



Important Legal Disclaimer: *We are not a law firm and are not qualified to render legal advice of any kind. Moreover, estate planning is a specialty area that requires a legal subject matter expert to advise on the particulars of a given situation, and each state has its own estate tax law. The best course of action is to consult the relevant experts (estate attorney, accountant and financial adviser) in your state.*

Overview

Estate planning can be enormously complex, and the subject itself is unpleasant. That's why many people simply avoid the matter completely and end up doing nothing. This is a terrible financial planning mistake that often exacts its full price when a surviving spouse is most emotionally vulnerable.

But taking the step to consult an estate attorney can be paralyzing in and of itself. So this guide is designed to provide a high-level outline to help simplify the matter. And the most important takeaway is simply to **do something now**.

Dying without a will is known as dying "intestate." Although there are state laws that determine what happens to your assets in this instance, dying intestate denies you the opportunity to specify how and to whom your property will be distributed. Moreover, a probate court can invalidate a will for several reasons, including improper or incomplete execution—in which case the probate court would apply the state rules for intestate succession.

For this reason alone, we strongly recommend creating estate planning documents—and then reviewing and updating them periodically. Whether you hire an expert or choose to do it yourself through a reputable online service, it's important to get it done.

As it is beyond the scope of this brief guide to cover the wide variety of individual situations, we focus instead on an illustrative overview for one common life arrangement: a married couple. We cover the planning aspects only, not the steps a surviving spouse would need to take after a death.

The following table lists the key steps in the estate planning process.



Critical Key Steps (Married Couple Illustration)

- ❑ Make a decision to either (i) hire an estate attorney to draft or update wills and other estate-planning documents, or (ii) do it yourself.
- ❑ Hire a financial adviser both spouses like.
- ❑ Track all financial accounts and assets, and update regularly (either through a financial adviser or an online service).
- ❑ Use a digital password aggregator to keep track of log-in information for online accounts, and keep the password with your wills.
- ❑ Make sure each spouse's will gives the executor permission to manage digital assets.
- ❑ Set up bank and other financial accounts a surviving spouse will need immediate access to in both spouses' names or as "transferable on death" from one spouse to the other. (Some types of accounts in one spouse's name alone typically go through probate and may not be immediately accessible.) Consult with an estate attorney before retitling accounts if you think you may owe federal or state estate tax.

Understand Your Federal Estate Tax Exemption

Historically, the first consideration of estate planning has been taxes. For 2019, the federal estate and gift tax exemption is \$11.4 million per individual. This means an individual can leave \$11.4 million to heirs and pay no federal or gift tax, and a married couple can shield \$22.8 million. As of 2019, the annual gift exclusion is \$15,000.

In addition to the federal estate tax of 40%, some states impose additional estate or inheritance taxes. Twelve states and the District of Columbia impose an estate tax, while six states have an inheritance tax. Maryland imposes both.¹

When federal estate and gift tax exemptions were significantly lower, tax minimization was the impetus driving many complex estate planning structures. But under *current* tax law, the overwhelming majority of Americans will never have to pay any *federal* estate taxes. So if you're lucky enough to live in a state that imposes no state estate taxes, such as Colorado, the planning paradigm is now much simpler from a tax perspective. But remember, tax law can and does change over time.

Hire an Expert or Do It Yourself

Once your tax situation is clear, you must make a critical choice: Hire an expert or do it yourself. If you choose to hire an estate attorney, use the remainder of this guide for informational purposes only as you follow and implement your attorney's recommendations. On the other hand, capable, diligent people can often handle the task via an online legal technology company, such as LegalZoom.²

Documents You Need to Plan Your Estate

Properly prepared and executed estate documents enable an executor or trustee to fully implement your intentions. First, you'll need to decide between a will and a trust. The following table offers a high-level overview of some basic estate planning legal documents.

Last Will	Living Trust	Living Will	Power of Attorney
<i>also called a "will" or "last will and testament"</i>	<i>also called an "inter vivos" trust</i>	<i>also called a "health care directive" or "advance directive"</i>	<i>there are two types</i>
A last will is a document that names an executor, the person who will take your assets through the court-ordered process of probate, which changes the title of your assets. A last will also outlines how you want to dispose of your assets and declares a guardian for any minor children.	With a living trust, you transfer your assets into a trust for your benefit during your lifetime. During your life, you are both the trustee and beneficiary of the trust assets. When you die, the trust assets are managed by your chosen representative, called a "successor trustee," and distributed in accordance with your wishes to your designated beneficiaries.	A living will details your instructions regarding the use of extraordinary medical procedures to save or prolong your life.	<ol style="list-style-type: none"> Durable Power of Attorney. This authorizes someone to make financial decisions on your behalf should you become unable to do so. Health Care Power of Attorney. A health care power of attorney appoints a trusted person to oversee your medical care and make your health care decisions if you cannot do so.

¹ Morgan Scarboro, "Does Your State Have an Estate or Inheritance Tax?" Tax Foundation, April 5, 2018.

² LegalZoom is one example of an online legal technology company. We have no relationship with LegalZoom, do not endorse their services, and cannot vouch for the reliability, accuracy or suitability of any LegalZoom product or service.



What Is Probate?

Probate is a court-supervised process used to validate your will and distribute your property. The process takes anywhere from six months to over two years to complete and may require that lawyers or other professionals be hired. Even if you die without a will, if your estate's value exceeds a threshold amount, your estate must still pass through the probate system. In such cases, the court decides how to distribute your estate among your relatives.

The probate process often includes the following steps:

1. Your will is filed with the local probate court (and becomes public record).
2. Your executor inventories your property.
3. Your property is appraised.
4. All debts, including death taxes, are paid.
5. The court validates your will.
6. Court costs, attorneys' fees and executors' fees are paid from your estate.
7. The remainder of your estate is distributed to your heirs.

To avoid or lessen the time and expense of probate:

1. Talk to your financial adviser to assure your bank accounts, brokerage accounts and other financial assets are properly titled in joint tenancy with your spouse or have the proper "transfer on death" designations.
2. Make sure your beneficiary designations for your life insurance policies and retirement accounts properly designate either your spouse or a specifically named beneficiary.
3. Establish a living trust and re-title your financial and other assets, including all real estate you own, in the name of that trust. Also, change the beneficiary designations for your life insurance policies and retirement accounts to your living trust.

For any assets not covered above, there is a small estate threshold to allow your executor to transfer non-real estate assets to your designated beneficiaries without going through probate. For example, Colorado's small estate threshold in 2019 was \$64,000.



Letter of Intent

A letter of intent outlines what you want to do with your remaining assets, but it is not a legal document. This can also include information about matters that are not yet settled, such as the plans for your funeral or which beneficiaries should receive specific family heirlooms. Although this document cannot override other legal designations you have made, it can provide guidance in case a portion of your assets go to probate unexpectedly.

Special Situations

This guide has been purposely designed to cover a single, simple situation of a married couple, but in estate planning, **one size does not—and can never—fit all**. Indeed, there are many special situations that absolutely require the advice of an expert. This is just a partial list:

- Advanced age or serious illness
- Married couples with no children
- Blended families
- Disabled beneficiaries receiving government aid, such as Supplemental Security Income or Medicaid
- Non-U.S. citizens

Naming Beneficiaries

A beneficiary is any person who receives benefits from a last will or a living trust. You should always provide for an *alternate, or contingent, beneficiary* in case the first one dies before you and there is no chance to make out a new will. However, if you have a living trust, there is no need to name a contingent beneficiary.

Even with something as simple as naming a beneficiary, there are potential pitfalls that must be avoided. The most common one is failing to update your beneficiaries when your life circumstances change. For example, if you remarry or add a child to your family, make sure to account for the new person in your estate planning. Another issue is properly naming beneficiaries under your IRA or 401(k) accounts to ensure your named beneficiary has the option to further delay taxable distributions. Some other common pitfalls are noted in the accompanying box.

Who Not to Name as a Beneficiary

- One person for everything
- Minor child or child's designated guardian
- The estate
- Outdated/deceased beneficiaries
- No one



Common Problems With Do-It-Yourself Estate Planning

DIY estate planning has its own challenges. It's not enough to know what you want to achieve. You also need a viable, valid implementation plan. The most common mistake is not properly executing or signing your estate planning documents, thus rendering them invalid. A simple rule of thumb is: When in doubt, and for all special situations, hire an expert.



Managing Digital Assets

In the modern world, you must also take steps to simplify the management of your digital assets. These include:

- Tracking all financial accounts and other digital assets, such as social media accounts, online subscriptions and email accounts, and updating the list regularly, either through a financial adviser or an online service.
- Using a digital password aggregator to safely secure and keep track of log-in information for online accounts. Keep the password with your estate planning documents.
- Make sure each spouse's will gives the executor permission to manage digital assets.

Next Steps: Do Something

Estate planning is complex, but it's no excuse to bury your head in the sand and do nothing.

The best advice is to take the next step and do something. Talk to your financial adviser or accountant. Hire an estate attorney. Do it yourself online. But by all means, take action now and do something.

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