

# A PIECE OF MIND

## ESTATE PLANNING ESSENTIALS

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What do palm readings, a crystal ball, and tarot cards have in common?

They are methods of trying to divine the future. Humanity has a long and creative history of trying to predict what has yet to come. Planning—financial planning and estate planning—take a different approach. Instead of trying to anticipate (which really means guessing), planning can help you prepare for a range of possibilities.

**An estate plan are measures and directions to ensure your family and financial goals are taken care of once you die.** Examining your estate plan is an important part of the financial planning process. Financial planning looks at your complete financial picture now, and in the future. Estate planning looks at what comes after death or incapability.

The topic of estate planning covers a lot of ground. Recently, we posted a series of articles that break down pieces of this broad topic. This article is a wrap up of the concept of estate planning, and the individual pieces of the process.

As always, we recommend using an estate planning attorney to help guide you through the process.

### Last Will and Testament

**Everyone knows they should have a will, but nearly half of Americans over 55 don't have one.** Writing a will puts you face to face with your inevitable demise, and that is uncomfortable for many of us. But a will might be one of the most critical and thoughtful things you can do for your friends and family.



A will can help your loved ones avoid unnecessary hassles and give you the peace of mind of knowing that your possessions will end up in the right hands. For instance, you want the heirloom grandfather clock that's been in your family to go to your daughter, and not the money-grubbing cousin who will sell it on eBay.

A Will, also known as a Last Will and Testament, allows you some measure of control of what happens after your death.

A will is your plan for:

- Assets, money, or property
- Guardian(s) to care for any minor children
- Appointment of an executor to carry out your wishes
- Caregiver(s) and funds for any companion animals

While you do not need a lawyer to complete a will, you may find the entire process overwhelming without one. A good estate attorney can help you prepare a will, and any additional estate planning documents you need. If you would like a recommendation, give us a call and we can help you find one who's right for you.

If you pass away without leaving a valid will, you are considered to have died "intestate." Usually, this means your estate is settled based on your state's probate laws. (Probate is the legal process of transferring the deceased's property to their heirs.) Probate laws generally favor the current spouse.

## Your Executor Executes Your Will

An executor, is a person or persons assigned by you, the testator, in your will. They ensure your wishes are carried out the way you want. They will also oversee settling your debts after the cost of probate and funeral

## WHAT IS A DIGITAL ESTATE PLAN & WHY YOU NEED ONE

Digital trends vastly changed where and how we access and store information. And this digitization has only complicated estate issues.

What happens to your digital assets and accounts after you die?

Digital assets are your online accounts. This includes files, email, social media, and networking accounts. (For example: Gmail, iCloud photos, Instagram, and LinkedIn)

Technology is constantly evolving. The specifics of what a digital asset is will continue to change. Digital assets fall into seven broad categories:

1. **Hardware** such as: computers, tablets, smart phones, e-readers, hard drives, flash drives, and other digital devices.
2. **Electronic Communications** such as: emails, social networking sites, and blogs.
3. **Online Reward Programs** such as: credit card rewards, hotels, and airlines.
4. **Financial Accounts** such as: PayPal, online banking, investments, and brokerage accounts.
5. **Digital Collections** such as: digital music files, photos, and videos.
6. **Business Accounts** such as customer databases which include personal and potentially confidential information.
7. **Cryptocurrencies** such as Bitcoin.

Federal privacy laws can hinder access for your loved ones. Many companies can't give access unless you made advanced arrangements. These privacy laws, designed to protect and combat hacking, make this difficult. The law considers violations criminal acts.

expenses. That's important. You should consider these costs when planning.

Often your executor is a lawyer or an accountant—who will need payment for this service. (Which is another cost you will need to consider.) You can have more than one executor. You can also have co-executors. Remember, your executor doesn't have to be a professional, but choose someone who will carry out your requests without bias. For more complicated estates, a professional is usually advisable. Or the use of co-executors wherein one is a professional.

## Got Kids?

Another important task your will assigns is the care of any minor children. You will need to decide who will care for them if you pass. Having backups is a great idea here.

**You should consult all prospective guardians before you include them in the will.** Sure, an unsuspecting guardian inheriting their long-lost cousin's child made great movie with "Baby Boom," but no one wants to be in that situation. And it would be unlikely to turn out as well...

## Don't Forget Mr. McFluffybottom!

If you have a cat, dog, or other pet, what happens to them when you're gone? This is a question that often gets missed when drafting a will.

Much like planning for care of minor children, you should consider who you want to take care of your fur-babies. Discuss the possibilities and arrange for a backup caregiver, just in case. Whomever you choose will have full discretion after you are gone—including euthanasia—so choose with care. You should also allow your executor to spend money for your pet if temporary care is required.

## Terms-of-Service

When you sign up for a service, rewards card, or credit card, you acknowledge a term of service agreement. This is sometimes called Terms and Conditions. These documents are almost universally long, boring, and seldom-if-ever read legalese.

Many people do not understand what the agreement does before clicking "I agree."

Often, these agreements may prohibit third-party access by anyone, including a fiduciary. Even in death. iTunes, for example, states that your purchased content cannot be transferred to anyone. Some states, like New York, have passed laws that override these terms-of-service limitations. But they are in the minority.

## The Act

Over a decade ago, states started introducing laws to handle digital assets. The latest Act is the "Revised Uniform Fiduciary Access to Digital Assets Act" (RUFADAA). (*Passed everywhere except Delaware, District of Columbia, Kentucky, Louisiana, Massachusetts, Oklahoma, and Pennsylvania.*)

RUFADAA allows an appointed fiduciary to access to digital files, computers, web domains, and virtual currency when the owner dies. **Email, text, and social media are still blocked unless you specifically consent to access in a will, trust, POA, or other record.**

The act also kicks in if the owner loses the ability to manage the account. If you live in a state that passed RUFADAA, **consider updating your estate plan to provide a clear set of instructions for your digital assets.**

You may not see the harm in leaving email and social media accounts open and unused, but these accounts can become targets for identity theft.

## Make it Legal, Make it Known

Once you make your will, you can make it legal by signing it with witnesses present. Some states will require you to notarize your will. You may also want to have witnesses

sign a self-proving affidavit in the presence of a notary. This document means it's less likely your witnesses will be called into court to validate the authenticity of your will should a dispute arise.

Your will is of no use if no one knows it exists. Keep it in a safe place and give a copy to your lawyer. Tell your loved ones you have a will and where they can get a copy when needed.

## Advance Care Planning

**Advanced care planning is not just about old age or illness.** It's about protecting yourself and your loved ones in the face of the unexpected. Currently, only 25 percent of Americans have end-of-life medical wishes recorded in legal documents.

Advance care planning (or advance directive) is a legal document, or a series of documents. They spell out exactly what you want—or don't want—should you be unable to decide for yourself. These documents serve as guidance for family members and medical professionals.

In an emergency, advance care directives can provide guidance with things like:

- Using ventilators
- CPR
- Pain care
- Organ and tissue donations

These documents go by different names depending on the state in which you live. But they usually have two main components: a living will and a durable power of attorney for health care. Additional documents may be added. Such as: a do-not-resuscitate (DNR)

## SIX EASY STEPS TO CREATE YOUR OWN DIGITAL ESTATE PLAN

Remember, this is an ongoing process and should be revisited as you add, change, and close digital accounts.

### *Step One: Take Inventory and Make a Master List*

Consider your digital and online “life.” Make a list of everything your digital executor or fiduciary would need to access.

### *Step Two: How Can Your Agent Access These Digital Assets?*

Once you have your inventory, you need to give your agent access to these accounts. This may be through a tool, like Facebook's “legacy contact.”

For those sites without tools, keep a list of your your login, account information, passwords, and security keys.

Remember to record passwords to your devices too, and where to find all your electronic goodies.

### *Step Three: What Happens to These Digital Assets?*

Do you want your online picture horde to go to your sister? Your Facebook account memorialized? If any of your digital assets have a monetary value, how should those be handled?

Decide what you want to happen with every item in your inventory.

### *Step Four: Name a Digital Executor or Fiduciary of Your Digital Assets*

Who will you allow access to your digital assets? Choose someone to settle your digital estate.

Due to the nature of what this person will handle, choosing someone trusted who is familiar and comfortable with technology is a wise choice.

order, physician order for life-sustaining treatment (POLST) forms, etc.)

You should consider advanced care directives as living documents. They should be updated and adjusted over time as your situation and health changes.

Your wishes may change as you age. What you do or don't want at thirty will likely be different than at seventy. We think it's a good idea to review them on a regular basis, perhaps anytime you review your estate or financial plans.

State laws vary but your advance care directives must follow current requirements. An attorney can assist you with this.

But don't expect a lawyer to explain the different medical treatments you are deciding about. They probably will not know enough to help you make an informed decision.

Each state also has their own generic forms available online. If you spend a lot of time in another state, snow-birding or visiting family, have paperwork in place for each location.

It is important to note that if you do not have a proxy and/or living will, doctors are legally required to pursue all viable life-sustaining treatment options.

## **What is a living will?**

A living will states your medical wishes and will guide your medical care if you become unable, physically or mentally, to express them.

What is a durable power of attorney for health care?

A durable power of attorney for health care, also known as a health care proxy, designates who can act on your behalf if you are unable. You decide how much authority they have and what decisions they can make for you.

## ***Step Five: Store Your Inventory***

Like any sensitive, important information, securely store your Digital Estate Plan. Some suggestions are to store it with your attorney, in an online vault like eMoney, or in a safe or locked file cabinet. Do not email this document or store online unless your executor can access it any time they need it.

Wherever you store your Digital Estate Plan, it is important your digital executor knows where to find it and to access it.

Another consideration... You should not make the digital asset inventory and password list part of your will. Upon death, wills become public record. Your login and password information would also become public record then.

## ***Step Six: Make it Legal if You Can***

If you live in a state that allows you to formalize your digital estate plan you should. Do so in a legally binding document, such as your will, or an amendment or codicil to an existing will.

The easiest way to do this is to name your digital executor or fiduciary in the document and list where to find the inventory and wishes.

## **Complicated but Achievable**

With a little planning, managing your digital assets after death is possible. We recommend speaking to your loved ones about your wishes. You should also consult an estate planning attorney for guidance.

**If you are a current client and looking for an estate planner, schedule a call and we can help you in your search.**

Your proxy (also known as representative, surrogate, or agent) may be a family member, friend, lawyer or someone else. It's a smart idea to name an alternative proxy. When you choose your proxies, consider someone who is health and/or financially minded. **Make sure your proxy and alternative know your specific wishes, have a copy of the document, and are comfortable with the responsibility.**

If you choose not to appoint a proxy, you must be more detailed in your living will.

## How to get started

The advance care planning process involves three basic parts. First, you need to educate yourself about what types of decisions might need to be made. If you aren't sure where to begin, and have current medical conditions, use this information to start. If you don't have any medical issues, look at your family history. It might provide a clue to what you could face in the future, like heart disease.

Second, consider the decisions ahead of time. What kinds of treatment do you want in an emergency? What treatments do you not want? Asking your doctor to help you understand your choices before you put them into writing is a good idea. For example, if strokes run in your family, what decisions would you face if you experienced one.

In considering treatment options, think about your personal values and what "quality of life" mean to you. Would you want to receive CPR if your heart stops? What about being on a ventilator? These are just a few things to consider. Not all your potential decisions are this extreme. An advance care directive allows you to outline instructions for any situation you choose, from CPR to the use of pain medication.

Finally, you need to make your wishes known. This step is vital. Your physician should have a copy of your wishes. If you are admitted to a hospital, give the facility a

copy of your advance care documents for your medical chart.

It is crucial in advance care planning to discuss your personal preferences in detail with anyone who serves as your proxy. You should also make sure your friends and family know your wishes. We realize this isn't an easy conversation. If you have trouble, one helpful suggestion we found was to make a video for your loved ones to watch. However you do it, make sure your friends and family understand your wishes. This can help prevent conflict later.

## "Just-in-case"

Everyone hopes they never need advance care directives. But the uncertain future can cause anxiety. This small piece of planning can give you and your loved ones peace-of-mind.

**You have the right to decide what care and treatment you receive. Advance care can ensure you have your say, even if you cannot communicate your wishes.** Remember, in the absence of a proxy and/or living will, doctors are legally required to pursue all viable life-sustaining treatment options.

## Power of Attorneys

Power of attorney (POA) is likely a familiar term. But POAs come in different varieties. It is important to note that this is informational only. We strongly recommend employing an attorney to help you with the complicated process of choosing and appointing POAs.

## What is a POA?

First, there are a couple terms you need to understand:

- Principal – the one granting powers
- Agent or Attorney-in-fact – the one being given powers

**A power of attorney is a legal document in which the principal appoints an agent to act for them.** The principal decides exactly how much power and responsibility their agent has over their affairs. POAs can have timeframes and circumstances in which they are active.

All POAs expire with the principal's death.

There are two general areas where power of attorneys are granted—healthcare and financial.

One person can hold both a healthcare and financial POA. POAs can be specific and limit your agent to handling only certain tasks, or they can be general and give broad authority.

### **A healthcare power of attorney:**

Also referred to as a health care proxy, gives your agent the ability to make health-related decisions including treatment, medications, and end of life choices. Without a healthcare POA your loved ones may not be able to access your medical information or make decisions on your behalf.

#### **Consider HIPAA and Privacy**

If you do not have a healthcare POA, you may want to sign a HIPAA release and keep it one file. Even if you are trusting your spouse or child to make decisions in the event of an emergency, the Health Insurance Portability and Accountability Act may severely limit the information medical personnel can share.

### **A financial power of attorney:**

Gives your agent financial and legal decision-making power. If you were to become incapacitated, your bills do not stop. Without a financial POA your loved ones may have no way of paying your mortgage or Medicare Supplement, for example. Without a POA, if you become incapacitated, your loved ones may have to go through a long and expensive legal battle to become

## **TYPES OF POAs**

### **Conventional POA**

A conventional power of attorney allows you to appoint an agent to manage your affairs now, while you are healthy and of sound mind. If you become incapacitated this POA expires.

Facts to remember:

- Begins when it is signed.
- Ends when the principal becomes mentally incapacitated.
- You can continue to manage your finances even after signing a conventional POA.

### **Durable POA**

A durable power of attorney goes into effect the moment it is signed. But this type of POA is more “durable” than a conventional POA and does not break if you become incapacitated.

Because possession of the document allows your agent to make decisions for you now, even if you are not incapacitated, some who use a durable POA keep a copy in a secure location where their agent can access it, but do not give them a physical copy.

Facts to remember:

- Begins when it is signed.
- Ends when:
  - It is canceled by the principal, or
  - The principal dies.
- You can continue to manage your finances even after signing a durable POA.

your “guardian” so they can manage your affairs.

You can also make access to bank accounts easier by filling out an authorization form and signature card from your bank. This is not the same as making your agent a joint owner of the account.

## Choosing an Agent

As mentioned above, choosing a POA is a serious task. You should choose someone you trust completely. Your agent should always have your wishes and preferences in mind. **You are essentially handing them the keys to your kingdom and you need to believe whole-heartedly they will use that power wisely.**

Your POA is bound by state laws to act in your best interest. But that doesn’t stop them from using your money to benefit themselves, should they have ill-intentions.

Naming two or more agents to serve as POAs at the same time can prevent a rogue agent but may slow down every decision. More commonly, people choose an agent and one or more successor agents. This way if the first person cannot or isn’t willing to be your POA, a successor is already in place.

## What a POA can and can’t do

An unlimited, broad POA grants power over medical or financial decisions.

### A financial POA agent can:

- Pay your bills
- File your taxes
- Collect debts owed to you
- Make investment decisions
- Manage property
- Apply for public benefits like Medicaid

### A healthcare POA agent can:

- Decide on care options
- Choose your doctors, caregivers and hospitals
- Decide where you live
- Pick your food/menu

## Springing POA

A springing power of attorney is called this because it “springs” into action when something specific happens, such as you become incapacitated.

Signing a document that gives someone else the power to make financial, health, or legal decisions for you can feel scary. You may think the springing option is smarter, as it doesn’t go into effect until specific conditions are in place. But, abuses of POA status usually occurs when the principal is incapacitated and can’t monitor their agent.

**If you are leaning towards a springing POA because of a lack of trust, you probably shouldn’t be giving that person any kind of POA.**

Another point to consider with springing POA, if the event and kind of incapacitation is not specific enough, the triggering of this type of POA may not be clear. It may even require a court proceeding to determine if it is in effect. If you need a POA, will you have time to wait on the legal system?

Facts to remember:

- Begins when specific events occur.
  - These events are outlined in specific language in the document.
  - Agent must obtain “determination” of incapacity before POA goes into effect.
- Ends when:
  - It is canceled by the principal, or
  - The principal dies.
- You can continue to manage your finances even after signing a springing POA.

*But there are still things your agent cannot*

**do. An agent cannot:**

- Change your will
- Make decisions after your death
- This is handled by your will, trust, and/or executor
- Help with Social Security applications, claims, or appeals
  - The Social Security Administration requires representatives to be vetted by them and authorized by you. Consider completing the SSA Appointment of Representative Form.
- Manage VA benefits
  - The VA requires the appointment of a fiduciary by the veteran and then investigated by the VA.
- Disclose personal information from Medicare
  - Medicare requires written or verbal permission
- Change or transfer POA to another person
  - This is important to remember. Your POA can step down and decline responsibility at any time. If you do not have a successor in place, there is no one to take over their duties.

## **Becoming Someone Else's POA**

**Having power of attorney is a big responsibility.** If you are asked to be someone's POA, sit down with the principal and learn about their current financial situation: bank accounts, loans, credit card accounts, investments, insurance, etc. You will also want to learn about their medical wishes. **Make sure you understand what they want you to do, should you ever need to act on their behalf.**

This is not a time for modesty or superficial conversation. Ask yourself, "If he had a

stroke tomorrow and I was asked to manage his finances or medical decisions, do I understand their wishes clearly enough to do so?"

You should also learn the other people involved in the principal's POA. For example, if you are healthcare POA, who is the financial POA? Or if you are unable to serve, who is the successor?

**And most importantly, if you do not feel you are willing and able to serve as a POA, say no.** If you say yes, your loved one is counting on you to come through for them in what could be their darkest time.

## **What's a Trust?**

A trust is simply a legal vehicle that holds and manages your assets. For some people, a trust can minimize the hassle and fees loved ones might face when inheriting assets. A trust can also minimize taxes and spare heirs from probate court.

When you create a trust, you can:

- Say where your assets go
- Determine when your beneficiaries have access to your assets
- Save estate taxes and court fees
- Protect your assets from your beneficiaries' creditors
- Determine who gets a beneficiary's portion of your assets in the event of their death
- Avoid long court processes

While these all sound like great things, a trust isn't appropriate for everyone. If you have one heir who is inheriting everything, a trust could very well be overkill. An estate planning attorney can help you determine if you need a trust.

## Types of Trust

There are many types of trusts. Here is a very brief rundown of some of the more common types to help you understand the jargon.

- **Revocable Trusts**, often called a living trust, are created during your lifetime and can be changed or revoked by you at any point.
- **Irrevocable Trusts** cannot be altered or revoked after its creation. Typically, a revocable trust evolves into an irrevocable trust upon death.
- **Charitable Trust** benefit a charity or the public in general. These trusts are established as part of an estate plan to lower or avoid estate and gift taxes.
- **Special Needs Trusts** are set up for a person who receives government benefits so as not to disqualify them from such government benefits. “Special needs” in the case of trust have a specific legal definition.
- **Testamentary Trust** is contained in a last will and testament. It provides for the distribution of all or part of an estate. There may be more than one testamentary trust contained in one will.

## You Should Have a Letter of Competency

Disputes between family members after a loved one’s passing happen not only in soap operas. Unfortunately, family members often disagree over the distribution of **assets** even in the presence of a will. Take one emotionally charged situation, add a hint of questionable mental capacity, and the perfect storm of suspicion and jealousy can be born. One document can reduce anyone’s ability to contest your wishes: A Letter of Competency. You should obtain this letter at the same time as your will, power of attorney forms, advance directives, and any other legal documents. The intent is to invalidate any claims you were not mentally capable of

making medical, financial, and/or legal decisions when you drafted the documents.

## What is a Letter of Competency?

A letter of competency is a generic letter from your doctor attesting to your mental capacity. It is best to get this letter from your primary care physician, preferably one you have seen over several years. Sometimes, a specialist in mental health and cognition may be a better choice.

For example, if you have experienced mild memory loss, a specialist would be a more credible witness. An attorney can recommend which would provide the most accurate statement if you are unsure.

They should print this letter on the doctor’s letterhead and include:

- Your name
- Your date of birth
- Date the doctor-patient relationship began
- Your doctor’s statements testifying to your ability, or inability, to make independent decisions about your healthcare, finances, and legal matters
- Any relevant medical diagnoses such as Alzheimer’s disease or stroke and the date of diagnosis Doctor’s contact information

You may need to provide facts or supporting evidence. Work with an attorney to determine what it should include.

## Time Well Spent

You might wonder if a letter of competency is necessary. Hopefully, it isn’t. But it’s better to be safe than sorry. **Seeing your doctor to get this letter takes minimal time and might save your loved one’s legal fees and strife.**

## Revisit Your Estate Plan Regularly

Your estate plan is a living document that may need updates and amendments over time, just as an IRA or 401(K) may need beneficiary changes as children are born and family members die.

Documents like your current will, trust, and financial power of attorneys should be shared with your financial advisor. In addition to another secure spot to store these documents, the information contained within allows us to assist your beneficiaries and better care for you, our client.

## WHEN TO REVIEW AND CHANGE YOUR WILL

Review your will regularly. Especially after life changes.

In most cases, you need not redo your entire will, just update it with an amendment or Codicil. However, make sure you keep any updates with a copy of the original and that your executor knows you have made changes.

Reasons you might want to update your will include:

- Children or grandchildren
- Marriage or divorce
- Buying or selling a home
- Move states
- New assets, like cars or boats
- Death of a beneficiary or executor
- Tax law changes
- Significant change to financial situation
- You need to add a digital assets section

*(Sources: The Tax Adviser, Everplans, Fidelity, NCSL, Uniform Laws, AARP, Schomer Law Group, Rocket Lawyer, AgingCare, Elder Law Answers, Senior Living, The Balance, PetFinder, Forbes, and Nerd Wallet)*

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