

# ||| Fundamentals of Estate Planning



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# Purposes of an Estate Plan

1. Address potential death or incapacity of the estate owner.
2. Define the party(ies) that can act on the estate holder's behalf upon death or incapacity, and ensure they are given legally-binding rights to act in such a manner.
3. Dictate guardianship and financial support for affected children.
4. Define the transfer of the estate's assets and payment of the estate's liabilities.
5. Limit or avoid the impacts of the probate process.
6. Minimize estate taxation.
7. Ensure the medical treatment wishes of the estate owner are well-defined.

# Terms and Definitions

1. Estate: the total of all assets owned minus all the debts owed. An estate can be applicable for either a living person or deceased person.
2. Will: There are four main types of wills: simple, testamentary trust, joint, and living wills. Each type is meant for different situations, satisfying varying individual needs and circumstances.
  - A. Simple Will: the most common type of will, which outlines how the estate assets are to be handled and to whom they should be distributed. Such a will can also designate a guardian for the deceased party's children.
  - B. Testamentary Trust Will: this form of a will places estate assets into a trust for the beneficiaries to access after the death of the estate owner. These pre-arranged trusts are intended to be set up by the named trustee, who will manage the trust assets following the death of the estate owner. Testamentary trusts are useful when beneficiaries are still minors or have other limitations that require oversight in handling their inheritance.
  - C. Living Will (Health Care Directive): this document defines the medical care preferences of the named party. should they become incapable of making such decisions. Living wills typically specify which medical treatments are acceptable or not and may have an associated healthcare proxy or healthcare power of attorney to name a 3<sup>rd</sup>-party to make medical decisions for you.
3. Trust: a fiduciary relationship that allows a trustee, who is a third party, to manage assets on behalf of the beneficiaries of the trust. Trusts are often used to ensure appropriate management of the trust's assets in the case where the beneficiary is unable to do so, to reduce estate taxes, and to avoid probate. More info on trusts is covered in the Advanced Estate Planning Topics education offering.

# Terms and Definitions (continued)

4. Beneficiary: a recipient of the deceased's assets.
  - A. Primary beneficiary: those who are identified as the recipient of the property/assets.
  - B. Secondary beneficiary: those named to receive the property/assets if the primary beneficiary cannot.
  - C. Residuary beneficiary: those named to receive estate holdings defined in a will that are not specifically left to other beneficiaries. Every will should name a primary and secondary residuary beneficiary.
5. Probate: the process by which a court oversees the execution of the terms of the will, including confirmation of assets and debts, distribution of property, guardianship of children, and payment of estate taxes as applicable.
6. Executor: the person or persons named in a Will with legal authority to supervise the execution of the Will's terms and act on behalf of the Estate. The executor's tasks include probate coordination; handling the deceased's bank, insurance and investment accounts; paying any outstanding debts of the estate; and distributing the estate's assets to the stated beneficiaries.
6. Personal Guardian: individual named to become legally responsible for the care of a minor child per a will.
7. Trustee: an individual person or organization given the authority to administer property in a Trust. The Trustee has a legal obligation to administer the Trust solely for the purposes specified in the Trust.
8. Power of Attorney: names a person who can act on your behalf; this person is called your "agent" or "attorney-in-fact." There are several forms of POAs – an estate attorney should be consulted to define the best option(s) for your specific situation.

# Interesting Facts

1. 77% of Americans believe Estate Planning is important, regardless of wealth.
2. 74% of American adults say Estate Planning is a confusing topic. (WealthCounsel).
3. The likelihood of disability is significantly greater than death (4:1) for a 30-year-old.

4. Percentage of Americans with a Will:

Age Group	Percentage
18 to 29	20%
30 to 49	36%
50 to 64	53%
64 and older	76%

5. Overall, 46% of American adults have a Will.
6. 35% of Americans say they were exposed to a family conflict due to lack of an estate plan or Will, directly or indirectly.
7. It IS legal to draft your own Will. There are requirements regarding witnesses and signatures. That said, we recommend the use of an estate attorney.
8. 74% of working-age Americans plan to leave an inheritance to their children. (HSBC)
9. 65% of American adults aged 55+ plan to allocate some of their money to beneficiaries before they die.



# Interesting Facts (continued)

10. 57% of college graduates have a Will.
11. 58% of Americans without a Will don't have a plan to establish one.
12. 30% of Americans don't know if their parents have a Will, and 40% of Americans don't know anything about their parent's Will.
13. Only 18% of Americans aged 55+ have a Will, Durable Power of Attorney and Health Care Directive.
14. Probate costs can total up to 10% of an estate's value and could delay estate settlement by a year or longer. (LegalZoom)
15. Top reasons families fail in transferring their wealth:
  - A. 60% - Lack of communication and trust
  - B. 25% - Inadequate preparation
  - C. 15% - Other reasons (lack of mission, taxes, legal, etc.)

Source: Roy Williams and Vic Preisser, 2003. Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values. San Francisco, Ca.: Robert D. Reed Publishers, pp. 36–48.

16. 70% of wealthy families lose their wealth within 2 generations; 90% within 3 generations.

# The Estate Planning Team

1. Estate Attorney: the key party for crafting all legal documents related to the Estate Plan. Although some documents can be drafted w/o an attorney, I recommend the use of an attorney for all but the simplest Estate Document creation.
2. Financial Planner: often, a financial planner will be the coordinator of the process, as they will have visibility to the client's financial status and details, and will often incorporate insurance, estate and tax planning into their financial planning service.
3. Insurance Agent: life, disability and long-term care insurance may be key elements of a financial plan, requiring guidance and expertise from a licensed agent.
4. Tax Advisor / Accountant: based on visibility to the client's tax returns and financial documents, the accountant may be consulted for guidance.
5. Trust and Wealth Management Specialist: certain clients may desire the services of a trust and wealth management specialist to help establish and administer trusts.

# Elements of an Estate Plan

1. Key Information File (Account info, Property Summary, Contacts, etc.)
2. Will
3. Trusts
4. Power of Attorney
5. Health Care Directive
6. Health Care Power of Attorney (proxy)

# Key Factors to Consider

1. Establishing Executors, Proxies, Trustees and Beneficiaries
2. Custody of Children
3. Asset Distribution
4. Administration of Trusts
5. Probate
6. Life, Disability and Long-term Care Insurance
7. Estate Taxation

# Suggestions – Single Person

1. If <50 years old, the likelihood of incapacity/disability is greater than death, so prioritize preparation for incapacity/disability.
2. Define a set of trusted parties that can act on your behalf as health care proxy, POA, executor, trustee and guardian (if you have children).
3. Establish your Estate Plan documents: Simple (or Testamentary) Will, Living Will, POA and Health Care POA. Share the location of these files with your intended POA and executor; ideally, you should review any key details related to these lists with your POA and executor.
4. Ensure retirement accounts and life insurance policies have accurate beneficiary information.
5. Create a Key Information File including Key Accounts (insurance, banking, investment, social media, credit card, etc). Share the location of this file with your intended POA and executor; you should review any key details related to this file with your POA and executor.
6. Consider creation of a TOD checking account or life insurance policy naming your executor as the beneficiary, if funds will be needed to pay bills while estate is being settled.
7. Review this plan annually.

# Suggestions – Married Couple

1. Ensure retirement accounts and life insurance policies have accurate beneficiary information.
2. Define a set of trusted parties that can act on your behalf as health care proxy, POA, executor, trustee and guardian (if you have children). Define a primary and secondary party for each of these roles.
3. Establish your Estate Plan documents: Simple (or Testamentary) Will, Living Will, POA and Health Care POA. Share the location of these files with your intended POA and executor; ideally, you should review any key details related to these lists with your POA and executor.
4. Create a Key Information File including Key Accounts (insurance, banking, investment, social media, credit card, etc). Share the location of this file with your intended POA and executor; you should review any key details related to this file with your POA and executor.
5. Consider creation of a TOD checking account or life insurance policy naming your executor as the beneficiary, if funds will be needed to pay bills (mortgage, taxes, tuition, etc.) while estate is being settled.

# Suggestions – Married Couple (cont.)

6. Define your family's projected financial income and expenses through retirement (mortgage, living expenses, education expenses, childcare, etc.). This process is explained in the Life Insurance training module and research paper.
7. If <50 years old, the likelihood of incapacity/disability is greater than death, so prioritize preparation for incapacity/disability. Review disability coverage via Employer.
8. Establish life and disability insurance coverage on BOTH parties to cover projected expenses in the case either party is disabled or dies. In most cases, the amount of employer-paid life insurance is not sufficient.
9. Review your Estate Plan annually or upon any significant life event.

# Ongoing Estate Plan Management

1. Ensure that the key participants in your estate plan are aware of their roles and agree to fulfill their roles.
2. Ensure that the key participants know how to access the documents and data that will be required to fulfill their roles. Update them when documents are updated or relocated.
3. Certain events will trigger a review and/or update of your Estate Plan.
  - A. Marriage
  - B. Death or Disability of a Spouse, Beneficiary, Executor, Trustee, or named POA.
  - C. Birth/Adoption/Marriage of a Child
  - D. Grandchildren
  - E. Accumulation of significant wealth (possibly via inheritance)
  - F. Starting a new business
  - G. Divorce
4. As part of an annual financial plan review, include a review of your Estate Plan and Insurance Coverage.



# Resources

1. [www.investopedia.com](https://www.investopedia.com) – this is a great resource for financial, tax and estate related topics.
2. <https://www.schwab.com/estate-planning/estate-planning-checklist>
3. <https://www.fidelity.com/life-events/estate-planning/overview>
4. [www.nolo.com](https://www.nolo.com)
5. <https://www.legalzoom.com>
6. <https://trustandwill.com/>

# Questions?