

# Looking Ahead: The Basics of Estate Planning

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Everyone reading this needs to take a few estate planning steps. First, everyone needs a will. Second, everyone needs to make sure your life insurance and retirement accounts have the correct beneficiaries. Third, many should consider working with an estate planning attorney, as I'll explain below.

A properly constructed will ensures that your values and desires are carried out in the event you no longer can communicate them. While you may wish to give your estate to family members, your church, or a charity, without a will, what happens to your assets is dictated by state law.<sup>1</sup> The IRS, a nursing home, your spouse's next spouse, or some other less than desirable entity may wind up with the lion's share of your assets.

## Wills

A will designates where you want your assets to go and, if applicable, who will take care of your children. A will usually names the guardian who will take care of your children and the trustee who will manage their assets.

These roles can be assigned to the same person, or you can name different people. A will cannot specify when or for what purpose your assets should be given to your beneficiaries, so if you don't have any other documents the assets will be distributed according to your state's law. For example, if you have an estate of \$5 million and you die without a will, your children could inherit that money at age 18 or 21, the most common ages of maturity.

If you have a will, upon your death it must pass through probate. Probate is a process that can be tedious, expensive, and lengthy, depending on where you live. During probate, a court validates your will and empowers the executor to use it. Assets like insurance policies and retirement accounts that name a beneficiary do not have to go through probate. Because it is expensive, public, and can be contested, probate is something to avoid if at all possible.

Keep in mind that once you have a will and have named beneficiaries for your life insurance and retirement accounts, you will need to update them if you marry, divorce, have children, your executor dies, one of your beneficiaries dies, you move to a different state, or any other significant life change occurs.

If you want to specify when or for what purpose your assets should be given to your beneficiaries or you want to avoid probate with a trust, this is where an estate attorney enters the picture. A common strategy is to create a trust for the benefit of your children that specifies when they are to receive your assets. For example, my estate plan gives my two children one third of their inheritance at age 20, one third at age 30, and one third

at age 40. There are other options, such as granting a trustee the power to release money for certain priorities and creating a more detailed estate plan that communicates your values to your children — such as paying for education or for a down payment on a house even if they haven't yet reached the age at which they'd normally get their inheritance.

## Advance Directives

You may also need an attorney to draft advance directives to specify your wishes if a medical emergency should occur. Who will be the decision maker? What are your specific life support decisions should your

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condition be irreversible? These documents are usually included in a comprehensive estate plan, but what isn't included is the conversation you should have with your family. As emergency physicians we realize these documents are rarely available when decisions must be made, so having a conversation with your family about your wishes may be more important than having the actual documents.

You may also want to grant others the right to make financial decisions in the event of your incapacity by giving them power of attorney. These can be “durable” (used at any time), or specific to certain conditions such as your incapacity.

## Estate Tax

The federal estate tax, also known as the death tax, has changed many times since World War I. In 2015 a single person could pass \$5.43 million to his or her heirs without any estate tax, and a married couple could pass on \$10.86 million. Because most emergency physicians don't have such high net worth, federal estate tax is usually not an issue for us. Individual states, though, may also have estate or inheritance taxes that you need to plan for, because many have much lower limits on what is tax-free. Each state has very different laws, so make sure that any attorney you work with is familiar with the laws of your state.

The estate tax is not relevant if you are passing assets to your spouse. Spouses can pass on unlimited amounts without tax liability. If your spouse is not a U.S. citizen, though, the situation is a lot more complicated.

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If you have an estate worth more than \$5.43 million (single) or \$10.86 million (married), and you are trying to pass assets to a non-spouse, there are many different and complicated trusts and strategies you can adopt. The bottom line is that you'll need the help of a qualified attorney.

The other option is to give away money as you approach the end of your life, so that your estate is no longer above the limit. Take a look at your finances, get some idea of how much money you are likely to die with, and decide if you should start giving some of it away to charity or family now.

Same-sex couples should consult an attorney, due to the complexities of estate planning in that scenario and the variations from state to state.

### Letter of Last Instruction

A final document to consider creating is a letter of last instruction, also known as a "doomsday letter." In today's increasingly electronic world, where financial statements are no longer delivered via U.S. mail, family members may have difficulty locating all the necessary documents in the event of your death. Your letter would help in this case and should include:<sup>2</sup>

1. Funeral instructions.
2. A list of financial assets and liabilities, safe deposit boxes, and any professionals you deal with (financial advisers, attorneys, doctors, etc.).

3. The location of key documents, like birth certificates, titles for cars, wills and trusts, tax returns, and financial statements.
4. User names and passwords for key websites.
5. An inventory of high value household items or possessions, and who you want to receive them (if they are not included in your will).

In summary, just about everyone reading this needs a will and needs to make sure that their life insurance and retirement accounts have the proper beneficiaries listed. In addition, those with more complex or large financial holdings, a desire to shape how and when their assets are bequeathed, a spouse who isn't a U.S. citizen, or a same-sex relationship should consult with an estate planning attorney.

### References

1. Martin T, Larson P, and Larson J. *Doctor's Eyes Only: Exclusive Financial Strategies for Today's Doctors and Dentists*. Brockport & Schoolcraft, LLC, 2012.
2. Clements, J. *Money Guide 2015*. Jonathan Clements, LLC, 2015.

If you have ideas for future columns or have other resources you'd like to share, email me at [jschofer@gmail.com](mailto:jschofer@gmail.com).

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