Do I Need Estate Planning?

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Everyone needs an estate plan, no matter the size of the estate. Not only does this plan help carry out your wishes after your passing; it benefits you while you're living. A good estate plan includes a plan to manage your financial affairs and health care decisions in the event that you cannot. It can prove invaluable in easing the administrative burden for your family and friends during a time of emotional distress.

With no formal estate plan, your survivors may not be able to access your assets until a personal administrator or guardian is appointed and the distribution plan is approved by the probate court. This process can last more than a year in some states.

Conversely, an estate plan benefits you, your family, and friends by allowing you to:

- Quickly settle issues related to your estate, therefore minimizing expenses
- Provide financial support for your friends or family members, such as a relative with special needs
- Avoid possible disruption of your business during the time of transition
- Direct money to your favorite charity or religious organization
- Reduce taxes owed after your death

It is advisable to consult with a qualified attorney about your specific situation and unique goals. Estate planning, however, does not have to be complicated or expensive.

Estate planning for parents

Estate planning is essential for parents. This is especially true if you are not currently married to your children's mother or father. Your children's surviving parent will generally be appointed guardian. Estate planning will provide the flexibility to name someone else to oversee the money that you leave your children. If you have remarried, an estate plan can provide support for your surviving spouse, as well as protect your children's potential inheritance should your surviving spouse remarry.

Your children's inherited assets must be managed for them until they reach their legal age. In some states, the court may authorize a minor's guardian to open a "blocked account" or guardian account at a bank or a financial institution. These types of accounts are very restrictive, and withdrawals are not allowed during the child's minority, except by court order. Alternatively, a custodial account may be established under a state's Uniform Transfers to Minors Act (UTMA). In most states, an UTMA account will terminate when the child reaches 18 or 21. If you believe your children would not be ready to handle large sums of money at young ages, talk to your attorney about other alternatives, such as creating a trust. You can instruct your trustee to take into account your children's financial maturity or

special needs when making distribution decisions.

Elements of an estate plan
A plan generally comprises three elements:

1. The **last will and testament** is a blueprint that directs who will receive your property upon your death and the specific circumstances in which they will receive it. Your will only governs property that flows through probate. For example, financial assets with beneficiaries other than your estate, jointly owned property with rights of survivorship, or assets in a trust funded during life are not distributed under the terms of your will.
2. The **durable power of attorney (POA)** authorizes someone, often called an agent, to handle your financial affairs if you were to become incapacitated. Without a durable POA, your family members would have to institute legal proceedings and request a probate court to appoint a guardian to carry out these responsibilities.
3. A **trust** is a formal arrangement allowing the trustee to hold assets. The trustee distributes assets to your beneficiaries at the time that you direct in the trust document. There are two basic types of trusts: a living trust and a testamentary trust. A living trust is funded during your lifetime and may receive your estate assets after probate is complete. It is often called a revocable trust because you retain the right to make changes or remove property during your lifetime. A testamentary trust is created after your passing and your will is approved by the probate courts.

Key terms
An understanding of key terms commonly used in estate planning will help as you create your plan. Key terms include:

Probate. This term refers to the legal process of administering a will or distributing property. Depending on the size of your estate and your state's laws, the probate process can be either simple or complex. You may be able to avoid some legal complexities by minimizing how much of your assets flow through the probate process. By funding trusts during your life, naming beneficiaries on insurance or financial accounts, and registering jointly-owned property to include rights of survivorship, you may be able to avoid probate, if doing so meets your estate planning goals.

Executor. Also known as the administrator, your executor follows the instructions you outlined in your will, ensuring your wishes are carried out. If you do not leave a will, the courts will appoint an executor or administrator over your estate.

Intestate. If a person dies without a will, the probate property will be distributed in accordance with state law. This is called an intestate. This could mean that the people most important to you, or those most in need, will not receive what you would have wished.

Simplified probate procedure. Almost every state offers small estates an alternative to the formal probate process. The requirements and rules differ from

state to state, but if the estate qualifies, simplified probate procedures allow a speedy distribution of assets to the heirs without waiting for court approval.

Letter of instruction. This document provides informal guidance to your executor and can add important clarification about your wishes. It may include information about your funeral arrangements, wishes for your pets' care, or descriptions of specific assets' sentimental value. Your executor may find that your letter of instruction is the most important document of your estate plan.

Health care proxy. Also known as a health care POA, this document authorizes someone to make health care decisions if you are not able to. It can also allow your wishes to be known about end-of-life decisions in the event that you are unable to communicate. The latter may be part of your health care POA document or an advanced medical directive, also referred to as a "living will."

Beneficiary designations. Retirement plans, life insurance, and annuity policies allow you to name who will receive your account without waiting for probate to conclude. Some brokerage and bank accounts, known as "transfer on death" or "paid on death" accounts, also allow you to name beneficiaries. If all of your primary beneficiaries predecease you, your named contingent beneficiaries will inherit the accounts. If you fail to name contingent beneficiaries, your estate is usually the default beneficiary.

Per stirpes. This Latin term can be used in conjunction with a beneficiary designation as a substitute for a lengthy list of contingent beneficiaries. If part of the estate would have gone to one of your previously deceased children, the inherited share is divided among the offspring of this person. The laws governing how the inheritance is divided differ from state to state. It is important to understand how financial institutions where your accounts are held will administer per stirpes inheritances.

Joint ownership. There are several ways to own property with another person, but not all registrations avoid probate. In most states, joint ownership, tenancy by the entirety, and community property with right of survivorship can act as effective substitutes for a will. Adding a joint owner to your property, merely to avoid probate, is not always a good idea because it may cause a taxable gift, subject the property to your joint owner's creditors, or raise disputes after your death.

Important considerations

Estate planning can be complex. Be sure to keep the following in mind:

- Be sure that your beneficiary designations reflect your wishes. Contact your current and former employers, your investment planner, and your life insurance agent for the required paperwork to make any changes, if necessary.
- Don't make the mistake of assuming a change in your circumstances, like a remarriage, will make a prior designation null and void. Always make beneficiary changes on the correct paperwork specific to the financial institution.
- Include both primary and contingent beneficiaries for your accounts. If

your primary beneficiaries die before you, without a backup beneficiary, the death benefit would be paid to your estate. This can result in unnecessary fees and delays associated with probate, as well as accelerated taxes.

- Relatives with special needs or disabilities rarely inherit directly. Receiving an inheritance outside of a special needs trust could mean the loss of valuable government benefits.
- A spouse who inherits a retirement account has several options for deferring income taxes until the money is needed. When your children inherit retirement accounts, they cannot defer taking distributions from the account until their own retirement. They will be required to withdraw at least a minimum distribution from the inherited IRA each year. This is often called "stretching" the distributions or setting up a "stretch IRA" because the taxes due are stretched over their lifetime.

- You can name a beneficiary of your retirement accounts, but be aware of the tax impact. In the end, the advantages of having the retirement accounts managed by a trustee may outweigh the tax disadvantages.

How much will estate planning cost?
It depends. Costs will vary from state to state and by the size of your potential estate. There are many steps you can take yourself, without an attorney, such as adding beneficiaries to financial accounts. Many people, however, need several legal documents, such as a will, a durable POA and a health care proxy for their estate plan. Although free and online resources for these documents are available, they may not be right for your specific needs.

It's always in your best interest to discuss your situation and goals with a knowledgeable attorney. Ask about fees and the cost of an estate plan in your first meeting. Many attorneys charge a flat fee for simple estate plans. When the estate is significant and tax planning is required, it is common for an attorney to charge hourly. If this is the case, remember that you can save a significant amount by organizing your documents, creating a net worth statement, and thinking ahead of time about your goals and potential heirs.

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