

CHAPTER 1

GETTING STARTED

"Estate planning." The phrase sounds so dry, distant, and foreboding. It's unfortunate so many people shy away from even the thought of it, because planning your estate is really about caring for your loved ones, seeing they are provided for, and making sure your hard-earned property is distributed according to your wishes.

Your estate consists of all your property, including

- * your home and other real estate,
- * **tangible personal property** such as cars and furniture, and
- * **intangible property** like insurance, bank accounts, stocks and bonds, and pension and social security benefits.

An estate plan is your blueprint for where you want your property to go after you die.

While a will is usually the most important part of an estate plan, it's not the only part. These days, it's common for a person to have a dozen "wills"--that is, various ways of distributing property regardless of whether the person has a formal will. Pensions, life insurance, gifts, joint ownership, and trusts are but a few of the ways you can transfer property at or before death quickly and inexpensively.

Not just for the elderly

We're all squeamish about death, but we're increasingly overcoming our reluctance to plan for it. The number of Americans with wills, for example, has grown by 50% in just 15 years. Thanks in part to growing interest in living wills, simplified procedures, and lower costs, millions of people of all ages and economic levels have taken steps to distribute their money and property according to a sound estate plan.

Estate planning is emphatically not just for the elderly. One glance at the news demonstrates that far too many young and middle age people die suddenly, often leaving behind minor children who need care and direction. Estate planning needs to be factored into your overall financial plan, along with your children's college tuition and your retirement needs. If your financial or familial circumstances change later in life, it's usually easy and inexpensive to adjust your plan.

Most people also plan for mental or physical incapacity resulting from an accident or illness. Through living wills, health-care powers of attorney, and other mechanisms, they control beforehand how they and their property are to be cared for if disaster strikes.

The law of intestacy

If you die **intestate** (without a will), your property still must be distributed. By not leaving a valid will or trust, or transferring your property in some other way, such as through insurance, pension benefits, or joint ownership, you've in effect left it to state law to write your will for you. This doesn't mean that your money will go to the state. That happens only in very rare cases where you leave no surviving relatives, even very remote ones.

But it does mean that the state will make certain assumptions about where you'd like your

money to go--assumptions with which you might not agree. Intestate descent laws prefer "blood" over "marriage," assuming--perhaps wrongly--that the more closely related you are to someone, the more likely you'd want your property to go to him or her. Some of your hard-earned money might end up with people who don't need it--for example, your grown child who already has more than you do. Meanwhile, others who might need the money more, or who are more deserving, could be shortchanged, such as that favorite niece of yours, or your other child, who has had trouble finding steady work. And surviving relatives may squabble over who gets particular items of your property, since you didn't make these decisions before you died.

Unfortunately, intestacy laws might also fail to provide adequate support for your spouse. For example, if you leave a spouse and no children, in many states your spouse shares with your parents, if they're alive, and your spouse may get as little as half of your property. Under the laws of one state, for instance, spouse would get \$5,000 plus half the balance; your parents would get the rest. In another state your spouse would get \$25,000 plus a half of the balance, but your parents would get the rest. In several states, your spouse and parents would split 50-50. Most people want their spouse to get all their property, but if they don't leave a will that probably won't happen. The way to assure that it will, and that your other goals will be achieved, is to plan your estate. Only estate planning gives you the feeling of control that comes from knowing your family is provided for as you wish. You decide who gets your property, when they get it, how they get it, and how much they get. Estate planning makes you the boss.

10 THINGS ESTATE PLANNING CAN DO FOR YOU

The first step in planning your estate is identifying your major objectives. Here are some typical objectives, preliminary suggestions on meeting them, and the chapters in this book that discuss these options in more detail.

1. Provide for your immediate family

Couples want to provide enough money for the surviving spouse. They often choose to provide this income through life insurance, particularly for spouses who don't work outside of the home.

Couples with children want to assure their education and upbringing. If you have children under 18, both you and your spouse should have a will nominating **personal guardians for the children** in case you both should die before they grow up. Otherwise, a court will decide without your input where your kids will live and who will make important decisions about their money, education, and way of life. [\(See chapter 6.\)](#)

2. Provide for other relatives who need help and guidance

Do you have family members whose lives might become more difficult without you, such as an elderly parent or disabled child, or a grandchild whose education you want to assure? You could establish a special **trust fund** for family members who need support that you won't be there to provide. [\(See chapter 4.\)](#)

3. Get your property to beneficiaries quickly

You want your beneficiaries to receive promptly the property you've left them. Options include

avoiding or greatly easing probate through insurance paid directly to beneficiaries, **joint tenancy**, a **living trust** or other means (chapters 2 and 5); using **simplified or expedited probate** available in all states, though sometimes only for very small estates or if all beneficiaries agree (see chapter eleven); and taking advantage of laws in certain states that provide partial payments to beneficiaries while a will is in probate ([chapter eleven](#)).

4. Plan for incapacity

During estate planning, most people these days also plan for possible mental or physical incapacity. This planning is especially important for single people. **Living wills** and **durable health-care powers of attorney** enable you to decide in advance about life support and pick someone to make decisions for you about medical treatment ([see chapter twelve](#)). Florida and a number of other states now permit you to designate a **personal guardian**. In addition, disability insurance can protect you and your family if you should become disabled and unable to work.

5. Minimize expenses

Everyone wants to keep the cost of transferring property to beneficiaries as low as possible, which leaves more money for the beneficiaries. Good estate planning can reduce these expenses significantly (see final sections of this chapter and chapters 2, 3, 4, and 5).

6. Choose executors/trustees for your estate

Choosing competent **executors/trustees** and giving them the necessary authority will save money, reduce the burden on your survivors, and simplify administration of your estate. It also will

reduce a court's involvement and, in many states, avoid paying for a bond. See chapters 3 and ten.

7. Ease the strain on your family

Many people take a burden from their grieving survivors and plan their funeral arrangements when planning their estate ([see chapter eleven](#)). Or you may simply want to limit the expense of your burial or designate its place. You also can provide for your body to be cremated or given to medical science after you die.

8. Help a favorite cause

Your estate plan can help support religious, educational, and other charitable causes, either during your lifetime or upon your death, and at the same time take advantage of tax laws designed to encourage private philanthropy ([see chapter 8](#)).

9. Reduce taxes on your estate

Every dollar your estate has to pay in estate or inheritance taxes is a dollar that your beneficiaries won't get. A good estate plan can give the maximum allowed by law to your beneficiaries and the minimum to the government. This becomes especially important as your estate approaches the magic number of \$1 million, the level at which the federal estate tax kicks in under current law. Chapter 8 briefly discusses this topic.

10. Make sure your business goes on smoothly

If you have a small business, the operation might be thrown into chaos upon your death. You

can provide for an orderly succession and continuation of its affairs by spelling out what will happen to your interest in the business. [See chapter 7.](#)

TAKING INVENTORY

Now that you've established your general objectives, it's time to get specific. Make up a checklist of assets and debts--what you own and what you owe. Below is a list of important estate planning documents that will provide a good idea of what you'll need to consider. You also may want to complete the more extensive "[Estate Planning Checklist](#)" at the end of book. It is detailed enough to be useful if you have a large, diversified estate, and is equally helpful if yours is a smaller, simpler estate. It also will enable you to do much of the preliminary work needed to prepare a solid estate plan.

Estate planning information

In planning your estate, it's helpful to have as much of the following information on hand as possible.

- The names, addresses, and birth dates of your spouse, children, and other relatives whom you might want to include in your will. List any disabilities or other special needs they may have.
- The names, addresses, and phone numbers of possible guardians (if you have young children) and executors or trustees.
- The amount and sources of your income, including interest, dividends, and other household income,

such as your spouse's salary or income your children bring home, if they live with you.

- The amounts and sources of all your debts, including mortgages, installment loans, leases, and business debts.
- The amounts and sources of any retirement benefits, including IRAs, pensions, Keogh accounts, government benefits, and profit sharing plans.
- The amounts, sources, and account numbers of other financial assets, including bank accounts, annuities, outstanding loans, etc.
- A list of life insurance policies, including the account balances, issuer, owner, beneficiaries, and any amounts borrowed against the policies.
- A list (with approximate values) of valuable property you own, including real estate, jewelry, furniture, jointly owned property (name the co-owner), collections, heirlooms and other assets. This list could be cross-referenced with the names of the people you might want to leave each item to.
- Any documents that might affect your estate plan, including prenuptial agreements, marriage certificates, divorce decrees, recent tax returns, existing wills and trusts, property deeds, and so on.

Sidebar

A SPECIAL NOTE FOR SPOUSES

You can't plan your estate if you don't know the facts about all the family assets. Yet, even in this era, lawyers say they still find that many clients who come to them for estate planning advice don't have basic information about their spouse's income. All too often, the client doesn't know how much the

spouse earns, what benefits he or she is entitled to, or where the money is invested. Whatever the reason for this situation, you need to know this information when planning your estate. It's especially important to find out how property you and your spouse own is titled, including insurance and other beneficiary designations.

Many people might be afraid to cause a rift in the marriage by asking a spouse about financial affairs—especially if that spouse is the primary breadwinner in the family. The need to share information and plan ahead can be raised indirectly--through another family member, an attorney, or other trusted professional--but full knowledge of the family's assets should be part of any sound estate plan. (end sidebar)

WHO CAN HELP AND WHAT WILL IT COST

If your estate is relatively small and your objectives are not complicated, you might plan your estate mostly on your own, with the help of this book and other resource materials, using professional help largely for tasks like writing a will or trust. Planning for larger estates can involve the counsel of your lawyer, insurance advisor, accountant, and banker, as well as your family and friends.

For a basic will, your lawyer will likely charge a flat fee that covers the costs of consulting with you, drawing up and executing the will, and any required filing fees. These days, most people need more than just a will, so many lawyers offer a package of estate-planning documents, including a basic will, a living will and durable health-care power of attorney.

More extensive estates, particularly those nearing \$675,000, generally require professional help in minimizing taxes. More complex estates may involve one or more trusts, in addition to a will.

With extensive estates, the lawyer often charges by the hour for the amount of work put into the estate plan. Ask about such fees at your first consultation and inquire about how much your total estate plan might cost. If you use a lawyer who charges by the hour, the more work you do in putting your wishes and the details of your estate in writing, the less work your lawyer has to do, and the lower the fee.

Preparing a will or trust

Even if you've done a lot of thinking about your estate plan on your own, don't just expect to pile some papers on your lawyer's desk and have a will or trust magically appear in a few weeks. Preparing these documents is seldom as simple as filling in blanks on a form. Most people will meet with their lawyer twice in the process, with more complicated estates requiring more consultations.

At the first meeting, you would probably discuss your financial situation and estate planning goals. Be prepared to tell your lawyer about some rather intimate details of your life: how much money you have, how many more children you plan to have, which relatives you want to get more or less of your assets. Your lawyer will review any documents you've brought in and ask questions that will help you think through various issues and possibilities. Then, he or she will probably outline some of the options the law provides for accomplishing your goals. Though certain methods may be recommended over others, depending on your circumstances, it will still be up to you to make your own choices from among those options.

Then, based on the choices you have made, your lawyer will draft a will or trust. At a second

meeting, he or she will review that document with you. If it meets with your approval, it can be signed then and there.

For more complicated estates, you may have some long phone conversations with your lawyer, and perhaps have to review several drafts of various estate planning documents, before everything is settled.

You should review your estate plan periodically (see chapter 9), so you'll want to stay in touch with your lawyer. Don't think of estate planning as a one-time retail transaction, but an occasional process that works best when you have a continuing relationship with your professional advisors.

Other costs

Good estate planning, as described above, should minimize costs that come about after your death. These include the following:

Probate costs

Probate is the court-supervised legal procedure that (1) determines the validity of your will and (2) gathers and distributes your assets. As chapter eleven details, the expenses of probate vary by state, since the requirements for simplified or expedited probate vary considerably. Good estate planning can minimize these expenses by passing assets through means other than a will, thus limiting the size of your **probate estate**. The smaller the estate, the lower the costs, especially if it is small enough to qualify for quick and inexpensive processing. What if your estate doesn't qualify for such simplified or independent administration? So many variables affect cost--size of estate, complexity of estate, amount of time required to settle the estate, etc.--that it's very difficult to generalize. Since a living trust avoids probate,

the total cost of a living trust may well be less than the combined cost of a will and probate. See chapter 5 for details.

Executor fees

By having a will and planning well, you can minimize the executor's fees. If you name a relative who's a beneficiary under the will as executor (most likely your spouse), he or she will probably waive the fee. On the other hand, if you die without a will, the probate court will appoint a **personal representative** to see the estate through probate, at a cost to be deducted from your estate. Similarly, if you pick a third party, such as a lawyer, to be the executor, that person is entitled to a "reasonable fee" for seeing an uncontested will through probate. While the amount varies, the fee is usually tied to what trust companies would get for performing similar duties. State law often treats this as a commission for the executor that varies with the size of the estate.

Legal fees in probate

If your estate is small and uncomplicated and your will is well-drafted, your spouse or other executor may be able to reduce the costs of administration. If things get more complex--for example, someone challenges the will, your will is out of date because you have a new spouse or child, the will is improperly prepared or executed, etc.--the cost of legal services becomes greater. You should count on paying whatever the going hourly rate is for a lawyer in your area. The more complex the probate process, the more hours the lawyer will have to put in--and the more it will cost your survivors.

HOW THIS BOOK CAN HELP

In this book, we'll acquaint you with the basics of estate planning--wills, trusts, living wills and other ways of planning for your death or disability. Our goal is to help you devise the best estate plan, by making you an informed consumer.

This guidebook can help you make decisions about writing a will, setting up a trust, using a lawyer or other professional advisor, and other matters involved in planning your estate. Remember that much of the law in this area varies according to the state in which you live, or where your property is located, so not all the information provided will necessarily apply to your state. But even in such cases, you will learn what issues to consider, questions to ask, pitfalls to avoid, and where to turn for information and assistance.

This book will help you save money by pointing out how the preparation you do--and even your willingness to do some simple administrative tasks yourself--can cut down on your lawyer's time, and thus on your legal bills. You'll also get better service by being prepared, knowledgeable, and asking the right questions. With this book's help, you should be able to ensure that you receive an estate plan tailored to fit your needs.

Finally, a note on legal terms. The law has its own language, and though this is a book for non-lawyers, we're occasionally forced to use some technical terms, or words to which the law assigns special meanings that may not always match our everyday usage. We'll define such terms as we go along.

Sidebar

CHOOSING A LAWYER

How do you find a lawyer to help you plan your estate and write any necessary documents? You can ask friends who have hired lawyers to draw up their wills. Or you can use any of the resources listed in the “Where to Find More Information” section of this publication, including lawyer referral program and national and state groups that certify lawyers as specialists in estate planning . Lawyers will often offer a first consultation free of charge. At this get-acquainted session, you can ask about the lawyer's experience in estate planning and get a firm idea of fees.

An essential: be comfortable with the lawyer you choose! A good estate lawyer will have to ask questions about many private matters, and you need to feel free in discussing these personal considerations with him or her. If you don't feel comfortable find another lawyer who's willing to explain the options to you and who'll help you do it right.

Sidebar

A FAMILY MEETING

Of course, a couple should communicate with each other so they agree on what goes to the surviving spouse and what to the children.

Because estate planning affects several generations, it may be a good idea, especially for families with grown children, to make your estate plan a family affair. Some families set aside a day and gather all family members who are involved in the plan. The parents can explain how this plan can have a major influence on all their lives, and why they're distributing gifts and trusts the way they are. They can also find out whether the children want to continue the family business, and ask if any property has sentimental values for them.

If you have such a meeting, encourage your family to voice their concerns and feelings about all

this--remember, many people don't like to talk about death--and answer any questions they may have. (This is especially important when personal or financial considerations lead you to make unequal distributions among siblings; fairness doesn't always mean equal treatment, and you need to spell out the good reasons for making unequal arrangements to avoid later resentment.) They may even raise issues that will lead you to call your lawyer or change your estate plan.

On the other hand, while you should listen to constructive questions, you needn't be defensive about the informed choices you make. Remember that you don't owe your children anything after they're grown up, and that you have the right to enjoy some or all of what you've earned. This meeting can be a chance to make that clear, but also to address any insecurities (possibly overwrought) these decisions may inspire.

And don't forget to tell the persons you've selected as executors or guardians of the children, to make sure they agree to serve.

Sidebar

KEEPING TRACK

One of the hardest tasks for an executor is figuring out just what money the dead person had coming in, and what bills and other payments need to be made. Think about your personal finances for a moment. If someone else suddenly had to step in and take over, would they know (or be able to figure out) about those royalties you have coming in from sales on a book you wrote three years ago? Or the payments you promised your friend Mac (orally, not in writing) for that boat of his?

Now is the time to put yourself in an outsider's shoes and write down all such expenses and income that might not otherwise be apparent to an executor. In doing so, you'll probably put your life in

better order. It's another example of how estate planning is more than planning for your death. It can make your life a lot simpler, too.

[Click here to go to Chapter 2](#)