

programs often will sell you documents that you do not need or advocate plans that do not actually work. The law is constantly changing, and books or materials on the internet are not always up to date. While there are pre-printed forms readily available for wills, powers of attorney, living trusts, and living wills, they may not be valid in your state or may not meet your specific needs. Completing these forms properly can be difficult, and mistakes cannot be corrected once you are dead or incapacitated.

The Role of an Elder Law Attorney

Elder law attorneys who specialize in estate planning are trained and experienced with wills, trusts, powers of attorney, advance directives or living wills, and the intricacies of estate and inheritance taxes. They may recommend accounting services, financial planners, or insurance purchases, but generally they do not earn their fees by selling such products. As a result, you are more likely to get thorough and unbiased advice from a qualified elder law attorney.

Many elder law attorneys have developed special expertise in estate and disability planning and have obtained the knowledge and experience necessary to provide clients with a complete plan for caring for themselves and loved ones, transfer of assets, and carrying out client wishes. In addition, elder law attorneys are sensitive to the special needs of older adults and their families. Be certain to assure yourself that the attorney you choose has such experience and training.

Attorneys will ask clients for a great deal of information and request original documents such as deeds, account statements, and insurance policies. It is the attorney's role to assure that all the elements of the estate plan are properly handled, and reviewing names on titles, beneficiary designations, and other similar information is part of thorough planning. All the information provided to an attorney is, of course, confidential and may not be disclosed to others without the client's permission.

National Academy of Elder Law Attorneys

The National Academy of Elder Law Attorneys (NAELA) is a professional association of more than 4,000 attorneys dedicated to improving the quality of legal services provided to older adults and people with disabilities.

The information in this brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified elder law attorney.

For more information about NAELA and a directory of NAELA attorneys in your area, go to www.NAELA.org.



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The Law and Aging

Estate Planning and Probate



The Issues

Estate planning means much more than preparing a last will and testament* or tax planning for the disposition of your assets upon your death. It is the process of accumulating and disposing of an estate to maximize your goals. Goals typically include making sure the greatest amount of the estate passes to intended beneficiaries while minimizing the amount of taxes due. Estate planning must also provide for administration and protection of assets during your lifetime (including transfer on death/beneficiary designation assets) and for decision-making in the event of a disabling illness.

Any complete estate plan should contain:

1. A last will and testament*
2. A durable health care power of attorney naming an agent (and an alternate) responsible for medical decision-making
3. A living will or other advance directive giving instructions concerning the type of care one wishes to receive (or avoid) in the event of a terminal illness or persistent vegetative state
4. A durable financial power of attorney naming an agent (and an alternate) responsible for asset and financial management

Estate planning may also include the creation of trusts and recommendations about beneficiary designations.

Estate planning is an opportunity to make wishes known about your health care and asset distribution and to determine what person(s) will be responsible for carrying out those directives. You may state your preferences concerning the type of care you receive, what types of medical care you do not wish to receive, and who you wish to act as your agent in carrying out those wishes. If you do not leave a last will and testament or trust, many of your assets will be distributed according to the laws of intestate (without a will) succession. There are laws in each state governing the

**In some cases, trusts are used with or in place of wills.*

rights of surviving spouses, heirs, and next of kin in the absence of a last will and testament.

Upon death, certain assets which have designated beneficiaries transfer as directed in the account documents, even if different from the will. Joint accounts usually pass to the other owners. All other assets pass either as the person directs in the will or as the legislature directs under a state's intestacy laws (if there is no will). Although there is a large exemption from federal estate tax, there may be other taxes due on death.

Scams/Do-It-Yourself Estate Planning

Often people are told they need to have a complicated revocable living trust in order to avoid probate. In some situations and in some states, this may be good planning, even though generally no tax savings result from using these trusts. However, sometimes it is a waste of money and effort to have a living trust. Likewise, people are sometimes told they need to purchase an annuity, and this may be a good investment in some situations but not others. Documents downloaded from the internet or copied from other sources may not work properly in your state or may not meet your goals, and when you need them it may be too late to fix the problem.

Probate

Probate laws, practice, and costs vary from state to state. A qualified elder law attorney will be able to advise you about your state. It is also important to meet with a qualified elder law attorney after a spouse dies because certain tax returns may need to be filed to save taxes on the surviving spouse's death.

What You Need to Know

In preparing an estate plan, it is essential to administer all your assets. Do a complete inventory of everything you own before contacting your estate planner.

Your estate consists not only of your home, car, and bank accounts. It also includes life insurance policies, annuity contracts, investments you may own (includ-

ing those held jointly with other people), your IRAs and other retirement accounts, and any other assets over which you can exercise control.

If possible, keep a centralized and secured record of all your financial accounts, insurance policies, credit and debit cards, loan accounts, safe deposit box, and account IDs and passwords.

You will need to make decisions about what to include in your estate plan. First, list any specific gifts to family or non-family members and/or to charities. Determine who will inherit your property upon your death. Be certain that your spouse or heirs are capable of managing financial affairs after you. If capacity or vulnerability is an issue, consider naming a trustee to handle financial affairs for them. Designate an executor or personal representative to administer your estate, as well as an alternate for this role. Special arrangements may be needed if there are family issues, such as children from a previous marriage of either spouse or any recipient with a disability.

Once these decisions are made and your inventory is completed, your attorney will be able to advise you as to the best techniques to use in planning your estate.

In the event of a disability, decide who will be your decision-makers for your finances and health care options. Finally, consider the difficult questions of what type of care you would want or not want in the event of terminal illness. If you have special desires concerning disposition of your remains, explain these desires during your planning conference as well.

These are complicated and personal issues. The advice of a qualified elder law attorney is essential to protect your financial health and welfare and to ensure that your health care wishes are known and carried out.

Some insurance vendors call themselves estate planners as do some accountants and financial planners. Often, these individuals will sell some type of product or service. Use caution in attending free seminars about living trusts or other arrangements since such