



# Estate Planning

Not Just for the Wealthy

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“ By failing to prepare,  
you are preparing to fail. ”

-Benjamin Franklin

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## Overview

Discussing one's mortality is a topic that most people prefer to avoid, so they tend to put off estate planning. I can assure you that putting a solid estate plan in place will not cause your premature demise. It will, however, provide you with peace of mind in knowing that the wishes you spell out while you are alive will be followed to the letter upon your death. It is one last gift that you can leave to your heirs: a stress-free and cost-effective settlement of your estate.

Simply stated, if you have assets and property in your name, you have an estate. If you do not put pen to paper and engage a Trust and Estate Attorney to draft a Will for you, your state's Probate or Surrogate Court will determine who receives those assets upon your death. A Will is even more important for parents who have minor children. If you fail to determine who you want to be the legal guardian(s) of your children and something should happen to you and your spouse, the Surrogate Court will decide for you. In that case, the court will have no way of knowing what your intentions were.

So how can you ensure these potential problems do not impact you and your family? Here are strategies that can ensure your Estate Plan is both well-planned and well-executed.

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# Estate Planning: The Basics

Estate planning is the act of creating a plan while you are alive that clearly designates who receives your assets upon your death. The two primary legal instruments utilized today are the Will and the Revocable Living Trust.



## The Will

A Will provides clear instructions on how your property is to be distributed upon your death. This document also establishes legal guardians for minor children. Your Will covers assets and property that are owned individually and do not have a named beneficiary. Such assets may include personal property (i.e. houses), your car, and business interests.

Many other types of assets will still be included in your estate but will pass outside the terms of your Will. For instance, your life insurance, 401(k) plan, and IRAs will have named beneficiaries, so these assets pass to those named person(s) without regard to your Will. Likewise, assets that are held jointly with your spouse pass to the surviving spouse by operation of law without regard to the terms of your Will.

Once a Will is probated, the cost of retaining an attorney to guide you through the court can be costly. In addition, once the contents of your Will have been probated, they are now in the public realm. The implication? Your relatives can ask to view the Will and potentially make claims on your assets.



## Revocable Living Trust

An effective way to avoid probate is to draft a Revocable Living Trust. Upon execution of the trust, your assets are now held in the trust while you are alive. The trust not only governs how your assets should be managed while you are living, but also designates to whom they should be distributed upon your death. Revocable Living Trusts generally cost more to draft than a Will. However, by avoiding probate, both the settlement and distribution of your estate remain private. In addition, the settlement period tends to be much shorter (and less expensive) than estates that need to go through the probate process.

Most Trust and Estate Attorneys will draft and execute two other important documents at the time they draft your Will or Revocable Living Trust. They are:



### Health Care Proxy

Health Care Proxies allow you to designate a person who can make important medical decisions for you should you be incapacitated or unable to do so. The Health Care Proxy also includes your wishes as to whether you would like to receive life-sustaining procedures in an end-of-life, terminal condition.



### Power of Attorney

A Power of Attorney allows you to delegate a person who you trust to have access to and manage assets in your name.

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## Impact of Estate Taxes

Estate planning should also include a strategy for avoiding or limiting the potential impact that estate taxes can have on your estate. In recent years, estate taxes have become less of a concern for most Americans. The federal estate tax exemption was less than \$1 million in 2001, but with the changes in federal tax laws, the current federal estate tax exemption is \$13.6 million! For married couples, the federal exemption is \$27.2 million. This means that less than 0.2% of estates must pay federal estate taxes. The current tax laws are set to expire at the conclusion of 2025 and revert to pre-2018 levels, so planning will be crucial.

Depending on the state you currently live in, you might not be out of the woods on estate taxes. There are currently 18 states that have estate or inheritance taxes. In New York State, for instance, estates above \$6.94 million are subject to an estate tax. It is important to note that New York does not have a portability clause that allows married couples to transfer a spouse's unused exemption upon the first death.

In addition, New York estates that are above the \$6.94 million exemption experience a tax cliff. New York estates pay estate taxes on the full value of the estate, not just the amount above the \$6.94 million exemption. In simpler terms, a New York estate valued at \$6.9 million would pay no New York estate taxes, but an estate that is \$500,000 larger (\$7.4 million) would pay over \$500,000 in estate taxes. In this case, estate tax planning is critical if you are intent on helping your heirs save a lot of money.

Common strategies used to limit the impact of estate taxes include the following:



### Annual Gifting

Annual gifts can be made to both children and grandchildren. The current gift tax annual exclusion amount is \$18,000 per gift—or \$36,000 per married couple. For example, if you and your spouse have two children, you can each gift \$36,000 to each child for a total of \$72,000 in gifts. There is no limit on the number of people that you provide annual gifts.



### Charitable Giving

Charitable gifts can reduce the value of your estate while also potentially lowering your taxes in the year that the gift is made.



### Irrevocable Life Insurance Trust (ILIT)

ILITs can utilize life insurance proceeds to pay estate taxes.

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## Other Important Considerations

Often overlooked—but no less important—components of your Estate Plan include:

- Designating Primary and Contingent Beneficiaries on your retirement accounts and life insurance.
- Establishing joint accounts with rights of survivorship (JTWROS) with your spouse.
- Establishing bank and investment accounts as either POD (Payable on Death) or TOD (Transfer on Death).

After establishing a Revocable Living Trust, make sure to “fund” the Trust by placing any assets without beneficiary designations in the trust by attaching a Schedule A. Assets that can be placed into a Revocable Trust include bank and investment accounts, homes, and automobiles.

# Summary

A thoughtful and well-crafted Estate Plan can provide you with peace of mind while saving time and money down the road for the people you love most. While most estate planning is not expensive, it does make sense to shop around as attorneys' fees for drafting and executing estate documents can vary significantly. Beyond the cost, choose an attorney that you trust and is willing to spend the time with you to discuss the various options at your disposal.

Federal tax laws are fluid and tend to change with Presidential administrations. Current tax laws expire at the end of 2025, so what works for you today might not work tomorrow.

Once you have your plan in place, review it annually to make sure that it still reflects the current laws, your current situation, as well as your long-term wishes.



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