

Estate planning 101

Estate planning involves outlining goals and objectives, organizing your financial affairs, planning the distribution of your assets and communicating your intentions.

In today's world, pursuing your life's goals is being challenged in new ways. Which makes now the perfect time to review your goals in terms of "Advice. Beyond investing." Because when we collaborate on what matters most to you, we can create a plan tailored for you.

Why should I take the time to plan?	2
Questions/considerations	2
How do I get started?	2
Planning checklist	4
What documents should I have in place?	5
Overview of applicable documents	7
Other considerations—Review your life insurance	8
I've created an estate plan; now what?	8
Conclusion	8

As founding father Benjamin Franklin noted: "In this world nothing can be said to be certain, except death and taxes...." Although we may not want to face it, we will all pass away at some point, and planning ahead clearly has its benefits: it is informative, provides peace of mind and creates efficiency. Individuals should take the time and effort to prepare themselves and their 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 a number of 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 or how you would like your assets distributed once you have passed are just a few of the many topics to think about. If you do not take the time 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 reflect your desires and wishes.

Questions/considerations

- If I were unable to make them myself, whom do I want to make financial and/or medical decisions for me? Should I have more than one individual make these decisions?
- If I am terminally ill or injured, what life-sustaining procedures would I like to receive (e.g., CPR, mechanical ventilation)?
- Would I like a funeral? Casket or cremation?
- 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/or charity?
- How can I better protect the assets 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 summary of your net worth often provides details regarding asset composition (e.g., liquid financial assets, retirement assets, corporate benefit plans and businesses), asset ownership and titling. A detailed net worth summary can help to 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 summary of your net worth is essential to analyzing and evaluating your current financial status from which you can create a plan to ensure your estate will be managed in a manner consistent with your goals and objectives.

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The advantages and disadvantages of one form of titling over another should be discussed in detail with your attorney.

As an example, upon reviewing your net worth statement 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, thus 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, by holding assets as JTWROS you may be unintentionally circumventing the estate plan you have worked so hard to put in place. To ensure the assets pass according to the terms of your estate planning documents (e.g., wills and trusts) you may wish to consider titling assets as "Tenants in Common" (TIC) or in the name of your revocable trust. The advantages and disadvantages of one form of titling over another should be discussed in detail with your attorney prior to making changes.

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

Having all of 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.

Planning checklist

Category	Document/information	Questions to ask/information to provide	Location/contact
Legal documents	<ul style="list-style-type: none"> • Will • Trusts • Durable Power of Attorney • Healthcare Directive • Living Will • Letter of Instruction 	<ul style="list-style-type: none"> • Who is my Executor? • Who are my Trustees? • How will my assets be distributed? Family/charity? • Am I still comfortable with the person(s) I authorized to act on my behalf? • What type of life support is acceptable to me? 	Provide the location and relevant contact information for each item.
Accounts	<ul style="list-style-type: none"> • All bank accounts • All usernames/passwords • Automatic payments • Safe deposit boxes and keys • 401(k) accounts • IRA/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 	<ul style="list-style-type: none"> • Will my family know whom to contact? Have they ever spoken with my advisors? • Who is the beneficiary of my retirement accounts, annuities and insurance policies? • Will my beneficiaries know what benefits they are entitled to and how to claim them? • Does my spouse know how to access our online accounts? • Will my spouse continue to receive my pension checks? • Will my spouse's Social Security benefits be affected? • Are sufficient assets readily available to settle my debts/pay taxes? 	Provide the location and relevant contact information for each item.
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/divorce papers • Additional contact information 	<ul style="list-style-type: none"> • How is my real estate titled? • If I pass away, how will my family pay the mortgage? • Do I have a formal loan agreement in place? • How will my family handle the outstanding balance on my vehicle (i.e., loan/lease)? 	Provide the location and relevant contact information for each item.

It is imperative for individuals to periodically review and update the documents they have put in place.

What documents should I have in place?

An estate plan should address the specific goals and wishes of the individual for which it was created. 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 one's lifetime, the delegation of authority during a period of incapacity or the authorization of a specific medical procedure when death is imminent. Estate planning should be comprehensive, yet customized.

For this reason, it is imperative for individuals to periodically meet with their estate planners to review and update the documents they have put in place. These documents typically include:

- **Last Will and Testament**—Your last will and testament is a legal document in which you appoint the executor of your estate, designate a guardian for your minor children and outline how you want your estate to be distributed. Maintaining an up-to-date will is essential to ensure your estate plan remains aligned with your current goals and objectives. To die without a will is to die 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; this may or may not be consistent with your wishes. For example, New York's intestacy laws distribute the estate to a surviving spouse and descendant(s) 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 the New York couple who intended 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 are to be distributed. Additionally, your will can include provisions that create certain types of trusts (e.g., credit shelter trust, 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 are often written into an individual's will with respect to assets titled in your individual name (i.e., not in trust) and that do not pass pursuant to a valid beneficiary designation; however, if applicable they may also be included within an individual's Revocable Living Trust.
- **Revocable Living Trust**—A Revocable Living Trust ("RLT") is a legal document that functions in much the same way as a will. You can appoint an individual to administer your assets, and outline how your assets are to be distributed. For this reason, an RLT is often referred to as a "will substitute." However, unlike a will that must be administered by the probate court, an RLT may enable your estate to avoid the probate process all together along with the time and fees often associated with probate. Since the probate court and any documents filed with it are open to the public, those individuals who wish to maintain privacy may consider using an RLT. Also unlike a will, with an RLT, certain provisions become effective upon signing and may assist in planning for one's incapacity. In the event of incapacity, an RLT may be used to assign the responsibility for management of trust assets to another individual (i.e., co-trustee or successor trustee). In order for a revocable trust to work effectively, the trust must be "funded." This means you will need to retitle your assets from your individual name (or JTROS, TIC, etc.) to your RLT. All too often, individuals will establish

If you have executed a revocable living trust, confirm with your advisors whether your assets are titled appropriately in the name of the trust.

a revocable trust document only to fall short when it comes to retitling assets in the name of the trust. Assets that remain in your individual name will be subject to probate. As such it is important that you confirm with your advisors that your assets are titled appropriately after you establish your RLT.

- **Financial Durable Power of Attorney (DPOA)**—If you ever become ill and incapacitated for a period of time, it is important to have someone (referred to as your “agent” or “attorney-in-fact”) authorized to make financial decisions on your behalf. A financial durable power of attorney is the legal document in which you designate your attorney-in-fact to act on non-trust assets. You may wish to consider naming two individuals to act in this capacity, a primary agent as well as a successor agent. A financial DPOA may become active 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). Unlike a standard power of attorney that becomes invalid upon your incapacity, the document may be made “durable” so that it remains in force throughout incapacity until your death or until it is revoked. Your designated agent will be able to pay bills, authorize transactions and manage your overall financial affairs.
- **Medical Directive**—Advance medical directives enable you to plan for your medical treatment in advance of needing it. Through the use of directives you may preauthorize specific medical procedures or appoint 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; Medical Power of Attorney) and Do Not Resuscitate (DNR) Orders.
 - *Living Will (Healthcare Declaration/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 POA/Healthcare Proxy)*—By establishing a Medical Power of Attorney, individuals appoint the person they would like to speak on their behalf with regard to making medical decisions in the case of their incapacity. Since a living will is typically focused on life-sustaining measures, a Medical POA 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 Financial POA and/or Medical Directives may incorporate HIPAA provisions within the document, thereby eliminating the need for a separate HIPAA release form.

Remember to review your estate planning documents and designated beneficiaries regularly to ensure the individuals you have named continue to be appropriate.

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. • 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. • An HIPAA release allows your medical provider to share your medical information with the designated person(s) making decisions on your behalf.
Terminal period	<ul style="list-style-type: none"> • Durable Power of Attorney (DPOA) • 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 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).

Review your life insurance policies to determine whether the insurance amount and type of policy continue to meet your current needs.

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 proceeds 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 son is the named beneficiary but the death benefit value will be included in your estate for 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, 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, consult with your attorney 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 and objectives, 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.

Clearly, Benjamin Franklin was correct when he noted the certainties in this world, but it was the humorist Will Rogers who pointed out an important distinction between the two: "The difference between death and taxes is death doesn't get worse every time Congress meets."

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