



Estate Planning: Preparing for End of Life

MANAGING RETIREMENT DECISIONS SERIES

ESTATE PLANNING IS ANOTHER WORD FOR putting one's personal affairs in order. People do estate planning all along life's journey, but especially when reaching the doorstep of retirement.

That is a time in life when thoughts naturally turn to leaving a legacy after one's death.

The estate plan includes wills, powers of attorney, health care proxies, and other documents relating to end-of-life decisions. The objective is to spell out how people want to be cared for in their last days and also how they want their assets and other possessions distributed once they die. If they do not have an estate plan, the government will make decisions for them, but the outcome may not be what they or their loved ones would want.

This Decision Brief points out key considerations for setting up an estate plan.

For wealthy people, estate planning emphasizes strategies to minimize estate taxes. This process often involves the use of specialized trusts and large-amount life insurance policies. For the less wealthy, estate planning tends to center around wills, beneficiary designations, powers of attorney and health care proxies.

Disclaimer

This Decision Brief is not intended to provide advice for specific individual situations and should not be construed as doing so. It is an information tool for general guidance. Individuals needing advice should seek the services of a qualified professional. Keep in mind that the tax code can change, the taxation of products and strategies vary, and individual tax needs and issues are unique. Consideration of tax issues is beyond the scope of this work.

Federal estate taxes can be a factor in certain estate plans. However, in the waning days of 2010, Congress enacted estate and gift tax provisions for 2011 and 2012 that replaced existing provisions.

Under the new law, every estate gets an estate tax exemption of \$5 million per individual (\$10 million for couples). The new law also eliminates any discrepancies between taxes on lifetime gifts versus transfers at death. The new law is effective for only two years, but it could be extended.

Heads up: Some state laws automatically follow the federal rules, but many states apply lower limits so it is worth checking the individual state laws.

Despite these higher federal limits, middle-income people still need to consider a number of estate planning issues such as those below.

Trust Words

A living trust is a trust that a person sets up and funds while still alive.

A testamentary trust is a trust that a person—the testator—establishes in his or her will; the funding occurs at the time of the testator’s death.

Wills and Trusts

A good place to start is to draft a will. Dying without a will can lead to assets being distributed in unintended ways. As noted earlier, the government will step in and make decisions on behalf of the deceased in case the executor predeceases or is not available for some other reason. This may lead to family disputes, excessive legal costs and delays in disposing of the estate.

Bookstores and Internet outlets offer do-it-yourself will kits. However, to ensure that the deceased’s wishes will be implemented as desired, it makes sense to have an attorney draw up a proper will that is witnessed and signed in a legal manner.

Part of the will-making process involves designating an executor of the estate and a backup for the executor. Many people appoint a trusted family member. This may work out if the appointed individual is capable of handling administrative/paperwork matters effectively and if the family functions well. If a qualified family member is not available, however, appointing an independent third party such as an attorney may be the best alternative.

In many instances, a will adequately covers the disposition of assets after death. But some retirees may need one or more trusts as well.

A trust is a legal document that names a person or entity—a trustee—who then manages and controls what happens to the assets. To set up a trust, it is best to consult with an experienced trust attorney who is up-to-date on the latest laws.

The basic difference between a will and a trust is that a will simply hands assets over to beneficiaries while a trust can be much more specific about managing and paying out the assets.

Example: George and Martha have an adult child with special needs. They may decide to set up a trust to provide for the child’s needs after they both have died.

Trusts may also be used to:

- Establish care arrangements for minor grandchildren for whom the grandparents are legally responsible.

- Provide oversight on spending by an adult child who has problems handling money.
- Specify bequests when the heirs may be from previous marriages.

The downside of using trusts is the time and expense involved and the need, in many instances, to hire a professional trustee. In addition, some people “overuse” trusts in the sense that they try to use the trust to “micro-manage from the grave.”

Powers of Attorney and Health Care Proxies

People should also work with a lawyer to execute a durable power of attorney. This document authorizes a named individual (the agent) to act on behalf of a person (the principal) if the principal becomes incapacitated. It applies only while the principal is alive. At death, the powers pass to the executor of the estate.

A key decision is whether to grant the power of attorney to a relative or to a professional such as an attorney. If an older person does not trust family members with this responsibility or is concerned that a family conflict may erupt over the chosen family member, appointing an independent professional may be the best alternative. Second marriages and mixed families raise the potential for problems in these areas.

Unfortunately, many cases of elder abuse and even stealing do involve family members, so it is worth being cautious in granting this power.

The other important document is the health care proxy. Also called a health care power of attorney, this may be a standard state-issued form that spells out the person’s wishes for care at the end of life.

The wishes may cover the extent to which the person wants use of extraordinary measures that prolong life and whether to allow organ donation. It may name specific medical procedures to use or not use when the person is terminally ill and unable to make decisions.

Typically, the health care proxy form appoints a health care agent and an alternate health care agent to carry out the person’s wishes. Often these appointees are the spouse, who is typically named the agent, and an adult child, typically named the alternate.

Health Care Proxy Q&A

Q: Who should have copies of the retiree’s health care proxy form?

A: This is a personal decision, but the document is so important that experts generally recommend that several people have copies on file, including:

- Family members
- The family attorney
- The primary care physician
- The hospitals most often used

Retirees should know that having a health care proxy in place is extremely important. It can relieve a family from a terrible decision-making burden at a time of extreme stress.

Avoiding Probate

Probate assets are assets that people hold in their own names at time of death. These assets pass on to heirs according to terms of a will, subject to court supervision.

The probate process often entails delays and costs, but some estate planning strategies can be used to mitigate those drawbacks by passing assets to heirs outside of probate. These strategies include joint ownership, beneficiary designations and transfer on death designations. (Trusts can also be used for this purpose.)

Joint ownership. This refers to assets like bank accounts jointly owned with another person. It is a common strategy for couples. The joint ownership makes it far easier for the surviving spouse to make financial decisions following the death of a loved one.

Unless spouses struggle with issues of trust, it usually makes sense for the two to own assets like bank accounts, investment accounts and houses on a joint basis, with the right of survivorship.

Beneficiary designations. Many financial accounts allow the account owner to indicate (designate) the person or persons to whom to transfer the asset upon the owner’s death. People can make such designations for retirement accounts like 401(k)s and IRAs, and also for annuities and life insurance policies.

When they specify a beneficiary, the assets will pass to the beneficiary outside of probate. (Note that beneficiary designations take precedence over any provisions in a will.) Many people name primary and secondary beneficiaries, so that if the first beneficiary dies before the owner, there is no question about who the new owner will be.

Important: Retirees should review beneficiary designations periodically—perhaps once a year—to be sure they are up-to-date and that they continue to represent the account owner’s wishes.

Naming beneficiaries is usually a straightforward process, but there are a few considerations to keep in mind.

For example, a common designation might be “my wife, if she survives me, and if not, equally to my children.” A potential problem with this is that grandchildren, if they exist, could be left out of the inheritance if their parent predeceases their grandparent. Adding the legal term, *per stirpes*, to the designation can overcome this problem. *Per stirpes* essentially says that equal shares of the inheritance will pass to *branches* of the family.

If family members have special needs, it is wise to use caution before naming them as beneficiaries. If they receive an inheritance, it may cause them to lose government benefits. An attorney should be consulted before designating beneficiaries in such cases.

Transfer on Death. For taxable accounts held at brokerage firms, the owner of the assets may want to have the brokerage set up a transfer on death (TOD) provision. Some bank accounts use TODs, too. A TOD acts like a beneficiary designation, so the assets pass directly, outside of probate. This is particularly helpful if the owner has no spouse or partner to name as joint owner.

Many retirees want to consider their close friends and charities in their estate planning. Wealthy individuals may set up charitable trusts to fund specific causes.

Those with less wealth who want to make significant contributions can invest in charitable funds offered through investment companies. The account owner can take tax deductions at the time of donation, and specify scheduled payouts from the fund.

Business ownership is another area for special consideration. The owner will want to plan carefully who will run the business upon the owner’s death. Specialized life insurance may need to be factored into the transition, so that ownership will transfer with minimal disruption. The assistance of a good attorney can be critical to the outcome.

Leaving Detailed Information

Standard estate planning documents do not cover all the information that sur-

vivors will need after the death of a loved one. Wills are usually quite general, covering disposition of major assets, but they typically do not mention lesser assets or family treasures and keepsakes.

If controversy is likely to erupt over the disposition of such lesser assets, the retiree may want to consider leaving a letter of instruction with the executor.

Letters of instruction do not have the legal standing of a will. They are, however, more flexible, and can be changed easily. Such letters should provide needed clarification for families whose members get along well with each other.

For contentious situations, it's wise to seek the assistance of an attorney who can set up legal documents that spell things out.

Retirees should also leave a detailed inventory of all bank accounts, investment accounts, retirement accounts, and insurance policies. This is of utmost importance for couples where one member handles most of the financial affairs.

Investment management is another important area. When one member of a couple handles all the investments, the couple should consider establishing an investment management plan. This plan would lay out how the surviving spouse should handle the investments after the more-informed spouse dies.

The investment plan should help the lesser-informed spouse avoid becoming a target of unscrupulous individuals who pose as investment professionals and then raid the couple's accounts. It's an excellent idea to set up financial relationships and services while both spouses are still alive, so that the surviving spouse has a trusted resource available when the other spouse dies.

Finally, people should make arrangements for a trusted person to have access to computer passwords. These may be necessary for accessing accounts, closing down electronic billing services and more. It's wise to keep the passwords in a secure place, off the computer, at all times. When setting up an estate plan, people also need to decide whom to inform about the location of this important list.

As a general rule, it is better to err on the side of leaving too much information rather than not enough. In addition, those who will be responsible for execut-

ing the estate plan should have the opportunity to read carefully through everything that applies to them. It is important to deal with any needed clarifications promptly so there will be no misunderstandings later on.

Families are often geographically dispersed. This can complicate management of an estate following death. It may help to provide family members with at least summary information about the estate plan. This will enable everyone to act immediately, when death occurs, without having to make a long trip to locate documents or find key financial advisors and institutions.

Regular reviews, at least yearly, will help keep the estate plan up-to-date. Following is a worksheet to use when conducting those reviews as well as in organizing and communicating estate planning information. Some experts also suggest creating a list of things that need to be handled quickly after death—such as stopping health insurance premiums and pension checks, and notifying the insurance company if a house will be empty.

Financial & Estate Info – Date _____

	Location of Info	Comments
Wills, Trusts, POA's and Health Care Proxies		Include contact information for attorneys and executors and other “who to notify” information.
Assets and Investments		Include contact information for each investment company and for advisors and planners.
Monthly Income		Include records and contact information.
Monthly Outgo		Include information on each of the recurring bills and how they are paid.
Income Taxes		Include contact information for tax preparer if one is used, and keep a separate file for each year’s federal and state income tax.
Home and Insurance		Include ownership documents, mortgage documents (and contact information).
Cars and Insurance		Include title information, maintenance records. Also for boats and other motorized recreational equipment.
Survivor Benefits and Life Insurance		Include a summary for life insurance policies—policy, amount, contact information.
Health Insurance and Providers		Include contact information.
Safe Deposit Box and Passwords		Make sure executor has access to keys.

The Society of Actuaries would like to acknowledge the work of its *Committee on Post-Retirement Needs and Risks* in producing this series.

The committee's mission is to initiate and coordinate the development of educational materials, continuing education programs and research related to risks and needs during the post retirement period. Individuals interested in learning more about the committee's activities are encouraged to contact the Society of Actuaries at 847-706-3500 for more information. Additional information and research reports may be found at <http://www.soa.org>.



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