

## Estate Planning 101: Why Put Your Wishes in Writing

The scenario plays out all too often, with people and families just like yours: The unexpected — injury, illness, even death — strikes, leaving major decisions about the stricken person's health, children and financial assets in the hands of the probate court rather than someone the person might have chosen himself or herself to make those decisions.

The best way to avoid the unpleasant limbo, legal red tape and uncertainty that often accompany such a scenario, and to be sure your wishes are carried out, is to put in place an estate plan. In a nutshell, "an estate plan is a written and legally enforceable expression of a person's wishes for what will happen with their property and their rights should they become incapacitated and when they die," explains Michael D. Whitty, CFP® and estate planning attorney with Vedder Price PC in Chicago, Ill.

Estate plans aren't just for the wealthy. In fact, said Whitty, "just about everyone needs some sort of [estate] plan." That includes anyone who:

- has minor children or other dependents (such as aging parents);
- wants to leave a legacy by passing assets to heirs, charitable organizations, schools, etc.;
- owns all or part of a business;
- wants end-of-life decisions and other healthcare/medical treatment decisions carried out according to their own wishes;
- wants to maximize the amount of money and assets that transfers to loved ones instead of the tax collector; and
- wants to minimize the hassles loved ones face in the wake of incapacitation or death.



What goes into an estate plan? Essentially, it's a set of documents that together spell out "who gets what, how and when they get it, and who's in charge," Whitty said. More specifically, the basic elements of an estate plan include:

- A **Will**, a legal document detailing a person's assets and how they are to be handled after his or her death, along with specifics on who will serve as guardian(s) for dependent children should the person (and/or their spouse) die. The executor is the party charged with ensuring that terms of the will are met. While people often — and rightfully — choose their spouse as executor, certain situations, such as a blended family, might dictate naming a third party, such as a trusted professional adviser, as co-executor, according to Whitty.
- **Powers of Attorney** for health care as well as for property. **Health Care Power of Attorney** is a person you designate as proxy/agent/surrogate to make health care/medical decisions for you if you lose (temporarily or permanently) the ability to make decisions yourself. An **Advanced Health Care Directive** (or living will) includes instructions to guide the healthcare proxy and healthcare providers with end-of-life decisions, etc. Similarly, a **Power of Attorney for Property** is a person you name "to handle financial decisions and transactions for you if you are unavailable or incapacitated," explains Whitty.

- **Trusts**, such as a revocable living trust, make sense for people who want to keep assets (such as real estate holdings) out of probate, so they're free to transfer directly to their beneficiaries. There are a range of other types of trusts, some of them fairly complex, that, when structured properly, can provide tax benefits.

What's at risk for people who don't have an estate plan? Plenty, according to Whitty. For one, a person who hasn't specified powers of attorney risks putting their financial and/or healthcare decisions — even while they're alive — in the hands of a court-appointed guardian. Without a will, meanwhile, responsibility for deciding how assets are handled falls to a state probate judge. These court-appointed officials are likely to know a lot less about your intentions than you do. And as Whitty points out, “the probate process can be extremely complicated and expensive” in many states — in other words, worth avoiding.

Another thing to avoid, according to Whitty: online services for obtaining a will and other estate planning documents. Spend the extra money to work directly with an estate planning attorney, he recommends, lest you end up with documents that are less than complete and less than legally airtight.

For basic information about estate planning, he suggests visiting the [American Bar Association's estate planning page](#). Make sure you find an individual who is an expert in the state you reside. To find an estate planning attorney in your area, visit the ABA's [findlegalhelp.org](#).

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