

Understanding the Basics of Estate Planning

► An estate plan lets others know what you want to be done when you are unable to speak for yourself due to mental incompetence or after death.

Have you experienced or heard of family conflicts arising due to the lack of an estate plan or a Will? Unfortunately, many people think about estate planning in terms of age or wealth, or they don't think about it at all. According to a 2021 Gallup poll, only 46 percent of adults in the United States (US) have a Will. In other words, more than half of the adults in America have nothing in place to describe how their estate will be administered after their death. Start by learning basic estate planning terms.

Estate Planning Terms

Before planning begins, it's important to know and understand essential estate planning terms that include the following:

- **Advance directives:** Legal documents created in advance to allow individuals to tell healthcare providers their healthcare preferences and desires when they cannot communicate.
- **Advance Healthcare Directives:** A type of Advance Directive that combines the Living Will and the Healthcare Power of Attorney. It specifically addresses end-of-life decisions and whether a person wants to be placed on life support, artificially hydrated, and fed under certain circumstances. It has a place in which a healthcare proxy, someone who can act on your behalf, can be named.
- **Agent:** A person(s) appointed by the creator of the Power of Attorney to legally act on their behalf.
- **Beneficiary:** The person(s) designated to receive a monetary or tangible gift from the account holder.
- **Contingent Beneficiary:** A person you selected to receive a benefit if the beneficiary dies.
- **Estate:** Everything you own, including debt.
- **Estate Plan:** A collection of legal documents that allows your voice or wishes to be heard when you cannot speak for yourself.
- **Estate Planning:** The process of arranging for the administration and distribution of your estate when you die or become incapacitated.
- **Intestate:** To die without a Will.
- **Living Will:** A type of Advance Directive that provides specific instructions regarding the medical treatments, procedures, and medications you do and don't want when you are unable to speak for yourself.
- **Power of Attorney:** A legal document created by you (the Principal) that designates a highly trusted person(s) (the Agent) to act on your behalf with the defined powers listed in the document.
- **Principal:** the person needing an Agent (a trusted individual) to act on their behalf.
- **Probate:** A court-supervised process of the transfer of assets to the rightful beneficiaries.
- **Trust:** A legal arrangement that allows a third party to hold and manage the assets of any beneficiary(ies).
- **Will:** A legal document that states how you want your property distributed after death.



Figure 1. Estate Planning. Source: iStockphoto.com, designer491, 2020.

Estate Planning

One of the most significant pieces of advice anyone can share with you is to “get your affairs in order” while you can. Estate planning is a process that allows you to

do such. It lets others know what you want to be done when you are unable to speak for yourself due to mental incompetence or after death. An estate plan consists of several legal documents that provide instructions regarding:

- financial management
- the transfer and distribution of property
- health care
- who can make decisions for you
- funeral arrangements
- guardianship of minor/disabled children
- storage and location of legal documents

Transferring an Estate

Although estate planning involves the transfer of assets or property, not all assets go through the public process of a court-supervised transfer (*probate*). Only probate property is transferred through the supervision of the court. Probate property includes property solely owned by the deceased, property transferred by a Will, life insurance proceeds payable to the estate of the deceased, etc.

A probate court does not transfer *non-probate property*. The transfer of such property occurs outside the provisions and control of a Will or court. This type of property is transferred in two ways: by operation of law and by contract.

The transfer of property by operation of the law follows stipulations laid out in state laws. For example, in a joint checking or savings account with the right of survivorship, the property (account) is transferred to the surviving owner(s) by operation of the law rather than provisions of a Will. Transfer of property by contract refers to property that can be designated to beneficiaries by contract. For example, the transfer of property such as employer-sponsored pensions, bank accounts with a pay-on-death beneficiary named, mutual funds, stocks, and life insurance policies with a named beneficiary, etc., can all override provisions in a Will if a beneficiary is named. If a beneficiary is not named, the property will then be included in the estate of the deceased and remain under the probate court's control.

Talk with your attorney or financial adviser for more information about transferring your estate by the probate court or outside the probate court. Specifically, research how you can transfer your property outside the probate court.

Transfer Estate Documents

Financial Powers of Attorney

The Financial Power of Attorney enables a highly trusted person(s) to manage your financial affairs on your behalf and for your benefit if you are unable or unwilling to do so yourself. There are two types: (1) one that becomes effective immediately upon the execution of the document, and (2) one that only becomes effective upon the occurrence of a stated event (typically, the certified legal incapacitation of the Principal). Both types are "durable," provided they contain the appropriate legal language, which simply means they both override the future incapacity of the Principal. Again, it is essential to name a very trustworthy person(s) as Agent since the Agent will have full access to your bank accounts and real estate, among other things.

Will

A Will, an estate planning tool, is a legal document that can be used to transfer or distribute real and personal property after death. Because this document is enforced only after death, the Will can be canceled or changed anytime while you are still living.

This legal document:

- specifies who gets your property
- identifies the person responsible for the administration of your estate and carrying out your stated wishes in the document (Executor)
- names guardians for minor children and/or disabled dependent adults
- specifies your funeral arrangements

If the court rejects the Will or you die without a legitimate Will, it is assumed that you died intestate. When a person dies intestate, the probate court will oversee and distribute your property according to Alabama intestacy laws, and not according to your wishes.

A Will must meet the requirements established by state laws. In the state of Alabama, some requirements are:

- You must be at least 18 to have a valid Will.
- You must be of sound mind.
- The document must be written, signed, and dated.
- At least two qualified witnesses must sign the document.

- The document can be handwritten, but it must comply with all other Will requirements (e.g., capacity, witnesses, etc.).
- The document cannot be oral (audio recording or video recording).

Once you have a valid Will, remember to periodically update it, especially after significant life events (i.e., marriage, divorce, the death of a spouse or a child, the birth of a child, etc.). Also, store this document in a secure place. Lastly, understand that a probated Will is a public document unless sealed by the court. This means that once your Will is probated, anyone can view it as well as make copies of it.

Trust

A trust is another estate planning tool used to manage and transfer property. It is a legal agreement between you and a person chosen to manage and control your assets on behalf of a beneficiary. A trust transfers assets/property outside a probate court's control. Depending on the type, a trust differs from a Will in that it may become effective before you die. Talk with your attorney or financial adviser for more detailed information about Wills and Trusts.

Health Care Decisions

Advance directives are legal documents created in advance to allow individuals to tell healthcare providers their healthcare preferences and desires regarding life-sustaining treatment and other medical care when they can't speak for themselves. There are several types of advance directive documents or estate planning tools. They include Living Wills, Healthcare Power of Attorney, Advance Healthcare Directives, Psychiatric Advance Directives, Do-Not-Resuscitate Order, Organ Donation Instructions, and Physician's Orders for Life-Sustaining Treatment.

The two most used advance directives are the Living Will and the Healthcare Power of Attorney. When these two are combined, they are called an Advance Healthcare Directive. The Advance Healthcare Directive provides instructions regarding the medical treatments, procedures, and medications you do and do not want while also providing a place to name a healthcare proxy, a trusted person who can speak on your behalf. It has become acceptable for physicians to use this designation as a Healthcare Power of Attorney Agent. However, it is suggested that in addition to an Advance Directive, you should have a separate Healthcare Power

of Attorney. Unlike the Advance Directive, the Healthcare Power of Attorney enumerates the given powers in which the agent can make healthcare decisions for you. Again, you must select a person you trust because your Agent can make all health decisions for you, the Principal, up to and including nursing home placement. In other words, the Advance Healthcare Directive is a single document that addresses end-of-life decisions with an option to name a Healthcare Proxy. The Healthcare Power of Attorney is also a single document that is used together with the Advance Healthcare Directive or alone.

Summary

In summary, estate planning is crucial regardless of age, wealth, or any other variable. It allows your voice to be heard when you cannot speak for yourself. Estate planning can not only prevent family conflicts, but it can prevent loved ones from having to make painful healthcare decisions.

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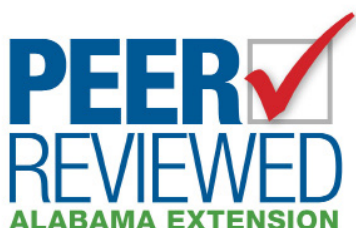
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