



S E R V I C E  R U N S D E E P

# MAKING CRITICAL ESTATE DECISIONS

Quick Guide

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*CAUTION: This guide is intended to introduce some of the basic issues and steps involved in estate planning. It is not intended to be all-inclusive. There are many issues and topics to be addressed in a complete estate plan, and working with a qualified professional is strongly recommended.*

# Introduction

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We hope that you are in good health and not expecting to be face-to-face with death for decades to come. Unfortunately, death can strike each of us at any time. It is also true that typically, the younger you are, the greater the likelihood that a loved one, such as a spouse or child, is depending on you. As you read about estate planning, we will focus on the impact that your death will have on your family. This will seem difficult to imagine, and other issues may seem more urgent right now. It is common to try to put these issues off until some other time. Do not make this mistake. It is unwise to put off estate planning until tomorrow, because tomorrow may never come. Act now.

You are the person who must determine what will provide security for you and your heirs. Though you may be working with an attorney or other estate planning professional and seeking advice from loved ones, the final word in all matters involving estate planning rests with you.

Your spouse or partner is important in the estate planning process. Although you may have your own will and may make decisions in your plan that differ from his or her desires, work together to integrate your plans. Get his or her input.

Estate planning lasts a lifetime. You'll need to monitor your situation to ensure it is current and meets your wishes.

## ***Meeting with an Attorney or Estate Planning Professional***

For most estate situations, an attorney who is familiar with estate planning issues will do just fine. (For people with complex issues and larger estates, an estate planning expert may be necessary.) The attorney should be patient with you and be willing to answer any questions you have. Remember, the attorney is working for you, so don't be intimidated.

Before you meet with your attorney or estate planning professional, prepare the "What's Your Estate Worth?" and "Estate Wishes" worksheets. Bring these to the meeting so the attorney can see what your wishes are, as well as the composition of your estate. Any information you leave out may lead to a mistake in developing your plan. In particular, tell him or her about jurisdictions where you previously resided, children from a prior marriage, and the financial,

emotional, or medical condition of any people to whom you want to leave money. You should also inform him or her about any marital trouble that may lead to divorce.

**SUGGESTION:** As you are reading about estate planning, you may want to consider how the concepts covered would affect the financial situation of your parents or other loved ones. They may not be aware of all the planning opportunities available. Lead by example. Tell them that you are planning your own estate and then suggest that they consider some of the ideas you are learning about for themselves.

Take some time to explore this Estate Planning section. When you've done so, you will be able to meet these objectives:

- Be able to estimate your estate
- Know how to develop a list of people you want to leave money or property to when you die
- Understand the importance of selecting the right legal guardian for your children
- Understand the importance of selecting the right person to handle your affairs when you die
- Be able to minimize the influence the courts will have on your affairs when you die
- Be able to reduce the taxes on your estate
- Be able to maximize the amount of money and property available to your heirs

Estate planning is a critical part of your overall personal financial plan. Estate planning, simply put, is the collection of steps you need to take to make sure that your loved ones are provided for in the best possible way, including lifetime planning and disposition of your property, at death.

Estate planning is carried out with legal documents such as wills and trusts, typically involves a lawyer, and may be very complicated if you have a lot of assets. However, every estate plan should start at the same point. You will have to decide who needs your financial support after you die, and how you want to protect them. As difficult as it is to sit down and plan for the day you die, it's essential, and a real show of love for your family and friends.

Estate planning lets you be the decision maker, even after your death. If you don't make certain decisions

and set them forth in your will, the courts in your state will make these decisions for you. So, if you want to decide how your financial affairs will be settled, you must have an estate plan.

You need to know what basic planning documents will be required. A big part of estate planning for many people is making arrangements so that estate and gift taxes are kept to a minimum. State taxes may also be a factor, depending on where you live. There are a number of estate planning strategies that you can follow to maximize the amount of your estate and ensure that it is distributed according to your wishes. Your retirement plan assets are part of your estate, and you need to make provisions for how they are distributed as well.

## Why Estate Planning Is So Important

Your obligations to your loved ones do not stop once you die. You may die while you are still providing for a minor child. You may die with a large amount of assets and debts. If you do not make certain decisions regarding who will take care of your small children, or how and by whom your financial affairs will be settled, the courts in your state will make these decisions for you. And they may rule very differently from how you would have chosen. Without proper estate planning, you give up your right to overrule the decisions that other people will make for you in these very important areas. In essence, your ability to plan and protect your loved ones dies when you do.

Remember, estate planning is not just for the wealthy. Plan ahead to avoid complications, save money, and protect the people you love. Estate planning is a critical part of your overall personal financial plan.

## Letter of Instruction

While you are planning for the future of your family and loved ones at the time of your death, consider the documents that will help those around you after you die or when you are in critical condition.

**SUGGESTION:** Timing is everything. The only way to have the following documents become legal—this applies to wills and trusts too—is if you are of “sound mind” when you sign them (this mental ability is called “capacity”). If you wait too long to have these documents prepared, injury or illness may cause you to lose capacity. Then, it is too late.

A *Letter of Instruction* is not an actual legal document, but simply a list of commands and instructions that is prepared for people to follow when you are sick or have died.

A Letter of Instruction includes, but is not limited to, the following:

- A list of legal documents and their location so someone could locate them
- The location and instructions to computer programs (financial software) and file names where this information may be stored
- The names and phone numbers of close family members to be contacted
- Description of prepaid funeral arrangements; if not, a preference for one funeral home over another

- A description of the type of desired funeral and whether burial, cremation, or body donation is preferred
- The location of a pre-purchased burial plot or preference
- A preference for charities to receive donations in your memory
- Preferences for certain hospitals
- A relatively current list of assets and debts
- A list of insurance policies including life, medical, disability, long-term care, and property insurance
- The location of all investment account statements
- The location of all deeds to property
- The location of copies of tax returns
- The names, addresses, and telephone numbers of the following people:
  - Family doctor
  - Family attorney
  - Family accountant
  - Family stock broker(s)
  - Religious leader and house of worship

The Letter of Instruction must be in a location where people will be able to find it, such as the top drawer of a desk. The Letter of Instruction should be dated so it will be possible to determine which version is the most

current (if several different versions are found). The letter should be updated when situations change (a change of doctors, a purchase of a burial plot, or a shift in money from one account to another). The letter does not have to be written; it can be taped (video or audio) or put on a computer file.

Although many states have rules against it, certain banks and other financial institutions will recognize a Durable Power Of Attorney only if it is on their own forms and if it is signed within the last few years.

Find out from your bank or brokerage firm if any special rules apply in your state, and then follow them. It is a good idea to sign new forms every three years and destroy all old originals of the documents.

**IMPORTANT NOTE:** It is very important that, when one of these documents is prepared, it states “durable” on the top of Instruction will save the executor a lot of trouble and help reduce fees that the accountants and attorneys may charge the estate. This means more money for your loved ones

## *Durable Power of Attorney*

There are times when you may be unable to take care of your financial affairs. If a Durable Power of Attorney is not prepared and signed appointing someone as the authorized representative (called the “agent”), no one will be able to help. The banker or stock broker will not otherwise allow a close friend or relative to access your accounts (unless it is a joint account) and get the money needed to pay bills or do other things to help you.

Although many states have rules against it, certain banks and other financial institutions will recognize a Durable Power Of Attorney only if it is on their own forms and if it is signed within the last few years. Find out from your bank or brokerage firm if any special rules apply in your state, and then follow them. It is a good idea to sign new forms every three years and destroy all old originals of the documents.

**IMPORTANT NOTE:** It is very important that, when one of these documents is prepared, it states “durable” on the top of the form. Non-durable Power of Attorney forms are available, but they expire when you become incapacitated. This is the exact time you want this type of document to be available.

### **Things an Agent Can Do for You under a Durable Power of Attorney**

- Sell and buy stocks
- Write and sign checks to pay bills
- Sell real estate and other business property
- If you own a business, vote in your place (assuming the business does not specifically prohibit this)
- Make gifts of your property
- Deal with the IRS (using an IRS power of attorney)
- Represent you in a business negotiation
- Sell some of your personal property
- Make deposits and withdrawals from your financial accounts

The powers that are granted to an agent can be virtually any power you have to conduct your own business affairs.

Choose the agent carefully. Although there are some laws to protect the person who signs the document, it is still vital that the agent be trustworthy and understand exactly what is expected of him or her in certain circumstances. These documents generally become effective as soon as they are signed, so caution is important.

Choosing an honest and well-intentioned agent is not enough. He or she may be called upon to make some complicated business decisions. Your spouse or other close relative who may not be able to make these types of decisions may be the wrong person for this important job.

### **What to Look for in an Agent on a Durable Power of Attorney**

Look for an agent with these qualities:

- This person should be honest and trustworthy.
- This person should have a basic ability to understand personal business and finance. At a minimum, this person should be able to coordinate the efforts and follow the advice of professionals, such as accountants, attorneys, and stock brokers.
- This person should be willing to serve as agent.
- This person should understand your wishes regarding business issues, investment strategies, and the wishes regarding support to family and other loved ones.
- This person should be available to serve. If he or she is too busy, is overseas or lives in another part of the country, another selection may be appropriate.
- There is no conflict of interest present. If this person is also your business partner, will this person act fairly instead of enriching him- or herself? If this person is responsible for the support of an individual that may be entitled to gifts from you, will he treat all parties equally?

**SUGGESTION:** Tell the attorney that you want to appoint a backup person in case the first person on the Durable Power of Attorney is unavailable in an emergency.

There are other documents which you should consider for your overall estate plan (such as a Living Will and a Medical Durable Power of Attorney.) Consult an estate planning professional.

*The object of estate planning is to conserve your assets while making sure they are properly distributed, either during your lifetime or after you're gone. You want to be sure that your family and loved ones will be provided for after you die.*

*Estate planning lasts a lifetime. You'll need to monitor your situation to ensure it is current and meets your wishes.*

## Name a Guardian

One of the most important decisions in estate planning is determining who should be named to care for your minor children (children under age 18–21, depending on the state in which you live). This situation would be important if both you and the child(ren)'s other parent are both deceased. The person you appoint is called the “guardian.” You may think that this situation is unlikely if both you and the other parent are young and still healthy, but you should still plan for the possibility of an accident or other tragedy striking both of you at the same time.

**IMPORTANT NOTE:** Without the proper estate plan in place, the courts might select guardians that you would not have chosen. Even if you leave informal evidence of your wishes (an oral agreement or notes on a piece of paper), the courts are not bound to follow this. Act now to protect the future of your children.

**SUGGESTION:** Always appoint successors in case the person you select cannot serve or predeceases you. Always talk to the people you choose before selecting them in order to gauge their willingness to serve.

**IMPORTANT NOTE:** If possible, try not to pick someone as guardian who lives in a different part of the country. Your child may be old enough to have established roots in his or her home area. If he or she just lost his or her parents, a move across country may simply be too stressful.

**SUGGESTION:** If you are naming a person who is married to serve as guardian, do not list the spouse as guardian. The guardian and spouse may be divorced when you die, and who would have custody of your child may be unclear. This could provoke a legal battle, thus placing even more stress on your child. If you feel strongly about both husband and wife as guardians for your child, consider naming one as guardian and the other as the alternate if your first choice is unable or unwilling to serve.

### Whom Should You Select as Guardian for Your Minor Child?

A legal adult who is very close to you, such as a family member or close friend.

- Someone who shares your values and principles regarding raising children, discipline, education, etc. In effect, you are trying to pick a person who will act in a similar way as you and who can create the same positive influence over your child.
- Someone who loves your child and wants to serve. A person who is raising children or has a real interest in doing so will usually make a better guardian.
- Someone who has time to help your child develop properly. If you select a husband and wife who are both career-driven, they may not give your child the amount of quality time needed to cope with his or her loss or with other issues they will face growing up, even if they mean well.
- Someone with whom you have discussed this appointment, and who will accept the position when you die.
- Someone who lives close to you and other family members.
- Someone who is in good health, energetic, and (preferably) close to your own age. It may seem

natural to choose your parents for this task. Ask yourself if they are too old to raise children a second time. Being a parent is a lot different than being a grandparent. Consider if their health will allow them to care for your child (especially if your child is small). You don't want your child to have to cope with the death of a guardian. Selecting someone from a prior generation only adds to these chances.

- Someone without any evidence of abusive or self-destructive tendencies.

- Someone who is in a committed relationship or married, if you believe that your child will benefit from more than one adult role model.

**SUGGESTION:** In addition to your will, make a videotape leaving directions and instructions to the guardian on how you would like to see your child raised. Although not legally binding, it would be an invaluable reference for the guardian during difficult times.

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## *Name an Executor*

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**Y**ou have the right to appoint a person and/or a company to supervise all the tasks that have to get done to wrap up your estate after you die. This person is called the "executor." In some older estate plans, a woman appointed to this position was called an "executrix." We will use the term "executor" for both male and female appointees.

For even the simplest estate, you should appoint an executor in your will. The role of the executor is an important one, and you should be the person who selects this individual.

Your executor may have to do the following important tasks:

- Collect assets and prepare statements for the court
- Decide on the recipient of specific personal belongings (if, in your will, you don't specifically say to whom an asset is to be given)
- Collect money owed, and pay bills
- Collect on insurance policies
- File income and estate tax returns
- Supervise the distribution of assets to people named in the will
- Control and protect assets while the estate is being reviewed by the court
- Sell assets to pay debts, taxes, or to give cash to people named in the will
- Hire attorneys and accountants to help with these responsibilities

If you do not appoint an executor, the courts will choose someone to serve as an administrator of the estate. The court-appointed administrator is usually a local attorney and has the same duties as an executor. The attorney will charge your estate for his or her

services, and may not be familiar with your wishes and desires. You owe it to your family to preserve as much of your estate for them as possible and to make sure assets are distributed as quickly as possible by someone who understands your affairs.

### **Whom Should You Name as Executor?**

There are two important criteria you should use in selecting your executor: trustworthiness and ordinary good business sense.

**The first test.** Ask yourself whether the person and/or company is trustworthy to do everything to protect your loved ones after your death. There is insurance that can be purchased to provide for the survivors' protection if the executor steals from the estate. However, to make sure this doesn't happen, and to have an active advocate for your survivors, select carefully.

**IMPORTANT NOTE:** If your estate has any complexities, consider using a bank or trust company as an executor, co-executor, or trustee.

**The second test.** Good business sense. Your executor will probably have to work with attorneys, accountants, bankers, insurance companies, stock brokers and maybe even your business partners (if you or your spouse have a business interest). A person, no matter how trustworthy and well-intentioned, who is inexperienced in business, may be unable to understand the advice given by these business people. Therefore, many situations require an experienced bank or trust company as your executor.

**A word of caution:** the executor will have a lot of tasks to fulfill immediately after your death. A very close family member who will be paralyzed by grief may be incapable of supervising these actions.

If you choose an individual as executor of your estate, choose:

- Someone who is very close to you, such as a family member, close friend, or trusted business associate.
- Someone who is extremely honest and trustworthy.
- Someone who will not be too emotionally distraught by your death.
- Someone with whom you have discussed this appointment and will accept the position when you die.
- Someone you expect will be available to serve. Do not pick people who live far away or who will be under a lot of other pressures (e.g., your son in medical school or your friend in the military who is stationed overseas).
- Someone who completely understands your financial and personal circumstances. This person should have strong positive feelings about your family and other survivors.

- Someone who has experience dealing with business matters.
- Someone who will not be put in a position of conflicting interest (e.g., a child who will have to make decisions that may benefit him or her at the expense of other siblings, or a business partner who will be voting with your percentage and his or her own).
- Someone who is not significantly older than you or in ill health. Although you will name alternates, try to pick people who will be able to serve well into the future.

**SUGGESTION:** Always appoint at least two back-up or alternate individuals to serve as your executor. You never know if you will live longer than your first choice if you choose an individual. As an extra step, consider naming a local bank or other organization as co-executor or backup executor. Remember, the last thing you want is the courts to pick someone for you.

## Who Gets What?

An important part of your estate plan is deciding how your assets will be divided after you die. You should first decide who should receive what.

Make a list of those who currently depend on you for financial support. Prioritize your list. Your list will probably include your partner and any minor children you have. Why not leave everything to them? There may be other people to consider. Do you have older parents or other loved ones who are dependent on you for financial support to pay for their housing or medical costs? Do you have children or other relatives who are adults, yet need your support for education costs, support while they launch a new business, or who simply have trouble getting by month-to-month? Are you planning to give money to an adult child for a wedding or a home purchase one day? There is no easy way to decide how to divide assets up if you don't think you have enough assets to go around at the time of your death. Everyone will make this decision differently.

You may be tempted to say that once all these people are provided for, you want to leave the rest to your spouse. However, you may want to take a different approach. Consider leaving certain mementos to a specific child or other close relative or friend. While these items may not have significant monetary value, their sentimental value will mean a lot to someone who

is grieving your loss. A collection of books, a piece of art or jewelry or any other asset of yours can help someone remember you long after you're gone. Although this is your decision, be sure to discuss it with your spouse to see if he or she has certain feelings about those specific items.

**SUGGESTION:** If you leave someone a specific valuable asset, make sure that you also assign them any insurance that you own covering that asset. You may also consider leaving them a little extra to keep up the insurance payments if they will not be able to pay the premiums on their own.

**IMPORTANT NOTE:** If you have children from a prior marriage, you will need a special plan. If you leave your estate to your surviving spouse, he or she may choose to leave his or her remaining assets at death to his or her own children or to the person to whom he or she remarries. This may eliminate any chance your children have to receive an inheritance. There are special strategies you can follow where all parties are protected. Similarly, do you feel that your spouse will provide for your family (your parents, aunts, and uncles, etc.) after you're gone? If not, you should consider leaving these special people something at your death.



**SUGGESTION:** If you have minor children, consider leaving additional funds directly for the guardians who may have to care for your children. You will probably be leaving most of your estate to your children, but the guardian may not be allowed to access this money for such things as buying a larger house or car to make both your children and his or her family comfortable with these new living arrangements.

**IMPORTANT NOTE:** There are very complicated estate and gift tax rules regarding transfers to spouses who are not U.S. citizens. If the value of your estate is more than the applicable exclusion amount, and you are married to a non-U.S. citizen, you'll need to find an attorney who is knowledgeable in this area of estate planning.

In addition to leaving money or property to loved ones at your death, you can use this opportunity to make donations to your favorite charity or other organizations. Remember, your spouse and other survivors may not feel the same way about specific causes or charitable giving in general.

Although you may feel differently, for most people, the following priorities exist for distributing the assets in their estate after their debts and other expenses have been paid:

**FIRST**—Enough assets go to support the spouse and other dependants for a certain period of time. Remember, children do grow up and spouses can remarry or work.

**THEN**—With what's left, divide it up based on your feelings and concerns for your:

- Spouse or partner
- Other family members
- Close friends
- Charities

Think twice about making transfers to the following people:

- People who are much older than you who have significant assets of their own—you may be needlessly creating more tax in their estate soon after you die.
- People who are currently on Medicaid or other governmental assistance. The transfer to them will have to be spent on medical or nursing home care that would otherwise be paid by the government. Since these costs are so high, you may not be giving enough to change their situation, but wasting your assets that could go elsewhere.
- People (including your children) who are institutionalized for life. The government will most likely provide them with care, and if you only have limited assets at death, these transfers will take away from your other loved ones who are not having their needs provided for. You can set up certain trusts in which these patients get certain amounts to help out with some extra items without disqualifying them from government assistance.
- People who are about to declare bankruptcy. If someone is so financially distressed, the amount you leave them will be consumed paying debts that would otherwise be discharged in bankruptcy.
- People who cannot control their spending due to such conditions as mental illness, compulsive behaviors such as uncontrollable shopping or gambling, substance abusers, cult members, or people who are unable to control large sums of money. You can always set up the transfer in such a way that someone responsible will control the flow of money to them (See the section *Using Trusts to Help Protect Assets*).
- Children or other young adults. These younger people may not have a full appreciation of the value of money. You can always give them assets in a trust (See the section *Using Trusts to Help Protect Assets*).

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## *Hold On or Give it Away*

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So far, we've discussed transferring your property to your loved ones or to charity at your death. What if you do not want to wait until you die? There are pros and cons to giving assets away during your lifetime versus transferring those items at your death.

Holding on to assets until you die:

- Gives you control over your assets

- May reduce the risk that these assets will be attacked by the beneficiary's creditors
- Assures that beneficiaries will not squander the assets you give them until they are mature
- Allows you to change your mind about who will receive the property

Most importantly, your circumstances may change, and the assets you think you do not need today may be needed tomorrow. Will you need these assets for your retirement, for emergencies, for long-term care when you are older, or simply to afford the lifestyle you always wanted? Are you sure the people you give gifts to will be equally generous? Will those assets even be there if you need them back? For safety's sake, don't assume so.

If you're sure you will not need the assets to live comfortably and the person is able to control money or appreciate the meaning of a gift, you may want to consider making some gifts during your life. Consider the joy you will get from giving things of sentimental value to your loved ones. You can take the time to share the meaning of your gifts with the recipient and watch them enjoy your generosity. Remember, you can't take it with you.

## Income Tax Differences between Gifting During Your Lifetime vs. Transferring Assets at Death

This discussion applies for an individual whose assets are less than the applicable exclusion amount.\*

The way property is transferred will have some important implications to the person receiving the property. You need to understand some key concepts:

**BASIS**—the purchase price, including commissions and other expenses, used to offset sales proceeds in determining capital gain and capital losses for tax purposes.

**GIFT**—the basis of the property received as a gift is the same as the basis of the property of the person making the gift. This is the amount paid for the property plus any improvements made less any amount deducted on the donor's tax returns (e.g., depreciation in the case of business property), plus any gift tax paid on the net appreciation.

**TRANSFER AT DEATH**—the basis of the property transferred at death is the fair market value of the asset

when the person dies (or six months later if the executor makes a special election). In the case of joint property transferred to a spouse, half of the basis is the surviving spouse's basis and the other half is the fair market value. In community property states, all of the community property transferred to a spouse will have a basis of fair market value. The impact of this rule on the capital gains income tax can be dramatic.

**Example:** Your grandfather owns some shares of stock that he paid \$100,000 for 20 years ago and the shares are now worth \$300,000. His estate is less than the applicable exclusion amount. He asks you if he should give it to you now or leave it to you in his will. You plan to immediately sell the property for its market value. Your marginal tax bracket is 25%.

Assuming this is his only asset, what should you tell him?

	Gift	Inheritance
Your Sales Proceeds	\$300,000	\$300,000
Your Basis	\$100,000	\$300,000
Capital Gain	\$200,000	\$0
Income Tax (at 15% long-term capital gain rate)	\$30,000	\$0

In this example, you needlessly paid \$30,000 of income taxes if you received the shares as a gift.

*\*If you assume there will be an estate tax at your death, an analysis must be done to see if gifting in this situation is advantageous.*

**IMPORTANT NOTE:** Anytime you are involved with a large transfer of assets, make sure you consult with a financial professional.