

# HOW TO PREPARE FOR ESTATE PLANNING AT EVERY STAGE OF LIFE

The Estate Planning Basics Everyone  
Needs to Know



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# ESTATE PLANNING AT EVERY STAGE OF LIFE

## The Estate Planning Basics Everyone Needs to Know

Contrary to popular belief, estate planning isn't just for people with many years of life experience and tons of money in the bank. Whether you're 18 or 80, crushed by student debt or a billionaire, there are steps you can take now to prepare for the inevitable and unexpected.

The earlier you create an estate plan, the easier it is to understand and maintain it as life changes. Haven't started yet? Don't worry. No matter where you are on your journey, this guide can help. It outlines the basics of estate planning, documents you should prepare at every stage of life and special considerations you may need to make based on your circumstances.

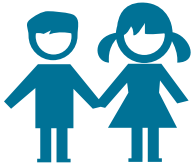
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# What Is an Estate Plan?

Estate planning is nothing more than turning your thoughts into action by legally putting your wishes into writing and structuring your assets so that they flow in sync with the documents.

Estate planning may seem like a daunting, complicated process, but it's not that difficult. When it comes down to it, planning your estate requires you to answer questions like the following:



Who will determine where my children live and go to school when I'm dead?



Who will care for my pets?



Who will get my cash, real estate, business, and insurance-related assets? Under what conditions?



Who will get my tangible stuff? What is the fairest way to divide it up? Maximize its value?



What will be left for charities? Which organizations do I support?



Who will make personal, medical, and financial decisions for me, if I am unable to communicate?



Should my viable organs be donated for use by someone who is in need?



Cremation or burial?

The documents in an estate plan make your answers to these questions legally binding.

# The Documents That Make Up an Estate Plan

Here are the legal documents that make up a typical estate plan:



## **WILL**

Instructions on who should receive your possessions and other assets after your death, plus directions for the care of your minor or disabled children and disposition of your remains, all in a format the court will recognize and accept.



## **HIPAA AUTHORIZATION**

Allows designated people access to your medical providers.



## **POWER OF ATTORNEY FOR HEALTH CARE**

Appoints an agent (a proxy) to make personal and medical decisions on your behalf, should you become incapacitated.



## **POWER OF ATTORNEY FOR PROPERTY FINANCES**

Appoints an agent (a proxy) to manage your finances, should you become incapacitated.



## **REVOCABLE LIVING TRUST**

A Trust established by the grantor (its creator) during his or her lifetime, with terms that can be amended (changed) or revoked (canceled) at any time during the grantor's life.



## **IRREVOCABLE LIVING TRUST**

Either a Trust that morphs out of a Will or Revocable Living Trust after the grantor has died, allowing the grantor to literally control from the grave or one that goes into effect during the grantor's

lifetime, often for tax reasons. In both cases, the Irrevocable Trust cannot be amended or revoked by its grantor.

## **Helpful Definitions**

As you work with a lawyer to prepare these documents, you may encounter confusing legal jargon. A few helpful definitions to know are:

### **GUARDIAN**

A person appointed by a *probate court*, often designated in your *Will*, to be responsible for your children or an incompetent adult. In the case of the incompetent adult, also known as a *conservator*.

### **FIDUCIARY**

A person in a position of trust and responsibility, acting on someone else's behalf, subject to heightened legal and ethical standards, including, among others, *trustees*, *executors*, *guardians*, and *agents*. Fiduciaries do not self-deal.

### **BENEFICIARY**

The person or the charity who receives a *gift*, whether from a lifetime transfer or a *testamentary* one from a *Will*, a *Trust*, or contractually from insurance, IRAs and other retirement plans, annuities, or transferable-on-death accounts.

### **PROBATE**

Death probate is the process of legally validating a *Will* or an intestate estate, collecting assets, paying bills, and eventually re-titling the assets under the supervision of probate court. Without proper documents, incapacity often leads to court guardianship, a type of living probate.

# How to Plan Your Estate at Every Stage of Life

Now that you know what an estate plan is, you're probably wondering, "When should I start?" Here is an overview of how estate planning needs may evolve over time and the documents you need at different stages of life.

Life Events	18 – 24 Years old	Estate Planning Activities
Few assets.  Still in school or dependent on parents.		Power of Attorney for Health Care and HIPAA Authorization, because you are an adult and, without consent, family members can be denied access when they are most urgently needed.
	25 – 34 Years old	
Still single with a few more assets and some credit history.		Add Power of Attorney for Property for such things as tax filings, credit cards, and leases if you unexpectedly lose capacity.  Add simple Will to direct a few items and ensure your pets have a roof over their heads.

### Life Events

## 35 – 39

Years old

### Estate Planning Activities

In a relationship.

Children or not, your assets and/or responsibilities have grown.

Update Will to ensure that family shares your assets as desired.

If you have minor children, name guardian who decides where they live and other lifestyle issues.

## 40 – 54

Years old

Growing children or dependents.

Have life insurance to take care of college and mortgage.

Create Trust to ensure that if you (and your spouse, if married) die, insurance \$ and other assets will be used for your children's benefit and not entirely dissipated when they become legal adults (18 or 21).

## 55 – 59

Years old

Accumulating significant assets.

Your children are responsible adults.

Update 15-20 year-old estate plan to name children in fiduciary capacities instead of siblings or parents.



### Life Events

## 60 – 69

Years old

### Estate Planning Activities

Sandwiched between two generations.

Assets growing.

Update your Trust to provide for both your elderly parents and descendants.

## 70 – 79

Years old

Enjoying Retirement.

Consider updating the estate plan to accommodate personal and financial changes that have occurred since the last time you reviewed.

If the estate is large, you may want to deplete assets by gifting to family for tax and other reasons.

## 80+

Years old

Preparing for final act.

Clarify wishes on how to spend your golden years upon potential incapacity—home health versus nursing home, quality of life versus quantity of days. Confirm that you and the agent for health care are on the same page.

Finalize your charitable legacy.

# Why You Need An Estate Plan

No matter what stage of life you're in you should plan your estate. It's likely that no matter how old you are, you have an estate – modest though it may be. Your car, your furniture, clothes, hopefully a bank account or two, and real estate, even if it's worth less than the amount you owe. Who gets what? Who takes control of your empire, such as it is? Whether you are bursting at the seams or running on empty in the material world, estate planning also requires selecting someone to make your most intimate medical and personal decisions when you lose your voice.

Still not sure if you really need estate planning? Take a few minutes to answer this questionnaire:

## **Do I Need an Estate Plan?**

Please check all that apply:

I am a legal adult, responsible for myself and my actions in the eyes of the state where I live.

I am conventionally married—I have a wife or a husband, two and one-half children and a dog, and so on.

My spouse and I have formed a blended family. We each have children from prior relationships and one together.

I have a life partner to whom I am not legally married under applicable state law.

I am single and do not mind playing favorites among my family.

I have young or elderly dependents.

I care for and/or am the guardian of someone with special needs.

I love someone who is immature when it comes to handling money.

I have assets large enough that I know I must be aware of tax issues.

I prefer to select the person who will make personal decisions with regard to my care and finances if I am ever incapacitated or when I die, rather than have that selection made for me.

I want some of my money to go to charity.

I want to add a little panache in giving away my personal treasures.

**If You Answered YES to Any of These Questions, You NEED an Estate Plan. The more yes's you answered, the higher estate planning should be on your to-do list.**

Failure to plan your estate could result in:



A nasty fight over "stuff," in which an undeserving or distant relation ends up with a personal item, contrary to all reasonable expectations.



The IRS receives a tidy sum that relatively simple planning could have prevented.



A loved one withers away in misery, unable to communicate his or her personal-care wishes to others.



A probate battle breaks out, and lawyers take center stage in an expensive family drama played out in a public forum. Heirs feel as if they were run over by a legal dump truck.



Various parties squabble over guardianship of you or an incapacitated parent, sibling, or child.



Loved ones scramble to make sense of an estate that was not properly planned.

Though legally correct and in accordance with applicable statutes, judges or jurors adhering to the letter of the law without regard for individual circumstances commit a grievous wrong. The noble spirit of the law is fine and dandy, but when pitted against the letter of the law, the letter nearly always wins.

## 6 Estate Planning Must-Haves

If you do only do one thing suggested in this guide, complete a HIPAA authorization and a power of attorney for health care. It's simple, and you never know when you'll need it.

Other important documents everyone needs include a Living Will, durable power of attorney for property, will and revocable living trust.

Let's take a closer look at what each one of these documents does.

### *1. HIPAA Authorization*

Among other things, HIPAA guarantees patient privacy. Think of a HIPAA authorization as your loved one's answer to the voice at the medical emergency end of the phone saying, "Sorry, I'm not authorized to discuss her condition with you—if you have a problem with this, take it up with our lawyers." The penalties for health workers (physicians, nurses, hospital administrators, and others) who violate the complex HIPAA privacy rules can include fines and jail time.

Unless you object, HIPAA does not prohibit health workers from releasing your pertinent medical information to certain immediate family members, but overly cautious health-care workers often withhold vital information from people who should have access to it. Because patient rights are paramount, a health worker uncertain about privacy responsibilities will often say "no," rather than risk trouble. Frustration and delays happen when time is scarce and nerves frayed.

*Imagine: Your daughter is in college, a thousand miles away. You joke about the fact that you pay her tuition, but she is an adult, so you have no right to see her grades. You pray that she is safe in her new environment, but if she bangs her head and is unable to give consent, you can find yourself in a nightmare, as her adult rights to privacy extend to her medical care. Imagine: You get a 2am call from a hospital: "She's here, in stable condition."*

*You ask, "What happened? What's happening?"*

*The worker at the other end of the phone may feel legally restricted in what information she can relay without violating HIPAA regulations, so you get no clear response or basic information. She believes that she is honoring your daughter's federal right to privacy and minimizing her potential liability, but her "take it up with our legal department" response leaves you in a lurch.*

Whether your situation involves overzealous health workers only interested in covering their butts or a conscientious person simply unsure about the patient's right to privacy, this scenario can happen regarding your spouse, your adult children, your elderly parents, or anyone who has suddenly taken ill.

## *2. Living Will*

A Living Will is useful when you are unable to speak for yourself. It gives hospitals and loved ones directions about your wishes and allows them to act on your behalf. A Living Will is a statement of philosophy that you

may or may not agree with. The pertinent portion of the Illinois Living Will is typical:

*"If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician, who has personally examined me and determined that my death is imminent except for death-delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.*

*In the absence of my ability to give direction regarding the use of such death-delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal."*

A Living Will is particularly useful in two situations when you are unable to speak for yourself: first, when there is no agent willing and able to act on your behalf and the hospital needs some direction about your wishes (think Terri Schiavo); and second, it gives cover to the agent who may be directing the termination of treatment ("It's what Mom wanted").

### *3. Health Care Power of Attorney*

**Select someone (an "agent" or a "proxy") to make decisions**

## **relating to medical care and living arrangements when you cannot.**

As you sit here reading this in the prime of life, your own incapacity may seem even more remote and improbable than death, but your world can change suddenly and unexpectedly. As a competent adult, you have the right to make your own medical decisions. You can decline medical care, including any procedure or treatment that would simply extend your life without regard to quality. A power of attorney for health care (health-care proxy/advance health-care directive) grants authority to a selected agent/proxy to make medical and other personal decisions, if and when you lack decision-making capacity.

After you sign a health-care proxy, you continue to speak for yourself for as long as you are able, so even if you give immediate authority to your agent, you will be the decision maker. Revoking a health-care proxy is very simple and can often be done verbally. Occasionally, health-care proxies are referred to as “durable” because they survive your disability, but more often, “durable” is used with financial powers of attorney.

Only those who are capable and aware of what they are doing can sign a health-care proxy. With luck, it will go unused, but if a sudden change occurs, this key document can save your family tremendous heartache and guide some of your crucial personal and medical decisions.

Should you become voiceless, even without a health-care proxy, it is possible that your family, your physician, and the hospital staff will reach a commonsense consensus and navigate an acceptable course of action without involving a court. They might even make the same choices you would have, but why leave something so important to chance?



Unique circumstances, conflicting personalities, and differing philosophies of family members, physicians, or nurses can all factor into what are literally matters of life and death. With your fate uncertain, your family must weather a painful and expensive process that can result in a judge entrusting your care to the last person you would have chosen. A health-care proxy gives you some measure of control and peace of mind.

#### *4. Durable Power of Attorney for Property*

##### **Who Pays Your Bills If You Can't Write a Check?**

Select an agent under a durable power of attorney for property (finances) to control your money and pay your bills should you become incapacitated. A durable power of attorney helps your family avoid the cost and aggravation of a guardianship being appointed over your estate. It is "durable" because it survives your disability or incompetence and because its purpose differs from that of a regular financial power of attorney, like one you would arrange for a house closing that you could not attend. All powers of attorney, durable or otherwise, end upon death.

##### **Durable vs. Nondurable Powers of Attorney for Property**

All financial powers of attorney, whether durable or not, must be signed by you while you're competent. They must usually be notarized, but the requirement of having an independent witness or two varies from state to state.

Durable Power of Attorney	Nondurable Power of Attorney
PURPOSE	
Allows a person to act on your behalf with respect to financial transactions if you become incapacitated.	Allows a person to act on your behalf with respect to some specific financial transaction or series of transactions, often because you are simply unavailable.
HOW IT WORKS	
<p>Survives your incapacity.</p> <p>Relates to a wide range of transactions under any parameters you set.</p> <p>Effective either immediately or at some future date or (in some states) on the occurrence of a "springing" event, such as when selected parties determine you are unable to conduct business transactions.</p> <p>Ends whenever you dictate, usually when you change it, regain your ability to conduct business transactions, or die.</p>	<p>Ends upon your incapacity.</p> <p>Relates only to a specific transaction or series of transactions.</p> <p>Usually limited to a set period of time and until a specific transaction is completed, or is ongoing based on various business factors.</p> <p>Ends at any time you dictate, usually when a specific transaction is completed, a business relationship changes, or you die.</p>

## 5. Will

A Will distributes your probate assets upon death and appoints an executor to administer your estate according to its terms. Your Will can also nominate a guardian for minor or disabled children and provide guidance regarding funeral wishes.

If you die without a Will, your probate assets will be distributed purely by a relationship formula, governed by your state's intestacy laws.

Here are some helpful definitions of terms used in a Will:

- Testator: The person making a Will

- Probate Assets: Everything you own individually
- Heir: Someone who inherits or would inherit as next-of-kin under intestacy
- Legatee: A beneficiary to whom you leave assets in your Will.
- Bequest: A gift made in a Will to a legatee.

## **Basic Elements of a Will**

Each state has specific requirements to create a valid Will. In general, the testator must have the mental capacity to create it—the often heard “of sound mind” (rather than the “of sound mind and body” you may hear in old movies). To be of sound mind, you must understand generally what you own, to whom it is being left, and that you are creating a binding document to dispose of your estate at the time of your death.

A Will must be written, signed (or marked in the event of physical disability) by you, and witnessed by at least two non-interested people (requirements vary state to state). Heirs and beneficiaries should not be witnesses. A Will often contains a notarized affidavit, lending more authenticity to its execution. If the Will is filed with a “self-proving affidavit,” witnesses do not have to testify in court that they were present when you signed it competently and under no duress.

You can change your Will at any time, because it goes into effect only upon your death. A Will usually revokes any previous Wills, so that at your death it is, in fact, your Last Will and Testament. Any previously signed Wills have no legal status. Their only value may be to establish your thought process should anyone challenge your last Will. A “codicil”

is an amendment to a Will and must follow the same formalities.

Given certain circumstances, a few states recognize oral Wills, but never involving real estate. Handwritten or “holographic” Wills are generally valid in any state, if signed and witnessed properly, but only about half recognize unwitnessed holographic Wills.

All Wills name the legatees to receive your assets. You can leave specific assets to specific people. You can also leave assets to a class of people, such as to “all my nieces and nephews in equal shares.”

Most Wills also contain some amount of contingency planning, directing the consequences of what happens if a legatee does not survive you. Does a deceased nephew’s share go to his or her children or does it lapse, to be spread among the shares of other legatees? Is there any special bequest for your favorite niece, or does she get the same as her siblings and cousins? Are you leaving anything for charity? These are all questions you will need to answer in your will.

## *6. Revocable Living Trust*

A revocable living Trust can accomplish everything a Will does, regarding the disposition of your estate. Upon your death, revocable living Trusts, like Wills, can either morph into further testamentary Trusts or distribute all of their assets outright to your beneficiaries.

Most revocable living Trusts are “self-declarations,” meaning that you wear a few different hats: grantor, trustee, and beneficiary. They can be

described in four words:

## YOU CONTROL IT COMPLETELY

A properly functioning revocable living Trust acts as a financial alter ego. It owns your assets and keeps your family out of probate court when you die, preserving your privacy and lessening attorney fees. By avoiding probate, revocable Trusts keep the details of what you do with your estate safe from the prying eyes of strangers. Wills, however, do not enable you and your family to avoid probate.

The difference between you owning your assets and your assets being owned by a revocable living Trust that you establish and control is that the Trust, unlike you, never dies or becomes incompetent. Upon your incapacity, the Trust is administered according to your best interests for the rest of your life. After you die, your revocable living Trust either becomes irrevocable under new testamentary terms, or its assets are distributed and the Trust ends. Either way, your successor trustee just needs a copy of the Trust and a death certificate to take control of your assets.

You can amend (change) the revocable living Trust's terms at any time or get rid of it altogether (revoke it). In most cases, you can use your Social Security number as a tax identification number, so no special tax accounting is required. All Trust income is reported on your regular individual or joint tax return.

# Special Circumstances to Consider When Planning Your Estate

If you have complicated family dynamics, immature beneficiaries, a special needs child or a large estate (large to you, especially, if you worked hard, scrimped and saved to accumulate it), you need to account for that in your estate plan. You also may wish to factor in pets, coveted family assets, non-biological dependents and much more.

You or a lawyer who is inexperienced in estate planning can knock out a template document by simply filling in the blanks. While this may give you the satisfaction that you indeed have a grownup Will, it may not encompass the results that you can accomplish if you give the matter serious thought.

At Matlin Law Group, we guide you through issues you may not ordinarily think about, especially contingency planning. Life is not always as linear as you think it will be. Once we achieve a meeting of the minds about the planning you need, we create a personalized, expertly curated estate plan that gives you and your loved ones peace of mind. We take time to learn about your family dynamics and provide legal and emotional support at every step in the estate planning process so you walk away with a plan designed for YOU, not some generic person.

**Ready to start planning your estate? Call Matlin Law Group today for a free consultation!**

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