state.

It includes your preference for CPR, NDR (do not resuscitate), life support, organ donation after death, pain management and other types of care. A Living Will helps ensure your wishes are known and respected by your healthcare providers and family members.

What is the difference between a Healthcare Power of Attorney and a Living Will?
We know, it's a lot of information to digest! The last two documents deal with medical decisions, but they serve different purposes.

A healthcare power of attorney allows your proxy to make medical decisions for you if you cannot do so yourself. This one is more flexible because it allows your proxy to make decisions around treatment and care based on your specific circumstances.

On the other hand, a Living Will is a document that expresses your wishes about end-of-life medical treatment. Typically, it only comes into play when you're in a terminal or persistent vegetative state, guiding your healthcare providers and family members about the kind of care you want in these specific life-sustaining situations.

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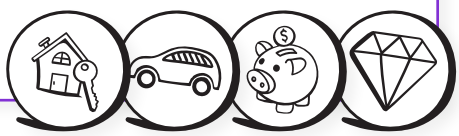
What is the Complete Process of Preparing an Estate Plan?

Step 1: Make a list of all the assets you own

Now that we've covered the fundamentals of estate planning, it's time to get hands-on. The first step is straight forward, create a list of all the assets you own. If some of your assets are shared jointly with your spouse, you may want to make that distinction — we'll explain later why this is important.

Here are common assets and properties that you may have:

- Real estate property
- Vehicles
- Bank accounts
- Retirement accounts: IRAs, 401(k)s, pensions
- Health savings accounts
- Investment and brokerage accounts
- Paper certificates, like a treasury bond
- Business interests
- Life insurance policies
- Digital assets: cryptocurrency and cash reserves (account emails and passwords)
- High-value assets (art, jewelry, rare coins)
- Family heirlooms or sentimental personal property (grandmother's wedding ring, collection of trading cards, etc.)
- Liabilities and debts explain later why this is important.



Gather paperwork and documentation to support ownership

Once you have your list, find the deeds and titles that verify ownership of your assets. This is particularly necessary if you're opening a trust. For your digital assets, keep handy your online account emails and passwords.

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What is the Complete Process of Preparing an Estate Plan?

Step 2: Create a Last Will/Testament

1. Decide which assets to include in your Will
If you're considering both a Will and a trust, then determining which assets should be held in each depends on the type of assets you have, their value and your specific goals for creating the estate plan.

Since this question is linked to your specific situation and goals, **we highly recommend working with an experienced estate planning lawyer** to help you decide which assets should be held in a trust and which should be distributed through a Will.

Having said that, some assets that may be right for a Will include:

- Cash and bank accounts
- Personal property that does not have significant value or sentimental importance
- Assets with named beneficiaries, such as life insurance policies, retirement accounts, or annuities.

2. Choose your estate executor
The executor of your estate is **the person that will manage your estate through the probate process**, carrying out the instructions in your Will. They deal with unpaid bills, taxes and anything else that needs handling. The executor is also in charge of distributing your estate to the people you left it to.

With that in mind, you should choose someone trustworthy and capable of managing your estate. People usually choose their spouse or an adult child as their executor, but you can choose whomever you want. Just keep in mind that the person you pick may decline, so choosing one or two backup people is recommended.

3. Choose your beneficiaries
Your beneficiaries are **the people who will inherit your assets after your death**. They can be your family, friends, relatives and even charities or businesses. You should think carefully about whom you want to include as beneficiaries and how you want your assets to be distributed among them.

You may also include backup beneficiaries in your Will in case your primary choices have predeceased you. Keep in mind that your beneficiary can also be your executor.

4. Choose a guardian for minor children
We're aware that this is a delicate topic, but it's better to be prepared than leave your children in the hands of fate. If you have minor children, making a Will can help you and your family have a plan for the worst-case scenario if you pass away before your kids grow up.

Of course, you already know you should pick someone you trust to be the legal guardian and care for your children. It's a good idea to first talk to the person you want to nominate since being a legal guardian is a huge responsibility. It's recommended to name one or two backup guardians just in case the first person can't do it.

5. Consult with a lawyer

It's essential to work with a qualified estate planning lawyer to ensure that your Will is legally valid and accurately reflects your wishes. A lawyer can also guide you on tax implications and other estate planning issues.

The estate planning process can be overwhelming and make you feel uncertain about your preferences. This is why we encourage working with a lawyer that has experience with estate planning, they can guide you through the best options that meet your needs.

6. Draft it

If you decide to work with a lawyer, they will help you draft your Will. If you need assistance getting started, there are also many templates you can find online to help you prepare it. Remember to include all of the necessary provisions and instructions. Finally, you need to sign your Will in the presence of witnesses, who must also sign the document.

Notes:

What is the Complete Process of Preparing an Estate Plan?

Step 3: Create a Living Trust

1. Decide which assets to include in the Trust
As mentioned earlier, we recommend consulting an estate planning lawyer to determine which assets belong in a trust versus a Will, based on your specific situation and goals. However, the following are examples of assets that are commonly included in a trust to avoid probate and ensure a smooth transfer of ownership to beneficiaries.

- **Real estate:** Property, such as a home or vacation home
- **Investment accounts:** Securities, mutual funds and other investment accounts
- **Business interests:** Shares of a business or ownership interests
- **Personal property:** Valuable personal property, such as jewelry, art, or antiques

2. Gather your paperwork
To transfer your assets from your name to the ownership of a trust, you need the titles and deeds of your properties, bank account statements, stock certificates, etc. Having all the paperwork ready for when you start the process is critical.

3. Choose your beneficiaries
This is the same process as choosing your beneficiaries for your Will.

4. Choose a successor trustee
Your successor trustee is the one to oversee the payment of your debts and the distribution of your assets after you die. This is also the situation if you become incapacitated. Your beneficiaries can be named your successor trustee as well.

Remember to choose someone you trust. A conversation with them may be a good idea to communicate your wishes and to ensure they are willing and able to accept the responsibility.

5. Choose someone to manage property for minor children
If you named your children as beneficiaries and they're still underage when it's time to inherit, you have the option to name someone to manage properties for them. This will take effect until they become adults or until they are at a specific age you choose.

6. Consult a lawyer
To create a trust, you must follow the legal rules and requirements of the state where the trust is being established. Working with a lawyer who is familiar with the laws in the state can ensure that the trust document is comprehensive, legally sound and complies with state laws. Also, a lawyer can guide you on tax implications and other estate planning issues.

7. Prepare the document
This document includes important details like the names of the trustee and beneficiaries, the purpose of the trust and instructions for managing and sharing assets. You want to make sure everything is clear and easy to understand so there won't be any problems down the road.

8. Fund your trust
Funding your trust is the process of transferring assets from your name to the ownership of the trust. This involves re-titling all the assets to the name of the trust and assigning ownership rights (if this is the case). This step is a requirement because a living trust becomes valid only after you, the grantor, funds it by transferring assets into it.

9. Sign and notarize
Finally, sign your trust. Whether a trust needs to be notarized depends on the requirements of the state where the trust is established. Some states require notarizing the trust document, while others don't.

Notes:

What is the Complete Process of Preparing an Estate Plan?

Step 4: Design a Durable Power of Attorney

The first step to consider when designing a durable power of attorney is to describe the situations you want it to cover. These can be related to financial matters, real estate transactions, legal matters and business affairs. Remember that the Healthcare POA is a separate document that we will discuss next.

1. Choose an agent
Your agent is the person who will have the legal authority to make decisions on your behalf. You should choose someone trustworthy and capable of managing your affairs. You may want to name a successor agent to take over in the event your primary agent is unavailable to carry out their duties. You should also know that some states allow multiple agents.

2. Determine the scope of the Power of Attorney
This means deciding what specific powers you want to grant your agent in the legal document. For example, you may want your agent to have broad powers to manage all your financial and legal affairs, or you may want to limit the agent's powers to only certain specific actions.

Keep in mind that this is a durable power of attorney, which means that (in contrast to a limited power of attorney) the power your agent receives will remain in effect in case you become incapacitated.

3. Consult with a lawyer
In addition to ensuring that your durable power of attorney is legally valid, a lawyer can also guide specific powers to grant and how to tailor the document to your needs. They can help you assess the potential risks and benefits of granting certain powers to your agent and how a power of attorney will affect your overall estate plan and financial situation.

4. Draft and sign the document
Your lawyer will help you draft the durable power of attorney, including all the necessary provisions and instructions. You will need to sign the document in the presence of witnesses, who will also sign the document.

5. Notify your agent
Once the document is complete, you should notify your agent of their appointment and provide them with a copy.

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What is the Complete Process of Preparing an Estate Plan?

Step 5: Create a healthcare proxy

1. Choose a healthcare proxy
This is the same process as choosing your agent for your durable POA. This agent is also known as a healthcare proxy.

2. Discuss your wishes with your agent
This is a difficult conversation but an important one. When you discuss your wishes with your healthcare proxy, you can guide the types of medical treatments you would like to receive or not in certain situations. For example, you may wish to avoid aggressive treatment at the end of your life or specify the types of pain management you prefer.

It can also help ensure that your proxy understands your values and preferences, which can help them make more informed decisions for you. Another thing to consider, you can help alleviate any potential guilt or uncertainty they may feel if they need to make difficult decisions on your behalf.

3. Consult with a lawyer
In addition to ensuring that your Healthcare POA is legally valid, a lawyer can also guide specific powers to grant and how to tailor the document to your needs.

4. Draft the document
Your lawyer will help you draft the Healthcare POA, including all the necessary provisions and instructions. You will need to sign the document in the presence of witnesses, who will also sign the document.

5. Notify your agent and healthcare providers
In addition to notifying your healthcare proxy, it's recommended to notify your healthcare providers because it ensures that they are aware of who has the legal authority to make medical decisions on your behalf if you are unable to do so.

Once the document is complete, you should provide a copy to your healthcare proxy and providers so that they know your wishes.

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What is the Complete Process of Preparing an Estate Plan?

Step 6: Design a Living Will

We've now reached the final document that you need to prepare for your estate planning. We know it's been a long and especially challenging journey, as the topics discussed are delicate. This last one is the most sensitive, so bear with us.

A Living Will is necessary for describing your wishes for end-of-life medical care. This may include instructions for when to prolong your life through life support devices or other life-sustaining treatments. There are specific circumstances under which a Living Will is indispensable; these are:

- You're entering your elderly years
- You're already sick or are receiving treatment for a health condition
- You have a terminal illness

Keep in mind that creating this document avoids burdening your families as much as possible.

When you start designing a Living Will, it's necessary to consider your values and preferences regarding end-of-life care. Consider what quality of life means to you, what medical interventions you would or would not want in certain situations and what your priorities are for your healthcare.

1. Use a Living Will form
Finding a Living Will form is the best option to start this process since it outlines considerations you may not think of otherwise. You can use your state's form if there's one, state laws usually guide what information Living Wills must contain.

2. Fill out the form to describe your wishes
You should tailor the contents of your Living Will to your wishes. Here are some types of care that are commonly covered in a Living Will form:

- **Life-sustaining medical care:** This includes interventions such as mechanical ventilation, tube feeding, CPR and artificial hydration. This document specifies if you would like these interventions or not.
- **Hospice care and palliative care:** Hospice care is designed to provide comfort and support to individuals nearing the end of their life. Palliative care is focused on relieving symptoms and improving the quality of life for individuals with serious illnesses. The form specifies whether you would like to receive hospice or palliative care.
- **Organ and tissue donation:** You specify in the document whether or not you would like to donate your organs and tissues after you pass away. This can include donations for transplants, research, or other medical purposes.

Discuss the Living Will with your healthcare providers: Once the document is complete, you should discuss it with your healthcare providers so that they are aware of your wishes.

3. Notify your healthcare providers
In addition to notifying your healthcare proxy, it's recommended to notify your healthcare providers to ensure that they are aware of who has the legal authority to make medical decisions on your behalf.

Once the document is complete, you should provide a copy to your healthcare proxy and providers so that they know your wishes.

4. Share it with your loved ones
It's also important to share the Living Will with your loved ones and your designated healthcare proxy so that they're aware of your wishes and can advocate for you if necessary.

5. Sign and notarize
For a Living Will, it's required that two witnesses sign it. Your state will determine who is eligible to be a witness and some states may prohibit witnesses that are immediate family or your proxy. After it's been signed, it should be notarized – which may cost a small notary fee.

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What is the Complete Process of Preparing an Estate Plan?

Step 7: Store All Your Documents in a Safe Place

Great work, you've made it to the end of the estate planning process. Once your five documents are complete, it's essential to store them in a safe place and make sure that your executor, agent and healthcare proxy know where to find them.

Additional Variables to Consider

When should you revise and update your Estate Plan?

You might think that you can safely forget about your Will once your estate planning is in place, but life changes. You should review and update all your documents periodically to ensure it accurately reflects your wishes. It's generally recommended to take a look at your end-of-life plans every three to five years or whenever there are significant changes in your life circumstances.

During the review, you can assess whether any changes are needed and make updates or revisions as necessary to ensure that your estate plan reflects your current wishes and objectives.

You may need to update your documents —especially your Will and Trust— if you have any of the following significant life changes:

- Moving to a different state
- Marriage/divorce
- Birth or adoption of a child
- Empty nest
- Change in your career
- Death of a beneficiary
- Retirement
- Starting a business
- Significant change in your financial situation

Changes in the law can also impact the effectiveness of your estate plan, so it's important to review your plan periodically to ensure that it remains up-to-date and compliant with any new legal requirements.

Working with a qualified estate planning lawyer can help ensure that your estate plan is kept up-to-date, legally compliant and designed to meet your specific needs and objectives.

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Assessing the Value of Professional Help

As you reach the end of this guide, consider the significant role a qualified estate planning lawyer plays in helping you establish a solid foundation to protect your loved ones and honor your wishes.

Estate planning involves complex legal processes and a lawyer with expertise in this area can provide valuable guidance and support.

The following are the key benefits of working with a lawyer for estate planning:

- Ensures the legal validity of your documents (Will, trusts, POAs) and accurate reflection of your wishes.
- Provides expertise and guidance in the overwhelming estate planning process.
- Assists in understanding tax implications related to Wills, trusts and POAs.
- Helps create a comprehensive legal trust document that complies with state laws.
- Ensures the legal validity of your durable power of attorney and tailors it to your specific needs.
- Offers guidance on granting specific powers to your agent and assessing risks and benefits.
- Helps evaluate the impact of a power of attorney on your overall estate plan and financial situation.

How can LegalShield Assist You in Creating an Estate Plan?

- LegalShield offers members access to a dedicated provider law firm to help them with a wide range of personal legal matters, including estate planning preparation.
- Your lawyer can advise you on executing Powers of Attorney, from writing the language that specifies powers and duties to defining what you mean by incapacitated to make your own decisions.
- The preparation of a Durable Power of Attorney or Financial Power of Attorney is covered for the person that is granting power and who is at least 18 years old.
- Additionally, your provider lawyer can assist in the preparation of a Standard Will, Trust, Physician's Directive and Living Will with annual reviews and updates.