

# Estate Planning Wills & Trusts



**HOW TO PRESERVE,  
PROTECT & TRANSFER  
YOUR WEALTH**



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ESTATE  
PLANNING  
*Myths*

A hand in a blue shirt sleeve holds a miniature, detailed house with a dark roof and lit windows. The house is set against a background of a green field and a sunset sky. The text 'MYTH #1: ESTATE PLANNING IS JUST FOR THE WEALTHY.' is overlaid in large white letters.

# MYTH #1: ESTATE PLANNING IS JUST FOR THE WEALTHY.

Nothing could be further from the truth. Estate planning applies to everyone. It doesn't matter how much you have in your accounts or how many valuables you own. You want to be sure that whatever you do have goes to the person of your choice.

Here are just a few of the goals an estate plan can help you accomplish:

- Protect those who depend on you and your income during their lifetime.
- Name guardians for minor children.
- Name the beneficiaries – including family members, other loved ones, and organizations – you wish to receive your property following your death.
- Transfer property to your desired beneficiaries in an orderly, tax-efficient manner, with as few legal hurdles as possible.
- Name your executor and/or trustee – the individual(s) or institution you appoint to act as your proxy in settling your estate and distributing your property.
- Express your wishes and preferences for funeral arrangements and how related expenses will be paid.



## MYTH #2: I'M TOO YOUNG & HEALTHY TO WORRY ABOUT ESTATE PLANNING.

Let's face it: none of us know our exact "expiration date." Apart from the discomfort that comes from confronting mortality, a mental hurdle that prevents people from creating an estate plan is the idea that these tools are only necessary if you're sick or old. It's true that you have a more pressing need for an estate plan if you're a part of these groups, but it is important to be prepared at any age. Unfortunately, accidents can happen to anyone.

If you care about what happens to your family after you die or are incapacitated, you need an estate

plan. If you want to choose who inherits your property, you need an estate plan. If you want to guard against destructive family conflicts that might arise after your death or incapacitation, you need an estate plan. None of these issues are strictly the domain of the elderly or the ill.

Even if you are a young adult with few possessions, no children, no spouse, and in excellent health, you have no way of knowing what the future will bring. Regardless of age, estate size or marital status, estate planning is something everyone needs to consider.



## MYTH #3: ESTATE PLANNING IS ALL ABOUT PROPERTY AND BELONGINGS.

An estate plan isn't just about property. It also deals with matters that are intimately personal, like legacy and incapacity planning.

Just like your goals for your property, your legacy is unique to you and your family. While it includes important charitable planning goals and gifting strategies, it goes well beyond the monetary aspects to include passing down the values, experiences, hard work and memories that define your life and are important to you and your family in a way that's meaningful to you.

Incapacity planning helps you prepare for unexpected events at every stage of your life from naming a guardian for your minor children to who will manage your financial affairs if you're no longer able to do so yourself. An estate plan also includes directives regarding your own health and well-being, allowing you to memorialize your preferences as to the medical treatment you wish to receive if you're ever unable to express those preferences yourself.

Those issues are part of today's estate planning basics, and they're at least as important as the documents that speak to the disposition of any property.



## MYTH #4: I ALREADY MADE A WILL SO I DON'T NEED ANYTHING ELSE.

A will is an important estate planning document that instructs how your property will be distributed after your death. It allows you to name an executor, who is your personal representative charged with overseeing the distribution of your property and shepherding it through the probate process.

So, making a last will and testament is a great first step, but you will need additional estate planning tools if you want to give yourself, and your family, as many protections and benefits as possible. Those tools include:

- General, durable power of attorney: this empowers your “agent” to carry out any legal and/or financial decisions that have to be made on your behalf during your lifetime if you are unable to act on your own behalf.
- Living will, or healthcare proxy: this is a legal document that enables you to specify the kind of medical care you do or do not want to receive in the event of illness or incapacity. It can save your family members and loved ones the burden of having to make those decisions at a highly stressful and emotional time.
- Trusts: trusts fall into one of two categories: revocable or irrevocable. Not everyone needs a trust, but within these two categories, there are many types of trusts that exist to fulfill a broad range of needs and objectives for those who can benefit from them.



## MYTH #5: IT IS CHEAPER TO DO IT MYSELF.

It is tempting to try to save money by using a do-it-yourself online will service or just writing something up yourself. But these poorly drafted documents may not meet the necessary legal requirements and end up costing your estate more money than if you had paid a professional to help you craft an effective plan.

It is impossible to know, without a legal education and years of experience, what the right legal solution is to any particular situation and what planning opportunities are available. If there is

anything about a family situation that's not commonplace, using a one-size-fits-all estate planning program means taking a large risk that can affect one's family for generations to come. And only a professional can determine whether a particular situation qualifies as commonplace.

Without clear instructions, your assets may not go where you want and can lead to problems that drag out your estate in a messy probate, cost money, and create headaches for your heirs.



# MYTH #6: ONCE A PLAN IS IN PLACE, I'M DONE.

Planning is never a “once and done” proposition. Your life, preferences and goals change over time – which may impact your plan. It may also be impacted by outside influences, such as the financial markets, tax law changes and economic events.

What if you marry or divorce, welcome a new child or grandchild, your minor children become adults, you move to another state, or experience the death of a spouse? All of these changes need to be reflected in your estate and legacy planning. That’s why it’s important periodically to review and update your estate planning docu-

ments, including your beneficiary designations and how your various accounts are titled.

If nothing else, you may need to update your plan because of changes in the law. Estate planning legal changes can come at any time. You want to make sure your plan addresses these changes and that you and your financial, tax and legal advisors remain abreast of any subsequent changes. You also want to pay close attention to any state laws that may impact your planning if you reside in a state that imposes a separate estate or inheritance tax.



# MYTH #7: I NEED TO PLAN A READING OF MY WILL.

A reading of the will is one of those great fictional devices that, while dramatic and compelling, has nothing to do with actual laws. Your family will be able to read your will after you die, but they won't do it by gathering together in a room to listen to your lawyer read the document out loud. Today, the only place you'll find a reading of the will is in a movie, a TV show, or a novel.

After someone dies, someone else has to bring that person's will to a probate court. Once filed with the court, the will becomes part of a new probate case, and will be subject to the court's (and the public's) scrutiny. During the probate process, a court will

determine if the will meets legal standards. If so, the terms of the will determine what happens to the estate. If not, state intestacy laws control.

Probate cases are public records: Anyone who wishes can inspect the will as part of the case record. While private readings of the will may have been common in times when literacy rates were lower and it was harder to notify distant relatives, they are not practiced today and are not required by any state's probate laws. If you have your heart set on a reading of your will, it may be possible to have your probate attorney make such arrangements for you, but the process is not necessary.



INTESTATE  
RIP

## MYTH #8: WITHOUT A WILL OR ESTATE PLAN, THE STATE WILL INHERIT MY ASSETS.

Yes, it's true that your state government could inherit your estate, through a doctrine known as "escheat," but it doesn't happen very often. Each state has laws that determine what happens to your property if you die "intestate" (without a will). These laws predetermine who inherits your property if the state can identify any relatives who survive you after death.

For instance, if you die leaving behind no surviving spouse but two surviving children, each child will inherit half of your estate. The only way a government will inherit your estate is if you die intestate and have no identifiable surviving relatives.

Even if you have no identifiable living relatives, you can still avoid escheat by creating a will. As long as you craft a will, preferably as part of a comprehensive estate plan, you can make whatever inheritance decisions you like. If you do this, your estate will pass how you want it to.

Therefore, you should have a well-crafted will and estate plan. That way you can avoid any possibility of the state getting everything you spent a lifetime building.



# MYTH #9: I CAN AVOID PROBATE IF I MAKE A WILL.

Having a will does NOT avoid probate. If you die with a will, that document must be filed in court along with a probate petition, verified and validated by the court, creditors paid, assets inventoried, and all the other parts of probate completed before your heirs get anything. While there are ways to avoid probate, having a will is not one of them.

If you're interested in pursuing ways to avoid probate, you should work with an attorney because the ways can be complex and offer both benefits and drawbacks. Some of the ways include (1) creating a living trust, (2) giving away your estate during your lifetime, (3) creating a joint tenancy, (4) designating pay-on-death beneficiaries, and (5) designating contractual beneficiaries.

Before pursuing those ways, you should consider that probate does not generally deserve its bad reputation. That reputation is partly the product of history, as probate was generally more cumbersome and much more expensive in the past, especially in jurisdictions that based fees upon the size of the estate. These days, the process is relatively streamlined, and the costs can be kept under control.

To be sure, probate CAN be a nightmare, especially if the heirs of an estate are at war with each other. But that's really no different than any situation in which relatives are seriously at odds. Even then, probate is unavoidable and, in a sense, welcome, as it's the only way to ensure that the wishes of the person who made the will are enforced.



# MYTH #10: I CAN DISINHERIT ANYONE I CHOOSE.

We've all seen movies in which the family patriarch threatens to disinherit the reckless son or the unfaithful wife. In reality, the script is different.

The fact is that you can cut a lot of people out of your will, but you can't always disinherit everyone with your estate plan. In many jurisdictions, it's especially hard to disinherit a spouse, who has the right to waive the will and receive some share of the estate, a share that's generally well more than some nominal amount.

Even if you do have the power to disinherit someone, the act makes courts uneasy, especially if you're excluding someone who would otherwise be what's known in the estate planning world as "natural object of your bounty," or the closest family members who would most likely inherit your estate. In other words, disinheriting someone is an invitation to have the will challenged, and it's a minefield you shouldn't try to cross without an estate planning attorney as your guide.

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