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Women and Estate Planning Basics



An estate plan is a map that reflects the way you want your personal and financial affairs to be handled in case of incapacity or death.

When it comes to estate planning, women have unique concerns. The fact is that women live an average of 5.7 years longer than men.* That's important because it means there's a greater chance that you need your assets to last for a longer period of time and a greater need to plan for incapacity. It also means that you need to take responsibility for your own estate planning.

What is an estate plan?

An estate plan is a map that reflects the way you want your personal and financial affairs to be handled in case of your incapacity or death. It allows you to control what happens to your property if you die or become incapacitated.

If you're married, the odds are that you're going to outlive your husband. That's significant for a couple of reasons. First, it means that if your husband dies before you, you'll likely inherit his estate. More importantly, though, it means that to a large extent, you'll probably have the last word about the final disposition of all the assets you've accumulated during your marriage.

Estate planning may be especially needed if you have minor children; your net worth exceeds the federal transfer tax basic exclusion/exemption amount (\$12,060,000 in 2022, \$11,700,000 in 2021) or, if less, your state's exemption amount; you own property in more than one state; financial privacy is a concern; or you own a business.

Planning for incapacity

Incapacity can happen to anyone at any time, but your risk generally increases as you grow older. You have to consider what would happen if, for example, you were unable to make decisions or conduct your own affairs. Failing to plan may mean a court would have to appoint a guardian, and the guardian might make decisions that would be different from what you would have wanted.

Health-care directives can help others make sound decisions about your health when you are unable to.

These might include:

- **Living will** — a document that lists the types of medical treatment you would want, or not want, under particular circumstances.
- **Durable power of attorney for health care (health-care proxy)** — lets one or more family members or other trusted individuals make medical decisions for you.
- **Do not resuscitate (DNR) order** — a legal form, signed by both you and your doctor, that gives hospital staff permission to carry out your wishes.

There are also tools that help others manage your property when you are unable to, including:

- **Joint ownership** — allows another person to have the same access to the property as you do. For example, if you and your spouse have a joint checking account and you become incapacitated, your spouse would still be able to make mortgage payments on time.
- **Durable power of attorney** — lets you name family members or other trusted individuals to make financial decisions or transact business on your behalf, even if you are disabled or perhaps because you are disabled.
- **Living trust** — a successor trustee can step into your shoes to manage property in the trust if something should happen to you.

Wills and probate

A will is quite often the cornerstone of an estate plan. It is a legal document that directs how your property is to be distributed when you die. It also allows you to name an executor to carry out your wishes as specified in the will and a guardian for your minor children. You can also create a trust in your will. The will should be written, signed by you, and witnessed.

Most wills have to be probated. The will is filed with the probate court. The executor collects assets, pays debts and taxes owed, and distributes any remaining property to the rightful heirs. The rules vary from state



to state, but smaller estates are exempt from probate or qualify for an expedited process in some states.

For most estates, there's little reason for avoiding probate, as the actual time and costs involved are modest. And there are actually a couple of benefits to probate. Because the court supervises the process, you have some assurance that your wishes will be abided by. And probate offers some protection against creditors, since creditors are generally required to make their claims against the estate in a timely manner.

However, there are a number of reasons for avoiding probate as well. For some complex estates, probate can take up to two or more years to complete and tie up property that your family may need, while running up executor fees, attorney fees, and insurance costs. And, if you have real estate in more than one state, probate may be required in each state. Also, wills and other documents submitted for probate become part of the public record, which may be undesirable if you or your family members have privacy concerns.

There are ways to avoid probate, if that is your wish. Probate may be avoided by owning property jointly with rights of survivorship; by completing beneficiary designations for property such as IRAs, retirement plans, and life insurance; by putting property in an inter vivos trust; and by making lifetime gifts.

What happens if you die without a will or an estate plan?

Whether or not you have a will, some property passes automatically to a joint owner or to a designated beneficiary. For example, you can transfer property such as IRAs, retirement plan benefits, and life insurance by naming a beneficiary. Property that you own jointly with right of survivorship will automatically pass to the surviving owners at your death. Property held in trust will pass according to the terms you set out in the trust.

Property that does not pass by beneficiary designation, joint ownership, will, or trust passes according to state intestacy laws. These laws vary from state to state. The state laws for intestate succession specify how property will pass, generally in certain proportions to various related persons. For example, a typical state law might specify that property pass one-half to a surviving spouse, with the remainder passing equally to all children.

Trust basics

A trust is a versatile estate planning tool that can protect against incapacity; avoid probate; minimize taxes; allow professional management of assets; provide safeguards for minor children, elderly parents, and other beneficiaries; and protect assets from future creditors. Most importantly, trusts can provide a means to administer property on an ongoing basis according to your wishes, even after your death.

A trust is a legal entity where someone, known as the grantor, arranges with another person, known as the trustee, to hold property for the benefit of a third party, known as the beneficiary. The grantor names the beneficiary and trustee, and establishes the rules the trustee must follow in a document called a trust agreement. With a trust, you can provide various interests to different beneficiaries. For example, you might provide income to your children for life, with the remainder going to your grandchildren.

You can create a trust while you are alive (a living or inter vivos trust) or at your death (a testamentary trust). A trust you create during your life can be either revocable or irrevocable. You retain the right to change or revoke a revocable trust. An irrevocable trust cannot be changed or revoked. A trust created at death is irrevocable.

Transfer taxes

When you dispose of your property during your lifetime or at your death, your transfers may be subject to federal gift tax, federal estate tax, and federal generation-skipping transfer (GST) tax. Your transfers may also be subject to state taxes.

Lifetime giving

Making gifts during one's life is a common estate planning strategy that can serve to avoid probate and help reduce transfer taxes. One way to do this is to take advantage of the annual gift tax exclusion, which lets you give up to \$16,000 (in 2022, \$15,000 in 2021) to as many individuals as you want free of gift tax. In addition, there are several other gift tax exclusions and deductions available to help you reduce transfer taxes. Making a gift can also let you see the recipient enjoying the benefit of your gift while you are still alive.

*NCHS Data Brief, No. 427, December 2021.

Use beneficiary designations, joint ownership, and wills and trusts to control the disposition of your property, so that you, rather than the state, determine who receives the benefit of your property.

The use of trusts involves a complex web of tax rules and regulations. Trusts and wills usually involve upfront costs and ongoing administrative fees. You should consider the counsel of an experienced estate conservation professional before implementing a trust strategy.

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