

# Basic Estate Planning Overview

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## Key Takeaways:

- Estate planning helps reduce the concern, cost and uncertainty that arises from dying without a will.
- Understanding the components of a typical estate plan is the first step.
- Setting up an estate plan can help avoid probate, aid with incapacity and help simplify the administration of your estate.

**Attorneys and financial advisors often recommend that their clients establish an estate plan. What constitutes a typical fundamental estate plan? Why are these documents critical? The following estate planning overview addresses these two questions.**

## Components of a typical estate plan

In most cases, an estate plan is comprised of four documents: a will, a revocable trust, an advance health care directive and a power of attorney.

### Will

A will is a document that states your final wishes and how you want them to be carried out upon your death. Like most people, you would use a will to leave instructions about what should happen to your assets after you die. This includes, for example, who will receive your assets (beneficiaries), how beneficiaries will receive them (outright or in trust), and when they will receive them (either immediately or over time). A will names an executor, who becomes the legal representative of your estate at your death. You also can name a guardian (or guardians) who would take care of your children if both of their parents were to die before they reach the age of majority.

Dying intestate, or without a will, results in your assets being divided based on predetermined rules set by your state of residency. Having a will, at a minimum, can ensure you stay in control of the terms of distribution. However, a will always goes through probate, a court-supervised process to authenticate your will and determine when and how to distribute your estate. The process involves identifying, locating and calculating the value of your assets and then paying any debts owed or taxes due. Probate can be expensive, reaching tens of thousands of dollars in costs, and time consuming. It is best to avoid probate whenever possible. Being proactive by establishing and funding a revocable trust avoids probate by having a trustee whom you appoint to manage and distribute your assets, as opposed to the court.



**“Everybody has an estate... No matter where you are in life, you will need to plan for what happens to that estate when you are no longer around to control and use it.”**

## Components of a typical estate plan—continued

### Revocable trusts

As previously mentioned, revocable trusts are an alternative route for distributing your assets following your death to avoid probate. Assets can include real estate, valuable possessions, bank accounts and investments. Unlike wills, which take effect only on death, revocable trusts are effective immediately when signed and funded. Their terms can be changed any time circumstance or feelings change.

#### Additionally, a revocable trust:

- Can save significant court fees and administrative burden by avoiding the probate process, so long as the revocable trust is funded.
- Allows the settlor to retain control of the property in the revocable trust, as well as the terms of the revocable trust.
- Offers continuity of management in the settlor's affairs upon disability, avoiding total reliance on durable powers of attorney.
- Creates one holding place for all the settlor's property.
- Distributes property after the death of the settlor.
- Offers privacy for the settlor and his or her loved ones. (A revocable trust is not a public record, but a will is.)
- Is easy to create and maintain and can be easily altered or amended.
- Has no adverse lifetime gift or income tax consequences.

### Revocable trusts with pour-over will

While a revocable trust is a better alternative to a will, it does not render a will obsolete. Wills may be established to work in coordination with a revocable trust established during your lifetime. This type of will is called a pour-over will. A pour-over will provides that any property not in the name of the revocable trust be distributed to the trustee of a revocable trust. This creates an extra level of protection in the event you did not transfer all your assets to your revocable trust during your lifetime. Furthermore, as mentioned above, a will is required to name guardians of any minor children.

### Advance health care directive

An advance health care directive accomplishes two goals. First, it appoints an agent with legal authority to make health care decisions on your behalf. Second, it provides instructions to that agent regarding your health care wishes, including end-of-life decisions. The advance health care directive is effective upon incapacity. The agent can consent or refuse consent to medical procedures, consult with doctors regarding your health and make a broad range of health care decisions for you. In most cases, your health care agent is your spouse first, then a close family member or very trusted friend who is not afraid to make difficult, life-or-death decisions. Lastly, advance health care directives typically include a HIPAA form, which addresses the use and disclosure of your health information.



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## Components of a typical estate plan—continued

### Power of attorney for finances

The agent under a durable power of attorney for finances is responsible for any assets outside of the revocable trust. For example, this document allows your agent to manage your retirement account assets, file your tax returns, make financial gifts and manage your health insurance coverage. If you have not transferred all your real property or investments into your revocable trust, the agent is responsible for managing those assets as well, often by transferring them to the trustee of the revocable trust, where they can all be managed “under one roof.” Some people prefer to name the same person as successor trustee, executor and agent for finances, because there can be some overlap among these roles.

### Inventory of assets/Professional contact list

Taking inventory of your assets is an important part of the estate planning process. An accurate asset inventory list provides a clear road map for your spouse, heirs and personal representatives. It is also important for the final administration of your estate. It includes the location of all your personal assets, such as bank accounts, stocks, life insurance, real estate, as well as account numbers, passwords and the physical location of the asset. You should also include contact information for anyone you work with on these accounts, if applicable. Additionally, having a contact list of professionals — planning attorney, CPA, financial advisor, business partners and lenders — is necessary in case of an emergency.

The inventory of assets, your contact list of professionals and your estate planning documents should be updated periodically and stored in a secure location. Keep a copy in a safe deposit box or an in-house storage system, as well as an electronic copy. Also provide a copy to the people named in the documents so they can act on your behalf, when or if required. While this process is time-consuming and tedious, it will make many aspects of your estate easier and more successful.



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## Components of a typical estate plan—continued

### Life insurance trusts

Using an irrevocable life insurance trust (ILIT) has long been a staple of estate planning, helping individuals reach a wide variety of goals. With the federal estate-tax exemption set to significantly decrease at the end of 2025, ILITs may serve an even more relevant role in your estate planning. An ILIT is a type of trust that is specifically designed to own a life insurance policy. Ownership of an existing policy can be transferred to the ILIT after it has been formed, or the trust can purchase the policy directly. The key benefit to holding a life insurance policy in an ILIT is that the value of any such life insurance policy held by the ILIT is not included in your gross estate for purposes of calculating federal (and state) estate tax liability.

To effectively remove a life insurance policy from a person's estate, an ILIT must be both the owner and beneficiary of the policy. During the life of the insured, the trustee of the ILIT is responsible for all policy premium payments and administration of the ILIT. Upon the death of the insured, the ILIT, as beneficiary of the policy, receives the death benefit. Depending on the terms of the trust, the ILIT may either distribute the proceeds to beneficiaries, or continue to manage and invest the proceeds for the beneficiaries on an ongoing basis. While the ILIT should not directly pay the estate tax liability due, it can purchase desired assets from the estate, thus providing the estate with cash for estate taxes or loan money to the estate to pay estate taxes. This avoids forced liquidations of estate assets to non-family members.

### The importance of these documents

Everybody has an estate. Whether you are wealthy or working on building your assets, your estate is made up of everything you own. No matter where you are in life, you will need to plan for what happens to that estate when you are no longer around to control and use it.

Creating a pour-over will and revocable trust will help simplify the administration of your estate and reduce the stress, anxiety and uncertainty that come from dying intestate. Having clear intent not only helps family harmony and avoids potential conflict, but also provides for an expedited and organized way to transfer assets. Further, in the absence of a power of attorney and advance health care directive, a court appointee will make decisions on how your assets are used to care for you, should you become incapacitated. This means that someone whom you may not wish to be in control or may not know could be making decisions on your behalf.

If you have a revocable trust, the trustee you have appointed could manage those assets on your behalf. If you have a power of attorney, the agent can sign on your behalf for anything outside of the revocable trust. And if you have a medical directive, the agent can give consent when you are unable to do so. All these documents help with incapacity and avoiding conservatorship, which, like probate, can be long and costly. Lastly, an ILIT can help reduce estate taxes and provide liquidity.



**An ILIT is a type of trust that is specifically designed to own a life insurance policy.**



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## Summary

Getting your estate planning in order should be a top priority. This is true whether you are planning for the intentional and expedited distribution of your assets upon your death, or if you are planning for incapacity and ensuring someone will be able to manage your affairs on your behalf without the involvement of conservatorship.



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