

# Estate Strategies

## Critical Elements of an Estate Plan



Taking steps to help protect your estate is a key financial choice. With proper strategies, you may be able to maximize your opportunities and help manage stress and confusion for your loved ones. This whitepaper outlines critical elements worth considering when creating your own estate strategies.

## INTRODUCTION

Taking steps to help protect your estate is a key financial choice. With proper strategies, you may be able to maximize your opportunities and help manage stress and confusion for your loved ones. Yet, approximately 50% of 50 year olds don't have a will in place — despite the fact that almost 60% of Americans plan to leave an inheritance.<sup>1</sup>

Taking time to create estate strategies not only helps you put your financial house in order, but can also save you money. By documenting your wishes and goals, you create a legal framework that the courts, your executor, and your loved ones can follow when settling your estate. Without these strategies in place, your family risks going through a lengthy and expensive process — which could alter any wishes you had for your legacy.<sup>1</sup>

You can help make sure that your executor respects and upholds your values, goals, and desires for your estate by taking some time to thoughtfully prepare, today. Here are critical details to address when creating your own estate strategies.

### What does your will do?

- Names an executor
- Names guardian for minor children
- Directs how to distribute your property
- Goes through probate

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# KEY ELEMENTS OF AN ESTATE STRATEGY

## 1. Will

In its most recent survey, Gallup found 56% of Americans don't have a will in place — which is unfortunate, since a will really is the cornerstone of your estate.<sup>2</sup>

This legal document is crucial for proving what you own, how you want to distribute your assets, and who cares for any minor children you have at the time of your death. A will can also help business owners successfully and efficiently transition their assets. If you don't have a will in place, then any questions connected to your estate will get resolved through the courts' probate process.<sup>3</sup>

### WILLS CAN BE CONTESTED

Unfortunately, as important as they are, wills have shortcomings.

Even though they are a legally binding document, people can challenge them in court. In fact, the probate court will send out notice of the will to anyone who might have grounds to contest it. And if someone steps forward, the potential arises for a lengthy battle in probate court. Once estates go to probate, all details become public record — meaning anyone can find out how much you left and to whom.

## 2. Letter of Intent

With your will in place, another document that can help guide your estate is a letter of intent. While a will provides legal directives, you can provide a more personal voice by giving additional written instructions.

Your letter is not an official legal document, nor can it override your will. However, the letter can work in tandem with your other estate documents.

You'll want to update your letter of intent several times a year to reflect any details that have changed since your last check-in. Also, the more people involved in your estate that have copies of the letter, the better. Consider giving copies to your spouse, children, closest friends, or executor.<sup>4</sup>

### Letter of intent common details to include:

- Complete list of all assets, including artwork and investments
- Estimates of your assets' current market values
- Wishes for passing down heirlooms
- Instructions for funeral desires
- Location of titles/deeds for any real estate
- Charities you want to support

Source: <https://www.investopedia.com/articles/personal-finance/051414/do-you-have-crucial-financial-letter.asp>

### HOW LETTERS OF INTENT HELP

**Inform Probate Judges:** This personal letter can help clarify to the judge what your intentions are should questions arise.<sup>5</sup>

**Back Up Invalid Wills:** Sometimes, courts can find wills to be invalid. Should this happen, a letter of intent could help inform how you want to distribute your assets.<sup>6</sup>

**Help in a Medical Emergency:** Should an accident or emergency leave you unable to express your wishes, your letter of intent can offer the answers and perspectives you need to share.<sup>7</sup>

### 3. Power of Attorney

Typically, a power of attorney document authorizes someone to handle financial and some legal decisions when you become incapacitated.<sup>8</sup> The person you designate as a power of attorney doesn't have to be an attorney. Anyone you trust, such as a family member or friend, can serve in this role for you. You can even designate more than one person, assigning different responsibilities to each.<sup>9</sup>

The power of attorney can go into effect upon your incapacity or any other trigger event you specify. A power of attorney does not need to go through any additional legal proceedings. Individual states can have various power of attorney laws. So, consider becoming familiar with your state's specific regulations in order to make a more informed decision.<sup>10</sup>

#### POWER OF ATTORNEY DESIGNATIONS

**General Power of Attorney:** An agent under this agreement can serve any and all needs, as your state allows. They can do things like sign checks, sell property, and more.

**Limited Power of Attorney:** You can designate an agent under this agreement to support specific legal needs for limited timeframes. For example, you may choose to designate a loved one to manage only your retirement accounts for a few years.

### 4. Health Care

Sound estate strategy should address your health needs because medical emergencies can happen at any point. If you could not care for your estate as a result, you may need to have people designated beforehand who can manage responsibilities for you.

To include medical care planning in your estate strategies, start by organizing a variety of legal needs and documents, including:

**Living Will:** A living will provides specific instructions about your medical care if you become incapacitated and unable to communicate. It goes into effect immediately upon your incapacity and doesn't need to go through any additional legal proceedings.

**Durable Medical Power of Attorney:** A durable medical power of attorney for health care agreement authorizes someone to make medical decisions on your behalf. And, like the living will and the power of attorney, it does not need to go through any additional legal proceedings.<sup>11</sup>

**HIPAA Release Clause:** The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 protects the confidentiality of your medical information. By signing a release approval, you'll permit hospitals and medical facilities to release your details to your designated health care proxy, such as your durable medical power of attorney agent.<sup>12</sup>

## 5. 2nd & 3rd Marriages

Forty percent of new marriages in the U.S. include a spouse who's been married at least once before.<sup>13</sup> As a result, a large swath of Americans must plan for 2nd (and 3rd) marriages in their estate strategies.

Whereas a 1st marriage typically builds a new foundation for your estate needs, subsequent marriages create additional layers of complexity. You may have children from your 1st or 2nd marriage and new assets to manage. Not building the estate strategies you need to protect your family and estate could leave you in a legal bind should something happen.

### HERE ARE COMMON ESTATE NEEDS TO CONSIDER WHEN REMARRYING:

**Prenuptial Agreements:** Prenuptial agreements may get a bad rap, but these legal documents are actually a critical estate strategy for remarriages. In fact, they are the only way you can prove who owns certain assets within a marriage. A prenuptial agreement can also help you put financial protections in place for your children, should a spouse die. State laws can vary on how to address prenuptial agreements, so be sure to check your own state's requirements.<sup>14</sup>

**Updated Legal Documents:** Once you remarry, your estate documents may need updating to align with your new life stage. You'll want to look over your will, powers of attorney, trusts, and health care directives, and revise them to include your new spouse, as needed.<sup>15</sup>

**Beneficiary Considerations:** You may need to update your beneficiary listings for your accounts to include your new spouse, if you want them to inherit the assets. Just note: Your beneficiaries can also list their own beneficiaries after you die. This detail could mean excluding your children if your spouse designates other people — even if you told your children otherwise. So, you may want to consider this detail carefully as you create strategies that reflect your estate wishes.<sup>16</sup>

## 6. Guardianship Designations

Having children means including their needs in your estate strategies. One common area people should prepare for is legally naming guardians for their children. If something happened and you and your spouse could no longer care for them, a guardianship designation helps ensure you can choose who raises your children. You may also want to consider naming a back-up guardian as an additional safeguard.<sup>17</sup>

### DIFFERENCE BETWEEN GUARDIAN AND TRUSTEE

While a guardian and trustee can both help provide care for your children, they aren't one and the same. A guardian specifically serves in a custodial role, providing the ongoing care and guidance for them, such as where they go to school and what they eat for dinner. Meanwhile, a trustee is their financial guardian who helps them with money matters, like receiving their beneficiary payments and paying any bills for them.<sup>18</sup>

## 7. Trusts

Trusts can be another powerful estate management tool.

A trust is a legal entity that can own property. Properly structured trusts completely avoid probate and avoid the delays and expenses that often accompany probate. Trusts are not a matter of public record; they're a tool for maintaining privacy.<sup>19</sup>

Trusts can provide very effective management of your assets and their distribution to your heirs.

And, even after your death, trusts can provide some measure of control over how assets distribute to children and other beneficiaries. In addition, trusts are much more difficult to contest than a will.

Using a trust involves a complex set of tax rules and regulations. Before moving forward with a trust, consider working with a professional who is familiar with these dynamics.

### Estate Benefits of Trusts

- Avoid probate
- Are not public record
- Support effective management & distribution
- Provide some control of beneficiaries
- Are difficult to contest

Source: <https://estate.findlaw.com/trusts/trusts-an-overview.html>

## 8. List of Accounts and Passwords

If you were to pass away suddenly, do your executor and loved ones know how to access all your accounts? Do they even know all the accounts you own?

Chances are, probably not. Considering that 86% of Americans store their online passwords in their heads, the vast majority of people aren't preparing their executors to access their account details.<sup>20</sup>

### CONSIDER TRACKING THE FOLLOWING CATEGORIES:

**Employment Benefits:** If you receive health care or retirement accounts through your employer, then you'll want to capture these details for your estate executor. Also, include your HR contact for this benefit.

**Financial Accounts:** Gather all the account details that connect to your assets. This information could include investment accounts, credit cards, safety deposit boxes, and other financial items.

**Online Accounts:** Your life online may need management from your executor and loved ones in order to settle your estate. Be sure to list your account login credentials for everything, from your social media accounts to online streaming channels and more.<sup>21</sup>

## FOOTNOTES, DISCLOSURES, AND SOURCES

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<sup>1</sup> <https://www.thebalance.com/top-reasons-why-you-need-an-estate-plan-3505444>

<sup>2</sup> <https://news.gallup.com/poll/191651/majority-not.aspx>

<sup>3</sup> <https://www.thebalance.com/why-you-need-a-will-1289264>

<sup>4</sup> <https://www.investopedia.com/articles/personal-finance/051414/do-you-have-crucial-financial-letter.asp>

<sup>5</sup> [https://www.investopedia.com/articles/pf/07/estate\\_plan\\_checklist.asp](https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp)

<sup>6</sup> [https://www.investopedia.com/articles/pf/07/estate\\_plan\\_checklist.asp](https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp)

<sup>7</sup> <https://www.investopedia.com/articles/personal-finance/051414/do-you-have-crucial-financial-letter.asp>

<sup>8</sup> [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate\\_planning/power\\_of\\_attorney/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/power_of_attorney/)

<sup>9</sup> <https://www.investopedia.com/terms/p/powerofattorney.asp>

<sup>10</sup> [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate\\_planning/power\\_of\\_attorney/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/power_of_attorney/)

<sup>11</sup> <https://www.lawhelp.org/dc/resource/frequently-asked-questions-about-durable-powe> | <https://www.thebalance.com/>

<sup>12</sup> <https://www.consumerreports.org/cro/estate-planning/essential-steps-for-estate-planning>

<sup>13</sup> <https://www.pewresearch.org/fact-tank/2019/02/13/8-facts-about-love-and-marriage/>

<sup>14</sup> <https://www.kiplinger.com/article/retirement/T065-C032-S014-getting-remarried-5-financial-steps-to-take-first.html>

<sup>15</sup> <https://www.kiplinger.com/article/retirement/T065-C032-S014-getting-remarried-5-financial-steps-to-take-first.html>

<sup>16</sup> <https://www.fidelity.com/viewpoints/personal-finance/estate-planning-for-second-marriages>

<sup>17</sup> [https://www.investopedia.com/articles/pf/07/estate\\_plan\\_checklist.asp](https://www.investopedia.com/articles/pf/07/estate_plan_checklist.asp)

<sup>18</sup> <https://www.kiplinger.com/article/retirement/T021-C032-S015-estate-planning-101-5-lessons-for-new-parents.html>

<sup>19</sup> <https://estate.findlaw.com/trusts/trusts-an-overview.html>

<sup>20</sup> <https://www.pewinternet.org/2017/01/26/2-password-management-and-mobile-security/>

<sup>21</sup> <https://www.forbes.com/sites/megangorman/2018/04/27/want-to-have-an-organized-estate-plan-track-your-passwords-and-accounts/#61804e632ac9>