

Quick Guide to Estate Planning

What is Estate Planning?

Estate planning is a process that involves thinking about your wishes related to your health and finances, and then documenting those wishes to ensure that they will be carried out. Most people think that you only need to plan your estate if you have a lot of money or property. But really, every adult over the age of 18 should have an estate plan. Although it can be difficult to think about your mortality, creating an estate plan allows you to express your deeply held values and personal preferences. Thinking about these decisions and preparing in advance can provide you with the peace of mind that your loved ones will know your wishes.

Key Estate Planning Questions

- When I die...
 - What do I want to happen to the property or things that I own?
 - Who do I want to take care of my minor children?
 - Is there someone else I want to help take care of?
 - Do I have thoughts about a funeral and burial?
- If I'm unable to make my own decisions...
 - Who do I want making medical decisions for me?
 - Who do I want making financial decisions for me?

Defining Your Estate

- ☐ Make a list of all property
- ☐ Determine property's value (financial & sentimental)
- ☐ How is the property owned?

Steps to Create an Estate Plan

Step One: Define Your "Estate?"

Your "estate" includes all of the property you own at the time of your death. For example, your estate might include your home, other real estate, cars, furniture, jewelry, art, bank accounts, stocks, bonds, securities, pensions, and Social Security benefits. Even payments owed to you, like a tax refund or an inheritance, are included in your estate. Digital property like online bank accounts, electronic devices, files and photos on those devices, email and social media accounts, and blogs are also considered part of your estate.

Once you have determined what property is included in your estate, you can determine what it is worth. To figure out the financial value of your property you can have it professionally appraised. But you should also consider if the property holds any sentimental value. For example, you may have a piano that isn't worth a lot of money, but it has been in your family for many generations. On the other hand, if no one in your family wants the piano, maybe you will decide to donate it to a local school. Gathering this information may help you decide how to distribute things.

The final step in defining your estate is to determine how the property is owned. There is more than one way to own property. These are the three most common ways to own property:

1. Individual Ownership: property that you own and no one else has a legal claim to. For example, if Jim buys a car and only his name is on the title, then he owns that car alone. So, he can make decisions about who to give his car to.
2. Joint Ownership: there are two ways that you can own property with at least one other person (jointly):
 - a. Joint Tenancy with Right of Survivorship: With this type of ownership, all of the owners hold an equal right to the property and do not need the other owner's permission to access or use that property. For example, if Emma and Ellen own a bank account in joint tenancy with right of survivorship, each one could spend money from that account without the other's permission. If Emma were to die, Ellen would become the sole owner of the entire account. The account would no longer be part of Emma's estate.

B. Tenancy in Common: With this type of joint ownership, each individual "tenant in common" owns a specific percentage of the property. Owners are free to withdraw/mortgage/sell only his or her own portion of that property. When a tenant in common dies, his or her share of the property would pass to his or her beneficiaries, not to the surviving tenants in common. For example, Paige and Dean own an apartment building with four units as tenants in common, with each of them owning 50% of the building. When Dean dies, ownership of two of the units would transfer to Dean's niece, as named in Dean's will. Now Paige and Dean's niece own the apartment building as tenants in common.

3. By Contract: Ownership of some types of property is determined by a contract (e.g., life insurance, retirement accounts, etc.). An owner has full control over the property while alive, but after death, the property transfers to a person (beneficiary) chosen by the owner. For example, Caroline has a retirement account and she named Jane as the only beneficiary. While Caroline is alive, she has the right to withdraw or add funds to that account, or even change the beneficiary. But after her death, the funds in the retirement account will go directly to Jane.

Step Two: Are You Responsible For Others?

During the process of planning your estate, you should consider who you are responsible for (e.g., minor children, adult children with developmental disabilities) and how to care for them if you were no longer able to do so. If you have minor children you may want to name one or more people to act as their legal guardians if you pass away. You should consider who you would want to manage any financial assets for those children. You can also think about any other family members and/or friends that you would like to have benefit from your assets.

Step Three: Which Estate Planning Documents Do You Need?

There are different documents that you should consider completing as part of your estate plan. Keep in mind that estate planning rules are different in each state. More information about each state's rules can be found at <http://TriageCancer.org/EstatePlanning>.

Decisions About Your Property

The two main estate planning documents to use to describe what you want to happen with your property are a will and a trust.

1. Wills

A will is a legal document that provides instructions for what an individual would like to have happen to their property upon death. A will is also a place where parents can name a guardian for any minor children or adult children with developmental disabilities. Each state has different rules about how to create a valid will, so it is critical to check the rules in your state. There are different types of wills:

- a. Written: Most states require that: 1) your will be in writing; 2) you be of "sound mind;" 3) you sign the will; and 4) it be witnessed by an "uninterested party." Some states may require two witnesses, that the witnesses are present when you sign the will, or that the will be notarized. "Sound mind" generally means that you have an understanding of what you are doing. An "uninterested party" generally means someone who is not getting anything in the will.
- b. Statutory: Some states (California, Maine, Michigan, New Mexico, and Wisconsin) have a statutory will form, which can be filled in with the details of your estate plan and your wishes. Will forms are free and you don't have to hire an attorney. But, they can't be customized, so they are better for simpler estates.
- c. Oral: Generally, oral wills are only allowed in very limited and unusual circumstances (e.g., statements made on one's deathbed).

There are several do-it-yourself will options, if you have a relatively simple estate, or cannot afford an attorney. There are online services, books, and computer software that can cost anywhere between \$35-\$200. You may also want to consider hiring an estate planning attorney, especially if you have a complicated estate. When an attorney helps you create a will, you will typically be charged a flat fee or an hourly rate. How much it will cost depends on factors such as the size of your estate or how complicated your wishes are. There are legal aid organizations that provide free or low-cost legal services for people with low and moderate income levels.

Visit <http://TriageCancer.org/StateResources>, for legal resources in your state.

Steps to Create a Will

- ☐ Assess property and values
- ☐ Double check state's requirements
- ☐ Decided on the type of will and if you need to hire an attorney
- ☐ Identify an executor
- ☐ Identify a guardian for minor children
- ☐ Keep will in secure but accessible location, known by the executor
- ☐ Periodically review will to ensure it matches current property and wishes

When you write a will, you should also consider who you want to be the executor of your will. This is the person who will ensure that your property is distributed according to your will. You can change or revoke (cancel) your will at any time, as long as you are of sound mind. A codicil is a legal document that you can use to make changes to your will, and can be used for minor changes (e.g., adding a particular gift or updating the legal name of one of your beneficiaries after they get married). Codicils must be executed in the same way that wills are in your state. For example, if a state requires that a will be signed by two witnesses, the codicil must also be signed by two witnesses. If you need to make more substantial changes (e.g., completely removing a beneficiary or adding a new child as a beneficiary) you may want to consider revoking (cancelling) your current will and writing a new one. Generally, if you create a new will, you should destroy any older versions to avoid any confusion or doubt.

2. Trusts

A trust is a document that allows you to hold assets for one or more beneficiaries. A beneficiary is a person who receives the benefit of the assets in the trust. You can choose a "trustee" to oversee the assets in the trust, or you can act as your own trustee during your lifetime.

Property that can be placed in a trust includes real estate, cars, bank accounts, stocks, art, and jewelry. When you place property into a trust legal ownership is transferred from you to the trust itself. Then the trustee has a legal responsibility to manage the property in the trust the way that you specified in the trust document. The most common types of trusts are:



Living trust: created while you are alive and is revocable until your death. Typically, you act as your own trustee, and while you are alive, you can make any changes for any reason.

Testamentary trust: used to provide for individuals who need help managing their assets. Testamentary trusts can be especially useful to parents who have young children and want to provide for future education, healthcare, or general support. They may also be helpful in meeting ongoing expenses for dependent adults with special needs while safeguarding their government benefits (e.g., Medicaid).

Irrevocable trust: cannot be changed or revoked once created, but may provide some tax benefits and protection from legal action or creditors.

Special needs trust: can be used to meet the needs of an individual with a disability. The advantage of these trusts is that the assets in the trust are not considered "countable assets" for purposes of qualification for certain governmental benefits (e.g., Supplemental Security Income (SSI) or Medicaid).

If you are considering creating a trust, you should consult an estate planning attorney who is experienced in your state's trust and tax laws to ensure that your trust is set up properly.

Decisions About Your Finances

3. Powers of Attorney for Financial Affairs

There may be a time when you become unable to make financial decisions for yourself and you may need help. A Power of Attorney for Financial Affairs is a legal document where you can authorize a trusted adult to make financial decisions for you. Those decisions could be as simple as depositing or withdrawing funds from a bank account, or handling other personal matters, such as receiving mail or making travel arrangements. A durable Power of Attorney for Financial Affairs takes effect when you sign it and stays in effect even if you become incapacitated in the future, but it ends when you pass away. That is when your will takes over. A springing Power of Attorney for Financial Affairs "springs" into effect only if you become incapacitated.

4. Advance Health Care Directive

There may come a time when you can no longer express your wishes about your medical care. An advance health care directive is a legal document in which you can share your preferences and provide written instructions about your medical care, if you become unable to communicate. You can make decisions about whether or not you want to stop medical treatment at a future time when treatment may not be useful (e.g., stopping chemotherapy once it stops working). However, they can also be used to ensure the start or continuation of treatment at a future time when you may not be able to verbalize your consent (e.g., starting artificial hydration). You can also appoint a trusted adult to make medical decisions for you in the event you are unable to communicate. For the advance health care directive forms in your state, visit <http://TriageCancer.org/EstatePlanning>.

When making decisions about end-of-life care, there are also other resources. The POLST (Physician Orders for Life Sustaining Treatment) Paradigm, encourages patients to talk with their health care providers about the kind of care they want. After talking, they document those decisions in a POLST Form, which can be used by emergency health care providers if patients are unable to speak for themselves. Depending on the state that you live in, a POLST Form might be called by another name. For more information, visit www.POLST.org.

Step Four: Funeral & Burial Planning

While it can be hard to think about these issues, you may want to consider making your funeral arrangements in advance, so that your loved ones won't have to make those decisions during a difficult time. These arrangements can also be expensive, so you should also consider how to cover these costs. Here are some things to think about:

- Where and how do I want to be laid to rest (burial, cremation, burial at sea, etc.)? Do my loved ones have any preferences?
- Do I need to buy funeral insurance to help pay for these expenses in the future?
- Do I want a memorial service, a wake, or some other type of celebration of my life?

For more information about funeral planning, visit <http://TriageCancer.org/EstatePlanning>.

Step Five: Review Your Estate Plan

Every once in a while, you should review your estate plan and make any needed changes, if there have been changes to your property, family, or wishes. Also, if you have moved to another state, you may also want to have a lawyer in the state where you now live review your estate plan, to make sure that it complies with state laws.

Practical Tips for Estate Planning

Once you have completed your estate planning documents, you should keep them in a safe, but accessible location. Make sure that your executor, trustee, or a trusted loved one knows about the existence and location of the documents and has access to them. For example, it can cause a problem if the only copy of your will is in a safe deposit box that only you can access.

Estate Planning Snapshot:

Think about your wishes → **Talk** to your loved ones →

Draft a Will and/or Trust →

Complete an AHCD and Financial POA →

Review and update existing documents →

Share the location of your plan with someone you trust

For more detailed information about estate planning: www.CancerFinances.org.

For help getting organized to start estate planning:

Checklist: Getting Organized - <http://TriageCancer.org/Checklist-GettingOrganized>