

FUTURE SECURED: YOUR GUIDE TO ESTATE PLANNING

**Safeguarding
Your Legacy and
Loved Ones**

Schaffer | Herring



What is Estate Planning?

Estate planning can be likened to assembling a puzzle. Just as a puzzle involves carefully placing each piece to form a complete picture, estate planning involves arranging various elements—like wills, trusts, and healthcare directives—to create a comprehensive plan that ensures your wishes are respected and executed.

Despite common beliefs, estate planning is not solely focused on distributing wealth after death; it can also encompass decisions regarding your health care and financial affairs, as well as the guardianship of minor children, should you become incapacitated.

Estate planning is often overlooked or postponed by many individuals, under the assumption that it's only necessary for the very wealthy or the elderly. However, this misconception could lead to unintended consequences for you and your loved ones.

The reality is that everyone can benefit from estate planning, as it not only helps to manage your assets after your passing but also provides crucial guidance during unexpected life events, ensuring all pieces of your life's puzzle fit together seamlessly and according to your wishes.

This guide is designed to demystify the process of estate planning, explaining its importance and how it can be tailored to fit everyone's needs.



Common Misconceptions about Estate Planning

Only for the Wealthy: Many believe that estate planning is only necessary for those with substantial assets. However, anyone can benefit from having a plan in place to handle their financial affairs and personal decisions.

Only for the Elderly: While it's crucial for older adults, estate planning is equally important for younger people, especially those with children or significant assets.

One-Time Task: A common mistake is treating estate planning as something that can be done once and then forgotten. In reality, it should be updated regularly as your life circumstances and laws change.

Too Expensive: There's a misconception that estate planning is prohibitively expensive. While there are costs involved, the investment is often far less than the potential legal fees and taxes your loved ones could face without a plan.

Simple Wills are Sufficient: While a simple will can be a good start, it often cannot address more complex issues such as estate taxes, guardianship for children, and specific instructions for health care.



Who Needs Estate Planning?

Families with Minor Children: Protect your children's future by appointing guardians and setting up trusts to manage their inheritances until they are of age.

Property Owners: Ensure your property is distributed according to your wishes, rather than leaving the decision to state laws.

Business Owners: Plan for the succession and continued operation of your business to prevent disruption and financial loss.

Individuals with Specific Medical Wishes: Document your healthcare preferences to ensure they are respected and followed.

Elderly Individuals: Address potential future needs including long-term care and end-of-life decisions, providing peace of mind to you and your family.



Why Do I Need an Estate Plan?

Avoid Probate: Bypass the lengthy and costly court process, ensuring smoother and faster transfer of assets to your beneficiaries.

Distribute Assets According to Your Wishes: Clearly outline who receives what, avoiding disputes and ensuring that your assets are distributed as you intend.

Minimize Taxes: Legally reduce potential taxes on your estate, maximizing the inheritance for your loved ones.

Protect Beneficiaries: Designate guardians for minor children and provide for family members with special needs or financial management limitations.

Business Continuity: Ensure smooth transition and continued operation of family businesses.

Plan for Incapacity: Make critical decisions about your finances and health care in advance, should you be unable to do so yourself.

Make Funeral Arrangements: Pre-plan your funeral to reflect your wishes, alleviate the emotional and financial burden on your family, and ensure your final wishes are respected.



Key Components of an Estate Plan

Estate planning might seem complex, but it consists of a few critical components that form a comprehensive approach to managing your affairs. Below are the fundamental elements that can make up an effective estate plan.

Wills

A will is a foundational legal document in estate planning that stipulates your preferences for the distribution of your assets and the care of any minor children upon your demise. It is a crucial element that ensures your assets are allocated according to your wishes, and not left to be distributed under state laws, which may not align with your intentions. Below are two types of wills commonly utilized in estate planning:

Simple Will: This type of will is straightforward and concise. It outlines who will receive your assets and appoints a guardian for your minor children, should you pass away while they are still underage. A simple will is especially suitable for individuals who do not have extensive assets or complicated estate circumstances. It serves as an essential tool to ensure that your basic wishes are respected and that there is a clear legal directive on the guardianship of your children, thereby preventing potential family disputes or court decisions in this regard.

Pour-Over Will: Particularly effective for those who have established a living trust, the pour-over will acts as a safety net. It ensures that any assets that have not been explicitly included in your living trust during your lifetime are automatically transferred into the trust upon your death.



This process facilitates a smoother and potentially probate-free distribution of these assets, as they will be handled according to the terms already set forth in the trust. Pour-over wills are ideal for maintaining privacy and continuity in asset management and distribution, as they help avoid the public scrutiny and delays often associated with probate court.

Both types of wills play vital roles in comprehensive estate planning, allowing for tailored strategies that match individual needs and circumstances. Whether you choose a simple will or a pour-over will, the key is to ensure that the document is clearly written and legally enforceable, reflecting your current wishes and applicable legal requirements.

Trusts

Trusts are versatile legal arrangements in which a third party, known as a trustee, manages assets on behalf of one or more beneficiaries. One of the primary benefits of using trusts in estate planning is their ability to bypass the often lengthy and costly probate process, allowing for a more direct and efficient transfer of assets. Trusts also offer enhanced privacy, as the details of the trust are not made public like those in a will. Here are a few types of trusts that are commonly used to address different estate planning needs:

Living Trust: This type of trust is established during your lifetime and becomes operational immediately. A living trust outlines specific instructions on how your assets should be managed and distributed in the event of your death or incapacitation. The primary advantage of a living trust is that it allows you to maintain control over your assets while you are alive and ensures that they are transferred to your beneficiaries without the need for probate upon your death. This can save time, reduce legal fees, and keep your estate affairs private.



Special Needs Trust: Tailored to support beneficiaries with disabilities, a special needs trust helps ensure that these individuals continue to receive the financial support they


need without jeopardizing their eligibility for government benefits like Medicaid or Supplemental Security Income. By setting aside assets in a special needs trust, you can provide for the supplementary needs of a disabled loved one—such as personal care, education, and recreation—while preserving their access to essential government aid.

Pet Trust: Recognizing that pets are often considered part of the family, a pet trust provides a structured plan to ensure your pets are well cared for in your absence. This type of trust specifies a caretaker for your pets and allocates funds to be used for their maintenance and welfare. A trustee oversees the administration of these funds, ensuring they are spent as intended for the benefit and care of your pets until the end of their lives.

Trusts are a highly effective tool in estate planning, allowing for a tailored approach that can accommodate a wide range of personal circumstances and goals. Whether it's securing the welfare of a special needs relative, ensuring the care of beloved pets, or simplifying the transition of assets, trusts offer a robust mechanism for managing and protecting your estate.

Advance Healthcare Directive

A living will, also known as an advance healthcare directive, is a critical document in estate planning that clarifies your preferences for medical treatment in situations where you are unable to communicate your decisions due to illness or incapacity. This document takes effect while you are still alive but have lost the capacity to express your wishes. It typically covers crucial decisions such as whether or not to remain on life support systems, the use of invasive medical procedures, and pain management preferences.



The primary goal of a living will is to ensure that your medical treatment aligns with your values and desires, thereby relieving your loved ones from the burden of making these difficult decisions during emotionally charged times. By clearly documenting your choices, a living will provides guidance to healthcare providers and ensures that your end-of-life care respects your autonomy and dignity.


Power of Attorney

The Power of Attorney (POA) is another foundational element in estate planning, granting a trusted individual the authority to make decisions on your behalf if you become incapacitated. This legal document is crucial for ensuring that your affairs are managed according to your wishes when you are no longer able to do so yourself.

Financial Power of Attorney: This form of POA allows your designated agent, often called an attorney-in-fact, to manage your financial affairs. This can include paying your bills, managing your investments, handling banking transactions, and making other financial decisions. The financial POA can be structured to take effect immediately upon signing or only activate upon your incapacitation, depending on your preferences.

Health Care Power of Attorney: This type of POA permits your appointed agent to make health-related decisions on your behalf. This is distinct from a living will but complements it by covering health decisions that may not be specified in the living will, such as choosing medical treatments, accessing your medical records, and deciding on your place of care. It ensures that someone who understands your wishes and values is in charge of decisions that affect your health and well-being.

Both types of Power of Attorney play a vital role in comprehensive estate planning, ensuring that both your



financial and health-related affairs are in trusted hands when you are not in a position to manage them yourself. These documents provide peace of mind that your affairs are handled efficiently and empathetically, reflecting your preferences as closely as possible.

Life Insurance Beneficiary Forms

Life insurance is an essential part of estate planning, providing financial support to beneficiaries after your death. Properly designating beneficiaries on your life insurance forms is crucial to ensure that the insurance proceeds are distributed smoothly and do not get tied up in probate.

Designate Primary and Contingent Beneficiaries: Clearly identify who should receive the policy proceeds, listing both primary beneficiaries (first in line) and contingent beneficiaries (second in line if primary beneficiaries are deceased).

Avoid Naming Your Estate as a Beneficiary: Naming your estate can subject the proceeds to probate, causing delays and possible inclusion in estate debts. Instead, specify individuals, trusts, or organizations directly.

Regular Updates: Keep beneficiary forms updated in response to life changes such as marriage, divorce, or the birth of a child to reflect your current wishes.

By carefully managing life insurance beneficiary forms, you help provide quick and direct financial assistance to your beneficiaries, bypassing potential legal delays and ensuring your wishes are honored.



Real World Examples

Scenario 1: Young Family Planning for the Future

Background: A couple with young children wants to ensure their care and financial stability if something happens to them.

Solution: They set up wills naming guardians for their children and create trusts to manage the children's inheritances until they reach adulthood. They also establish powers of attorney to handle their affairs if they become incapacitated.

Scenario 2: Business Owner Preparing for Succession

Background: A business owner seeks to secure the future of their business without burdening their family with sudden responsibilities.

Solution: They incorporate a business succession plan into their estate planning, including a buy-sell agreement funded by life insurance to ensure smooth transition and financial security for both the business and the family.

Scenario 3: Retiree Concerned About Health Decisions

Background: An elderly individual wants to make sure their medical preferences are respected as they deal with chronic health issues.

Solution: They complete an advance healthcare directive specifying what medical actions should be taken in their best interest, appointing a trusted person to make decisions if they're unable to do so themselves.



Frequently Asked Questions

What is estate planning?

Estate planning is the process of arranging for the management and distribution of your assets during your life and after your death. It includes creating legal documents like wills, trusts, and healthcare directives.

Do I need an estate plan?

Yes, everyone should have an estate plan. It helps ensure that your assets are distributed according to your wishes, and it can provide important guidance for your care in case you become incapacitated.

What documents are typically involved in estate planning?

Common documents include a will, trust(s), financial and medical powers of attorney, and healthcare directive. Each serves different purposes in managing your assets and health care decisions.

What happens if I don't have an estate plan?

Without an estate plan, state laws will determine how your assets are distributed, which may not align with your wishes. Additionally, your family might face longer, more stressful, and more expensive legal processes.

How often should I update my estate plan?

You should review and possibly update your estate plan after major life events like marriage, divorce, the birth of a child, significant changes in financial status, or changes in the law.



What is probate, and why should I try to avoid it?

Probate is the court-supervised process of distributing a deceased person's assets. It can be lengthy and expensive, so many people choose estate planning strategies that bypass probate to expedite and simplify the transfer of assets.

Can I do my own estate planning or do I need an attorney?

While simple estate planning can be done on your own, using templates or software, it's generally advisable to consult with an estate planning attorney to ensure all legal aspects are properly addressed and tailored to your specific circumstances.

What's the difference between a will and a trust?

A will is a document that specifies how your assets should be distributed after your death. A trust is a legal arrangement that provides more control over how and when your assets are distributed, and can often help avoid probate.

What is a power of attorney?

A power of attorney is a legal document that grants someone else the authority to act on your behalf in financial or health-related matters if you are unable to do so.

What should be included in a health care directive?

A health care directive should include instructions for your medical care if you become incapacitated. This can include your preferences for life support, pain management, and other medical treatments.



How can I ensure my pets are taken care of after I'm gone?

You can include provisions for your pets in your will or set up a pet trust. A pet trust allows you to allocate funds and specify a caretaker for your pets, ensuring they are cared for according to your wishes.

How do I include my online accounts and digital assets in my estate plan?

To include your online accounts and digital assets in your estate plan, you should first make a list of all such assets, including social media accounts, digital wallets, and online banking accounts. Provide a trusted designee with legal access to your usernames and passwords, either directly or through a secure digital estate planning service. Additionally, specify your wishes for each account, whether you want them closed, maintained, or transferred to someone else.

What role does a prenuptial agreement play in estate planning?

A prenuptial agreement can clarify what happens to your and your spouse's assets in the event of death or divorce, affecting how your estate is distributed. It's important to ensure that your estate plan and prenuptial agreement don't conflict and that both are updated as needed to reflect your current wishes and circumstances.

How should I handle gifts in my estate plan?

When planning to give gifts through your estate, consider specifying the amounts and recipients in your will or trust. If you plan to give significant gifts, it may be beneficial to do so during your lifetime to take advantage of annual tax exemptions. Additionally, for charitable gifts, setting up a charitable trust or designating a charity as a beneficiary can ensure your philanthropic goals are met while potentially providing tax benefits.



How do I choose a guardian for my children?

When choosing a guardian, consider someone who shares your values and parenting style, is financially stable, and is willing and able to take on the responsibility. It's also wise to discuss the possibility with them before designating them as a guardian in your estate plan.

Can my children's guardian manage their finances?

Typically, a guardian manages daily care and decisions for minors, but not necessarily their finances. If you want the same person to manage both personal and financial matters, you should specify this in your estate plan, possibly by setting up a trust with the guardian as trustee.

What happens if a designated guardian is unable to serve?

It's a good idea to name an alternate guardian in your estate plan. This ensures that if your primary choice is unable to serve, there is another trusted individual ready to step in without court intervention.



How Do I Choose the Right Attorney to Help Me with My Estate Plan?

Choosing the right attorney for estate planning is crucial to ensure that your assets and family are well-protected after your passing. An experienced and trustworthy attorney can provide invaluable guidance, helping to navigate complex legal waters and tailor an estate plan that best suits your individual needs and objectives.

Identifying Your Needs

Before you begin your search for an attorney, it's important to assess the specific requirements of your estate. Consider factors such as the overall size of your assets, the complexity of your financial and family situations, and any special considerations like business ownership, special needs dependents, or properties in multiple states. Understanding the complexity of your estate will help you determine the level of expertise and specialization you need from an attorney.

Finding Potential Attorneys

Finding the right attorney often starts with gathering recommendations. You can seek referrals from friends, family, or financial advisors who have had personal experiences with estate planning. Professional legal associations and online legal directories are also valuable resources for finding qualified attorneys in your area.



Vetting Process

Once you have a list of potential attorneys, the next step is to thoroughly vet each candidate to ensure they meet your needs. Start by verifying their qualifications, including their standing with the state bar association and any certifications in estate planning or related fields. During initial consultations, which many attorneys offer for free or a reduced fee, ask targeted questions to gauge their experience and expertise:

- How many years have you been practicing estate planning?
- Can you handle estates that have elements similar to mine (such as businesses, out-of-state properties, special needs trusts)?
- What is your approach to estate planning? How do you tailor plans to meet individual client needs?
- How do you charge for your services—hourly, flat fee, or another arrangement? Are there any additional costs I should be aware of?

These questions help you understand not only their professional capabilities but also their approach to client service and estate planning.

Engaging Your Attorney

After choosing an attorney, the next step is to formalize the relationship. This typically involves signing an engagement letter, which outlines the terms of your engagement, fee structure, and the specific services the attorney will provide. It is important to have clear expectations for ongoing communication and updates about your estate plan. Regular meetings or check-ins can help ensure that your estate plan remains up-to-date with any changes in your life or the law.



Selecting the right estate planning attorney is a crucial decision that affects how well your assets are managed and distributed according to your wishes. Remember, the right attorney not only provides legal expertise but also peace of mind that your estate affairs are in capable hands. Take the time to choose someone who you trust and feel comfortable working with, as this relationship is key to developing an effective estate plan that safeguards your legacy. At Schaffer Herring PLLC, we pride ourselves on providing personalized and thorough estate planning services tailored to meet the unique needs of each client. If you're ready to begin the estate planning process, or if you have any questions about how we can help, don't hesitate to contact us. We're here to ensure that your estate planning is as smooth and comprehensive as possible.

DISCLAIMER: Please note that the information provided herein is for general informational purposes only and should not be considered legal advice. It is always advisable to consult with a qualified attorney who specializes in estate planning to ensure that your specific needs and circumstances are adequately addressed. This content is intended to offer general guidance and should not be used as a substitute for professional legal consultation.

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