

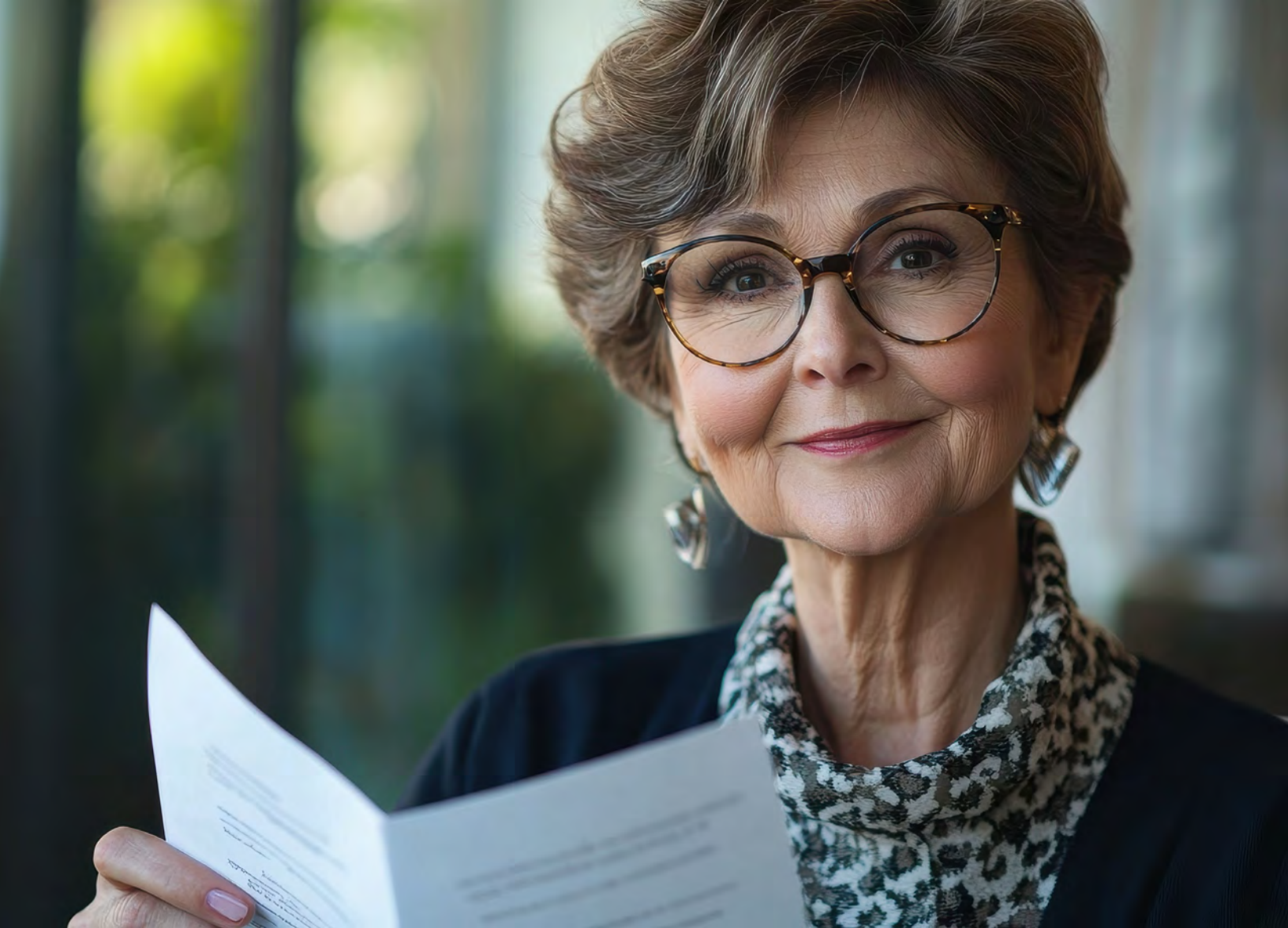
The Solo-Agers Decision Guide

Resource Series



Getting Your Legal Documents and Support in Order

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Get Your Legal Documents in Order

This is one topic in the Solo-agers Decision Guide. The Introduction to this Guide outlines the types of decisions that solo-agers need to make to prepare for their future aging needs. Other topics in the series cover preparing for physical and cognitive decline, developing a support network, housing, finances, health care, and technology aids.

Do you have a will and, if so, have you updated it recently? Have you designated someone to handle your affairs if you are incapacitated? Have you done any other estate planning? If the answer to these questions is “No,” you are not alone. Many people believe that they don’t have enough assets to justify needing an estate plan. But money isn’t the only reason to consider estate planning.

Based on an AARP survey in 2021

- ✓ Solo-agers are more concerned than other adults about losing their independence and having a court-appointed stranger making decisions for them.
- ✓ Only 28% of solo-agers have someone who could help them with banking and bill-paying, as compared with 70% of all adults age 50+
- ✓ Only 40% of solo-agers have someone to help with their investments, most commonly a financial professional.

Source: Thayer, 2021

Estate Planning Considerations

Financial planners and estate planners routinely advise their clients to have certain legal documents in place if they want to exert control over who takes care of their affairs when they are unable to do so themselves. Solo-agers often have very different estate planning needs and preferences than other people. Whereas estate planning is often suggested to be about protecting ones' dependents and preserving assets, solo-agers undergo estate planning to protect themselves and ensure that their end-of-life wishes are met.

If you lose physical or mental capacity, you may be unable to adequately manage your finances, pay bills, and make investment decisions. You may also be more vulnerable to fraud. While these are potential problems for many older people, the difference is that solo-agers do not have trusted family members to take over. Once you lose cognitive functioning, at a certain point, you will no longer be able to handle day-to-day financial tasks such as paying bills and balancing accounts. And most importantly, it can be too late to select your own trusted team to protect your interests. This team may include your lawyer, your physician, your financial advisor(s), and/or close friends.



Only 1/3 of Americans
have an estate plan.

Components of An Estate Plan

Although having certain estate planning documents in place can be helpful for everyone, it is even more important for solo-agers who do not have close family to rely on in emergency circumstances. There are some do-it-yourself options available, such as for simple wills, but hiring an estate planning attorney may be needed depending on your circumstances. For example, this can be helpful to ensure that your documents are legally binding and that financial and healthcare decisions on your behalf will be made consistent with your wishes.

A brief description of each of the primary documents is provided below, along with some advice on next steps. Healthcare documents are covered in another topic in this guide, but are included here as well because it is common for people to execute and regularly review all of these documents together.

Primary Estate Planning Documents

1. Will
2. Trust(s)
3. Financial Power of Attorney
4. Health Care Power of Attorney
5. Living Will or Advance Directive

1. Will. Why do so many people die without a will? For many, it is simply because they have put it off. Nobody likes to think about death. For single people, it may be because they assume that wills are only necessary for married couples and parents who are concerned about taking care of their dependents. Solo-agers may not need a will to protect their family, but they still may want to exercise some control over who will make financial and medical decisions on their behalf, and who will get their assets after their death.



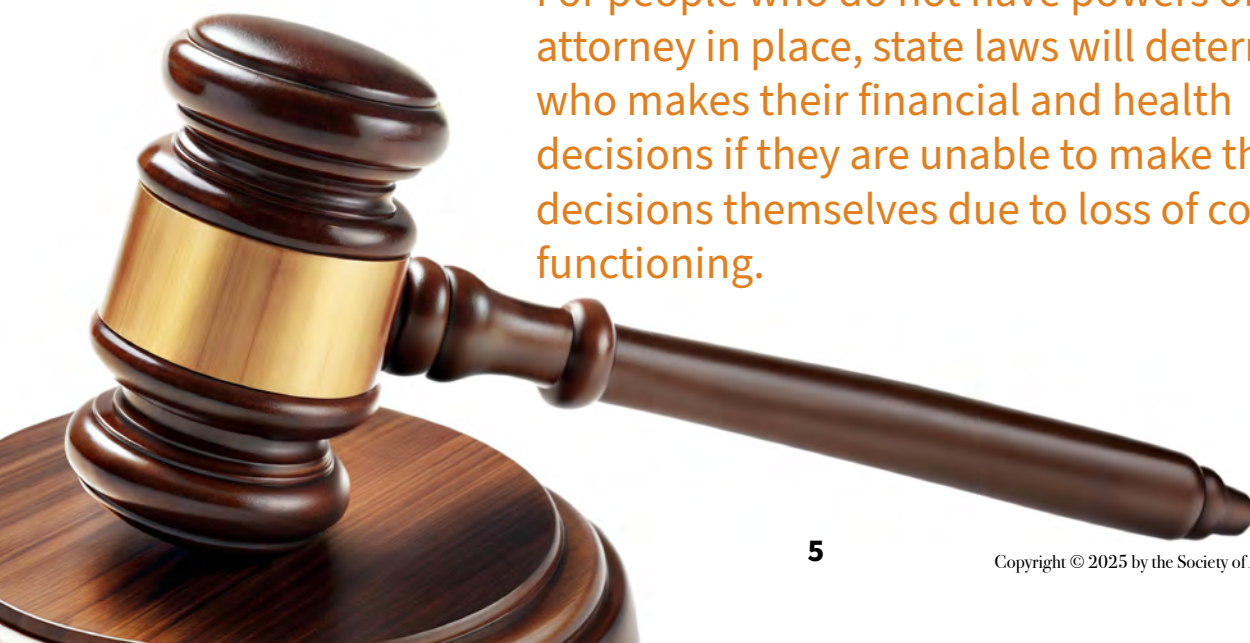
Although some assets (such as bank and retirement accounts) allow you to designate a beneficiary outside of a will, a will allows you to designate beneficiaries for your other assets since there isn't an obvious heir such as a spouse or child. When someone dies intestate (without a will), property will pass according to state law, usually in some proportion to close relatives (spouse, children, or parents). Absent close relatives, the state will designate some combination of siblings, nieces and nephews as heirs. You have no obligation to leave anything to family members, but you do need a will to opt out of these default laws.

A will is a legal document that specifies how you want your property to be distributed after your death. In it, you will also name the person who will handle settlement of your estate, commonly called the executor, executrix, or personal representative. There are simple forms available online that can be completed at little or no cost. If you choose the do-it-yourself route, you should carefully follow state-specific directions regarding witnesses and notarization. The cost for hiring a lawyer to draw up a simple will varies substantially and is another consideration in your planning.

For your will to be legally valid, you must:

- ✓ Be of legal age.
- ✓ Have mental capacity to make a will.
- ✓ Intend for the document to be your will.
- ✓ Put it in writing (printed, not handwritten).
- ✓ Date it.
- ✓ Name an executor or personal representative.
- ✓ Sign it in the presence of 2 witnesses who are not relatives or beneficiaries.
- ✓ Get it notarized.

For people who do not have powers of attorney in place, state laws will determine who makes their financial and health decisions if they are unable to make the decisions themselves due to loss of cognitive functioning.



Considerations for Creating a Trust

- Bypass more lengthy state probate process for settling estates.
- Provide heirs with more immediate access to funds
- Help further ensure estate achieves desired purposes after your death
- Potentially avoid estate taxes (in certain circumstances)

2. Trust(s). Individuals with more complicated estate needs may want to create a trust as part of their estate plan. What is a trust and why might you need to create one? A trust is a legal entity that holds and manages assets on behalf of someone else. The most common reason for trusts in estate planning is to avoid the state probate process which can add considerable time to the process of settling an estate, and even more if the estate includes assets in more than one state. Trusts also allow you to have more control over how your estate is distributed after you die.

If you want to leave your assets to a person or to a charitable cause, you can do this directly in your will, but doing it through a trust may give you more options to ensure that your funds actually go where you want after your death. For example, a trust set up for your nephew can be designed so that the money will be disbursed at a later date (e.g. when he turns 25) or in annual increments. Similarly, a trust set up for a scholarship can be designed to ensure that the organization does not erode your legacy with administrative costs. In addition to working with an estate attorney to create a trust to avoid probate, the attorney can also help you with moving your assets into the trust. Another consideration you can discuss is how often to review and update the trust.

3. Financial Power of Attorney. Unlike a will, which comes into effect after you die, the durable financial power of attorney (POA) is a document in which you designate an agent to handle legal and financial affairs on your behalf while you are still alive but unable to do so on your own. The POA is no longer valid after your death, when your designated personal representative will take over this role according to your will.

If you are unable to do so yourself, your financial POA can:

- ✓ Sign contracts for you
- ✓ Access your bank accounts
- ✓ Pay your bills
- ✓ Manage your investments
- ✓ Take care of your insurance
- ✓ File your tax returns
- ✓ Buy or sell property on your behalf





4. Durable Power of Attorney for Healthcare. Similar to the financial POA, the durable power of attorney for healthcare is used to designate an agent to handle medical issues on your behalf when you are unable to do so. The purpose of the healthcare POA is to plan for medical emergencies, cognitive decline later in life, and to designate someone who can communicate with doctors and make decisions about your medical treatment. Although you can designate the same person to be both your financial and medical agent, it may make sense to assign different people in these roles. This document is also discussed in another topic in this guide which covers [*healthcare issues*](#).

5. Living Will. A living will is different from the medical POA in that it only applies in end-of-life situations when you are unable to communicate your preferences. In this document, you specify the medical treatments that you are willing to undergo if you are terminally ill or permanently unconscious with no hope of recovery. These directives can be a great help to loved ones and healthcare providers who are making decisions about your treatment. Most states have a standardized form for a living will. Links to state-specific forms can be found on the websites of the American Bar Association and the AARP. *Five Wishes* is also an excellent resource. (see resource links below).



If you are unable to make decisions on your own, your living will describes your wishes about:

- ✓ Whether to use cardiopulmonary resuscitation (CPR) if your heart has stopped beating.
- ✓ Whether to put you on a ventilator.
- ✓ When and for how long you want to be on a feeding tube.
- ✓ When and for how long you want kidney dialysis.
- ✓ Whether you want infections to be treated aggressively when you are near the end of life.
- ✓ Whether you want to donate your organs.
- ✓ Whether you want to donate your body to science.

Choosing the Right Person(s) to Oversee Your Affairs

The most difficult decisions in estate planning are the selection of your personal representative, financial power of attorney, and/or trustee. If you do not have close relatives or friends to assign to these roles, you may be relieved to find out that it is often better to engage the services of professionals who have experience dealing with these matters.

In selecting people to serve in these trusted roles, the most important factor should be whether they will be able and willing to make decisions consistent with your wishes and, if

Close friends and relatives may not be the best choice because they may

- Predecease you or have physical/cognitive limitations by the time you need their help
- Have trouble managing during a time of stress and/or grief
- Have inadequate financial or organizational skills
- Lack the time to fully meet their obligations



applicable, to manage your finances and/or estate competently. For the role of executor, a solo-ager may want to hire a local professional who specializes in estate settlement and has knowledge of the necessary legal and accounting rules.

Estate Tax

Most people have estates that are far too small to be subject to estate taxation, so this is not their motivation for estate planning. However, if you are wealthy, an estate planner can help you consider possibilities for better managing federal and state estate taxes that might be levied after your death prior to distribution to heirs or a charity. Careful planning, early gifting, and creation of trusts can all be used to help manage estate taxes.

What to do with your estate documents

- ✓ Keep originals in a safe place.
- ✓ Give copies to your doctor, your healthcare agent, and backup agents.
- ✓ Keep a record of who has copies (in case you later make changes)
- ✓ Talk to important people in your life about your advance directives and your preferences.
- ✓ Carry a wallet-sized card that indicates your preferences, identifies your healthcare agent, and where you keep copies of your documents.
- ✓ When you travel, carry contact information for your emergency contact(s) and POAs.

Share your Plan

Once you have created your documents, it can be beneficial to share them with appropriate individuals and follow through on any additional steps that have been recommended to you.



Resources for Legal Documents

AARP, Advance Directive Forms by State, aarp.org/caregiving/financial-legal/free-printable-advance-directives/

American Bar Association, *Tool Kit for Health Care Advance Planning*, (2020) https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-tool-kit-hcap.pdf

American Bar Association, *State Specific Advance Planning Forms*, (February 2023) https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-links-to-st-specific-advnc-drciv-frms.pdf

Five Wishes, [fivewishes.org](https://www.fivewishes.org), (print or digital fillable document that allows individuals to specify their personal, spiritual, medical, and legal wishes in one place)

Park, Anthony S., *The Solo-ager Estate Plan*, www.anthonyspark.com (2020)

SOA, *Late-in-Life Decision Guide*, [soa.org/497f1c/globalassets/assets/files/resources/research-report/2022/lil-decisions-guide.pdf](https://www.soa.org/497f1c/globalassets/assets/files/resources/research-report/2022/lil-decisions-guide.pdf)

Thayer, Colette. *Solo-agers: Attitudes and Experiences*. Washington, DC: AARP Research, February 2021. <https://doi.org/10.26419/res.00428.001>