

# Estate Planning Guide

If you know who you love, who you trust and what you have, you can start your Estate Plan.



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# How Do I Begin My Estate Plan?

Relax; there are only three things you need to know before you begin:

## Who do You Love?



Who needs to be taken care of when something happens to you?

## What do you own?



What homes, property, bank and retirement accounts, assets and personal belongings do you own?

## Who do you trust?

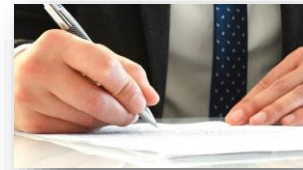


Who do you want to take care of your children, make healthcare decisions for you and handle your checkbook if you cannot or after you are gone?

# Last Will and Testament:

## A Will is a legal document that does several things:

**Executor:** It names an Executor to be in charge of your estate if your estate needs to be probated. This person is overseen by the probate court and is responsible for collecting your assets, paying creditors and distributing property according to your plan.



**Distribution Choices:** A Will can distribute property according to your desires.

**Guardian Nomination:** It can select guardians for minor children or dependents.

**Pour Over Into a Trust:** If a Trust is created as part of your Estate Plan the Will insures that any unaccounted assets are put into the Trust.

**Create a Trust:** A Will can create a Trust at your death to provide your family.

**Disinherit:** Children and others can be disinherited or given unequal shares. Spouses cannot be disinherited unless a prenuptial agreement is in place.

**Avoid Intestacy:** Without a Will the government's intestacy scheme will determine how your assets will be distributed.

## What are a Will's limitations?

- **Not Effective until Death:** A Will only becomes effective upon the death of the Testator (the person who made the Will). It is not a substitute for a Power of Attorney which enables someone to act on your behalf.
- **Probate Required:** Will must be admitted to probate by a judge in order for its terms to be carried out. A Trust is usually the best way to insure that your assets are distributed without the need for court involvement.
- **Non-Probate Assets:** A Will does not distribute assets that pass automatically such as joint tenancy property, transfer on death deeds and joint or payable on death accounts. Such assets pass without regard to the language of a Will.
- **Beneficiary Designations:** A Will does not change beneficiary designations. IRAs, Insurance Policies, and Bank Accounts often have beneficiaries or payable on death designations. The companies holding those assets will transfer the property according to beneficiary designations without regard to what a Will says.

# Family Trust

Also called Revocable Trust or Living Trust

The Family Trust has become a common part of many Estate Plans. In fact, most attorneys believe it malpractice to create an Estate Plan without considering whether a Trust is appropriate. A Trust does much more than a Will.

**No Probate Court:** One major advantage of a Trust over a Will is the ability to avoid the expense, loss of privacy, frustration and delays of probate court. Instead of going to probate court, the Trustee you choose has full control over the property and is required to follow your distribution instructions.



**No Separate Tax Returns:** While you are alive there are no separate tax returns, schedules or reports that are required.

**Distributions:** A Trust gives you the ability to give detailed instructions concerning when, how and to whom distributions are to be given.

- **Immediate Distributions:** Perhaps one of the most attractive features is the ability to have property distributed immediately and without the need for probate court supervision.
- **Delay Distributions:** A Trust can delay distributions of assets until an heir reaches a financially mature age.
- **Special Needs Dependents:** You can choose a Trustee to manage the assets and pay bills for somebody with special needs.
- **Spendthrift Provisions:** You can prevent individuals who are irresponsible, have substance abuse, or creditor problems from squandering their inheritance by placing a Trustee in charge of the assets.
- **Flexibility:** Revocable Trusts can be amended if your needs or the needs of your beneficiaries change. For example, if one of your heirs becomes them more financially vulnerable than others, the Trust can be modified to provide from him or her.

**Your Choice of Trustee:** You decide who serves as Trustee. Initially, you will serve as the Trustee. Married couples usually elect to have each of them act as co-Trustees then the survivor serves. The successor Trustee can be a person or a Trust Company or Trust Department of a Bank.

**Continuity of Management:** The person (or married couple) creating a Trust usually choose themselves to be the Trustee(s) until their death or incapacity. Then your successor Trustee takes over. This inures that there is no interruption in authority to pay bills, manage property and conduct business.

**Privacy:** The contents of a Trust are generally free from public examination. Therefore, the distribution plan and the nature of the assets are kept private. In contrast, a Will must be filed in a public record, and the executor will usually be required to file an inventory and appraisal.



**Your Property is still Yours:** Having a Trust does not limit your control. You may sell, give away, rent, lease or dispose of anything you own just as you do now.

## Non-Probate Assets:

Some assets will pass automatically *even* if a Will or Trust says otherwise. Therefore, it is important to understand how these work so that an Estate Plan can function as intended.

## Beneficiary Designations:

Some assets are designed to pass through beneficiary designations or payable on death instructions given to banks, insurance companies and other institutions. Common examples include Life Insurance Policies & Annuities, Bank Accounts, IRAs and 401Ks. They are a simple way to distribute assets but they have limitations:



- There is very little control over timing of distributions;
- There is a limited ability to name contingent beneficiaries which may result in the need for probate which may result in unintended disinheritances or uneven distributions; and
- Limited ability to maximize value through tax and other planning.

Many of these disadvantages may be avoided by naming a Trust as a beneficiary instead of an individual.

## Real Property Ownership Non-Probate Transfers

**Joint Tenancy:** Joint Tenancy is one of many ways two or more people can hold title to property. Most married couples hold title to their homes as Joint Tenants. It is one of the simplest ways to hold property. Here is how it works most of the time:

Usual Example: John and Mary are married and own a home together. The deed names them as “Joint Tenants.” John dies. Mary files an “Affidavit of Surviving Joint Tenant.” She is now the sole owner of the home. The property is not subject to probate or claims of John’s estate.

Common Mistake: Mary thought that it worked pretty well and thinks that this would be a great way to pass on property to her children. However, this can lead to disastrous consequences because every person named on the deed becomes an owner. The children's troubles or problems can impact ownership of the property:



- Tax or Judgment Liens & Bankruptcies;
- Divorce property division; Partition action by greedy co-tenants; and
- Occupancy rights of co-tenants.

Unintended Disinheritance: Sue dies first and Mary dies second Doug will own all of the property and Sue's children will receive nothing.

Liens: Doug has financial problems (gets sued, gets divorced). Doug's interest in the property may be subject to liens or claims that may prevent the property from being sold or mortgaged.

Greed: Sue becomes estranged from the family and files a lawsuit to have the property divided. Or she could sell her interest in the property to somebody else who can take the same action.

**Inflexibility:** Agreement of all of the joint tenants is necessary in order to sell, mortgage, lease or change who will inherit the property. Even if they are agreeable, financial troubles of one of the joint tenants may prevent or complicate the transaction.

**Life Estate:** A life estate splits the land into two parts. The Life Estate allows "Life Tenant" possession as long as he or she is alive. The remainder interest belongs to the "Remainderman" who gets title to the property after the Life Tenant dies.

Advantages: The Life Tenant is not immediately subject to the liens or claims of the remaindermen. In other words, the Life Tenant cannot be interrupted in her occupancy of the property.

Disadvantages: The Life Tenant cannot sell or mortgage the property unless the Remainderman agrees. Financial or divorce problems of the remaindermen may prevent the transaction. The Life Tenant may also be prevented from leasing the property or developing the mineral interests without the remaindermen's consent.

**Transfer on Death Deed:** Transfer on Death Deeds transfer property after death of the owner. The owner of real estate executes a Transfer on Death Deed and files it in the county where the property is located. When the owner dies the beneficiary files a Transfer on Death Affidavit and receives the same title that the previous owner had.



Advantages:

- The named beneficiary is not granted an immediate interest in the land. Therefore, their financial problems or liens against them do not impact current property owner.
- The owner is free to sell, mortgage, and transfer the property without consent or notification to the beneficiary.
- The owner can revoke the deed if he no longer wants that beneficiary to receive it.
- There is no need for probate and it is not available to pay creditor's claims.

Disadvantages:

- If the beneficiary does not act timely after the owner's death the property becomes part of the owner's estate and subject to probate.
- If the owner wants another beneficiary to receive the property the previous deed must be revoked.
- Difficult to name contingent beneficiaries.

Summary of Estate Planning Tool

Goals	Intestacy	Beneficiary Designation	Simple Will	Trust
You Choose Who Will Be In Charge			✓	✓
You Choose Who Will Inherit		✓	✓	✓
Control When Property is Inherited				✓
Avoid Probate		✓		✓
Privacy		✓		✓
Easily Changed		✓		✓
Continuity of Management				✓

# Powers of Attorney:

A Power-of-Attorney grants someone you choose the power to make decisions and enter into binding contracts on your behalf. In Estate Planning, a Power of Attorney is used to plan for the possibility of incapacity.

What would happen if you became incapacitated and had no plans in place?

- No one could legally handle affairs, sign checks or enter into contracts on your behalf.
- Your family would need to have a court declare you incompetent and appoint a guardian.



## Advanced Healthcare Directives:

Sometimes called a “Living Will,” is legal document which instructs health care providers of the level of care you desire if you are unable to speak for yourself.

Under Oklahoma Law it is presumed that you would want life sustaining treatment continued including the use of feeding tubes unless a contrary desire has been communicated. The best way to insure your wishes are honored is to have a Living Will.



### Three End-of-Life Conditions:

The Oklahoma Form describes three “end-of-life” conditions which may trigger the Living Will if you are incapacitated. The instructions will be followed if your death is expected within 6 months regardless of treatment; if you are in a persistently and irreversibly unconscious condition; or if you have an end-stage irreversible condition, caused by injury, disease, or illness, which results in severe and permanent deterioration indicated by incompetency and complete physical dependency for which treatment would be medically ineffective.

### Treatment Options:

For each of these conditions you may select different treatment options:

- Do everything including feeding tubes
- Stop treatments but use feeding tubes
- Stop everything and no feeding tubes.
- Other: You are not limited to these options. You can include other instructions concerning the care you do or do not want.



## Health Care Proxy

A Health Care Proxy is a person you choose to make medical treatment decisions for you in the event that you are unable to make such decisions. Your proxy can make decisions but they must follow the instructions in your Living Will.



### Do-Not-Resuscitate Form:

A “Living Will” is not the same as a Do-Not-Resuscitate or DNR form. A DNR instructs medical personnel to not administer cardio pulmonary resuscitation (CPR). It should be signed only by someone who has a terminal condition and has made an informed decision that he or she does not want to be resuscitated under any circumstance. It is not usually part of an Estate Plan.

## Other Estate Planning Needs

**IRA Beneficiary Trusts:** There are special rules that apply to non-spouses who inherit IRAs. You can arrange your IRA so that your children receive the money over time thereby allowing it to grow while deferring taxes.



**Special Needs Trusts:** An heir with a physical, mental disability or chronic illness can have a Special Needs Trust designed so that he or she is not disqualified from receiving needs-based government benefits.



## Tax Planning:<sup>1</sup>

Although most Oklahomans do not need to worry about Estate Taxes. It is important to consider potential tax implications of you Estate Plan.

**Federal Estate Tax for Individuals:** As of 2017 estates under \$5.45 million are not subject tax. The tax rate above this amount is 40%.

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<sup>1</sup> This is a very general discussion of a complicated issue. The reader cautioned to remain aware that significant tax consequences may be involved in Estate Planning and Gifting. Estate and gift tax figures based on 2017 rates.

**Married Couples:** Marital Deduction: All property left to a spouse is free from the Estate Tax (IRC §2056(a) if your spouse is an American Citizen. With proper Planning, your spouse can combine your \$5.43 exemption with theirs for a total of \$10.9 million.



**Oklahoma Estate Tax:** Oklahoma repealed its estate tax in 2010.

**It is Usually Better to Inherit:** Tax laws are written so that somebody who inherits property avoids capital gains that their parents would had to have paid if the property is inherited. However, a Gift of an appreciated asset does not.

How to Get Started:

1. Complete a questionnaire about important people in your life and your possessions. [Form Available Here](#). Or Call [405.340.6554](tel:405.340.6554)
2. Meet with attorney to discuss plans, concerns and to find answers for specific questions. At this point we will provide you with a cost estimate.

About the Authors:

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*We are pleased to offer this booklet as a resource to aid you in developing your Estate Plan. This guide describes many of the documents that are used in a typical Estate Plan. Our goal in writing this booklet was to describe Estate Planning in plain English.*

*It is intended that this will be an aid to you as you begin, complete or revise your Estate Plan.*

*It is our sincere hope that this motivates you to begin and complete your own Estate Plan.*