

Estate Planning: What Do I Need?



By Greg Patterson and James Allen Canady

By definition, estate planning is a process designed to help you manage and preserve your assets while you are alive and to conserve and control their distribution after your death according to your goals and objectives. But what estate planning means to

you specifically depends on who you are. Your age, health, wealth, lifestyle, life stage, goals, and many other factors determine your particular estate planning needs. For example, you may have a small estate and may be concerned only that certain people receive particular things. A simple will is probably all you'll need. Or you may have a large estate and minimizing any potential estate tax impact is your foremost goal. Here, you'll need to use more sophisticated techniques in your estate plan, such as a trust.

To help you understand what estate planning means to you, the following sections address some estate planning needs that are common among some very broad groups of individuals. Think of these suggestions as simply a point in the right direction, and then seek professional advice to implement the right plan for you.

Over 18. Since incapacity can strike anyone at any time, all adults over 18 should consider having:

- **A durable power of attorney.** This document lets you name someone to manage your property for you in case you become incapacitated and cannot do so.
- **An advance medical directive.** The three main types of advance medical directives are (1) a living will, (2) a durable power of attorney for health care (also known as a health-care proxy), and (3) a Do Not Resuscitate order. Be aware that not all states allow each kind of medical directive, so make sure you execute one that will be effective for you.

Single. If you are single, you may not need much estate planning. But if you have some assets and material possessions, you should at least write a will. If you don't, the wealth you leave behind if you die will likely go to your parents, and that might not be what you would want. A will lets you leave your possessions to anyone you choose (e.g., your significant other, siblings, other relatives or a favorite charity).

Unmarried couples. You are in a committed relationship but aren't legally married. For you, a will is essential if you want your property to pass to your partner at your death. Without a will, state law directs that only your closest relatives will inherit your property, and your partner may get nothing. If you share certain property, such as a house or car, you may consider owning the property as joint tenants with rights of survivorship. That way, when one of you dies, the jointly held property will pass to the surviving partner automatically.

Married couples. For many years, married couples had to do careful estate planning, such as the creation of a credit shelter trust, in order to take advantage of their combined federal estate tax exclusions. For decedents dying in 2011 and later years, the executor of a deceased spouse's estate can transfer any unused estate tax exclusion amount to the surviving spouse without such planning. You may be inclined to rely on these portability rules for estate tax avoidance, using outright bequests to your spouse instead of traditional trust planning.

Married with children. If you are married and have children, you and your spouse should each have your own will. For you, wills are vital because you can name a guardian for your minor children in case both of you die simultaneously. If you fail to name a guardian in your will, a court may appoint someone you might not have chosen. Furthermore, without a will, some states dictate that at your death some of your property goes to your children and not to your spouse. If minor children inherit directly, the surviving parent will need court permission to manage the money for them. You may also want to consult an attorney about establishing a trust to manage your children's assets in the event that both you and your spouse die at the same time. You may also need life insurance. Your surviving spouse may not be able to support the family on his or her own and may need to replace your earnings to maintain the family.

Comfortable and looking forward to retirement or already in retirement. You have accumulated some wealth and you are thinking about or enjoying retirement. Here is where estate planning overlaps with retirement planning. It is just as important to plan to care for yourself or to continue caring for yourself during your retirement as it is to plan to provide for your beneficiaries after your death. Make sure you have a plan in place to get you to your retirement goal and to keep you sustained throughout a long retirement. This includes planning for health care costs and potential long-term care needs. A financial advisor can assist with your specific plan by implementing practical steps toward achieving your most important goals, keeping you focused on those goals, and checking up on and updating your plan regularly.

Who is impacted by estate taxes? Depending on the size of your estate, you may need to be concerned about estate taxes. For 2019, \$11,400,000 is effectively excluded from the federal gift and estate tax. Estates over that amount may be subject to the tax at a top rate of 40 percent. Similarly, there is another tax, called the generation-skipping transfer (GST) tax, which is imposed on transfers of wealth made to grandchildren (and lower generations). For 2019, the GST tax exemption is also \$11,400,000, and the top tax rate is 40 percent. Whether your estate will be subject to state death taxes depends on the size of your estate and the tax laws in effect in the state in which you are domiciled.

Elderly or ill. If you are elderly or ill, you will want to write a will or update your existing one, consider a revocable living trust, and make sure you have a durable power of attorney and a health care directive. Talk with your family about your wishes, and make sure they have copies of your important papers or know where to locate them.

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