



LIVING & TRUST
&
ESTATE PLANNING

The FindLaw Guide to Estate Planning

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What will happen to your assets after you pass away? Proper estate planning will ensure that your possessions will end up where they belong, and ease the burden of your passing on your loved ones.

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Introduction

Estate planning is one of the most important things people can do before they die to reduce the stress of their passing on their loved ones. Proper estate planning can provide care for any minor children, the disposition of important assets like cash and real estate, and avoid loss of funds to estate tax or legal fees. Yet many people shy away from estate planning because it can seem an overwhelming task. This guide contains some information to get you oriented, and points you to the right resources to get you started.

How Much Do I Need to Plan?

There is no one-size-fits-all approach to estate planning. How complicated your plan needs to be depends on a [number of factors](#), many of which will change over time.

Fortunately, you can always amend, add, or delete features as your needs dictate. Here's what to consider before you begin estate planning in order to find the plan that's right for you:

- **Do you have any children or other family members who cannot provide for themselves?** If so, you will need to choose someone to take care of them, and arrange for their income should you become incapacitated.
- **Do you own any real estate?** If so, you should make sure that the correct person inherits the land or sells the land and distributes the proceeds.
- **What kind of financial accounts do you have?** Everything from your checking to your retirement account must be accounted for and distributed to the correct person with minimal tax.
- **Do you have any significant personal property?** Precious jewelry, automobiles, and other possessions can make lovely gifts, but it's up to you to make sure they get to the right person.
- **What should be done with your remains?** This question might be difficult to consider: Should your body be buried, cremated, or [donated to science](#)? How will you pay for your [funeral](#)? Leaving clear instructions will save your loved ones the trouble of determining your wishes after you've passed.
- **Are you not married to your significant other?** Although couples who are not formally wedded may feel as if they are married, they need to plan very carefully since they will not get any of the spousal privileges that formally married couples have.
- **How should your medical decisions be made?** Estate planning can also help if you are incapacitated. You can decide certain medical decisions before such a situation occurs, and designate a trusted family member to make decisions on your behalf.



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Tools for Estate Planning

There are a number of tools to ensure your desires are met after you pass away:

- **Wills:** Wills are the most well-known devices for explaining your last wishes. In a [will](#), you can choose someone to manage your affairs, called an [executor](#), designate someone to care for any children, and instruct your family how to dispose of your assets.
- **Trusts:** Trusts are financial accounts that are managed by someone to whom they do not belong. They are particularly useful if you want to make sure a minor has enough income to reach adulthood safely. There are many [types of trusts](#), so be sure to consult with an attorney or financial professional before choosing one.
- **Powers of Attorney:** These documents designate a loved one to make medical or financial decisions on your behalf.
- **Living Wills:** Not technically a will, this [document](#) designates a medical power of attorney and leaves instructions concerning your medical care.
- **Life Insurance:** This can provide some [immediate cash](#) upon your death to your family. It can be useful in covering short term expenses, and any remainder may be added to your estate.
- **Beneficiary Designations & Joint Tenancy:** Some financial accounts allow you to designate a beneficiary to receive funds immediately upon your death. Additionally, putting a spouse or other family on your deed or bank account will allow them to take control of the property without the courts or attorneys' involvement.

What Happens after Death

After you die, your family is left to dispose of your possessions. They must work with a particular division of the state courts, called the [probate system](#), in order to accomplish this. The probate court judge will begin by determining what

property is left after you die, which is called the "estate." Some property might be excluded from the estate, including any money already in trusts, and property you owned jointly with someone else. The money in the trusts will go to the beneficiary (who owns the account) or the trustee (who manages the account) and property owned jointly would go directly to the co-owners.

If you left a will, the court would first determine if the will is valid. Then, the court will work with the executor to [wind down](#) your affairs and dispose of your property according to the will.

If you died intestate, or without a will, the court will look to your state's intestacy statutes to determine how to divide your property. These vary slightly between states, but their [general provisions](#) are fairly consistent.

STOP

Should I Talk to an Attorney?

A few people, especially young people with no children and few assets, could probably draft their own wills using one of many [online forms](#). However, there are many small requirements for a valid will, and several components to estate planning generally. An effective lawyer can help educate you on your state's laws and create a will, trusts, and other important documents while minimizing tax liability. You can locate an estate planning lawyer now by visiting [Findlaw.com](#) and choosing among several quality-assured lawyers in your area.

For More Information

Regarding estate planning issues, please visit our website at <http://estate.findlaw.com>.

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