



EMW LAW

A complete guide to creating your estate plan.

This worksheet guide will help you understand the process and the essential elements involved in estate planning.

An Estate Plan is a comprehensive document or set of documents that details how you want your personal and financial affairs to be handled after your death. It is not only about distributing assets but also about planning for your loved ones and your own future needs should you ever become unable to care for yourself.

The importance of having an Estate Plan cannot be understated. It allows you to:

1. Specify how your assets will be distributed after your death.
2. Name a guardian for your minor children.
3. Designate someone to manage your financial affairs if you become incapacitated.
4. Specify your wishes for medical treatment if you become unable to communicate them.
5. Minimize potential estate taxes and probate fees.

Getting started is easy

Take your time to read through this guide and make sure you understand each aspect before moving forward. Estate planning can be complex, but with careful planning and consideration, you can create a plan that will ensure your wishes are carried out and your loved ones are cared for.

Once you're ready, contact us to create all of your essential documents.

Choosing a Will or Trust

Deciding between a Will or Trust is an essential step in creating your estate plan. Both tools serve unique purposes, and understanding their differences is key to making an informed decision.

What is a Will?

A will, also known as a last will and testament, is a legal document that communicates your desires regarding the distribution of your property and the care of any minor children after your death. The person who carries out the instructions in your will is called the executor.

What is a Trust?

A trust is a legal arrangement where you give control of your assets to a trustee for them to manage and distribute for your beneficiaries. Trusts can be setup to operate during your lifetime (Living Trust) or after your death (Testamentary Trust).

Differences Between a Will and a Trust

The main differences lie in when they take effect and how they distribute assets. A will only takes effect after your death, while a trust can take effect as soon as it's created. A will goes through a court-supervised process known as probate before its assets can be distributed, while a trust avoids probate, allowing for a quicker distribution of assets.

When choosing between a Will and a Trust, be sure to consider:

- **Size of Estate:** Larger estates often benefit from the use of trusts to avoid probate and potentially reduce estate taxes.
- **Privacy Concerns:** Trusts are not made public, unlike wills, which become public record once they go through probate.
- **Cost and Complexity:** Creating a trust can be more costly and complex than creating a will.

Notes:

Choosing a backup guardian

In the event of your untimely death or incapacity, having a designated backup guardian for your minor children is crucial. This person will assume the responsibility of caring for your children, so it's essential to consider this decision carefully.

If a minor child's parents pass away or become incapacitated and cannot care for them, a court will appoint a guardian. By designating a backup guardian in your estate plan, you ensure that the person you trust most will be caring for your children. Be sure to consider:

- **Willingness to Serve:** The person you consider should be willing and able to take on the responsibility.
- **Age and Health:** Consider the potential guardian's age and health status. They should be capable of managing the rigors of child-rearing.
- **Location:** If the person lives far away, your children may have to relocate, which can be an additional stress factor.
- **Parenting Style and Values:** Consider if their parenting styles, religious beliefs, and moral values align with yours.
- **Relationship with the Children:** It's beneficial if the children already have a positive relationship with the potential guardian.
- **Financial Stability:** While the guardian doesn't have to support your children financially (that's what a will or trust is for), the person should be financially responsible.

Remember, it's crucial to have open discussions with potential guardians to ensure they're willing and able to take on the responsibility.

Notes:

Choosing your Executors or Trustees

An executor or a trustee plays a crucial role in implementing your estate plan. They are responsible for ensuring the proper management and distribution of your assets.

What is an Executor?

If you have a will, the executor you choose will be responsible for carrying out the instructions in your will after your death. This includes paying off debts, filing tax returns, and distributing your assets to the beneficiaries.

What is a Trustee?

If you have a trust, the trustee manages the assets within the trust. In a living trust, you can act as the trustee during your lifetime and appoint a successor trustee to take over after your death or if you become incapacitated.

When choosing your executor or trustee, be sure to consider:

- **Trustworthiness:** This person will have control over your property, so trustworthiness is a must.
- **Organizational Skills:** Managing an estate or a trust requires a lot of paperwork and record-keeping.
- **Financial Knowledge:** They don't have to be financial experts, but they should understand financial matters or be willing to seek advice when necessary.
- **Availability and Willingness to Serve:** Make sure they are willing and able to commit to the responsibilities of the role.
- **Age and Health:** They should be likely to outlive you and be able to manage the responsibilities during the estate settlement process.

Remember, the individuals you choose to act as your executor or trustee should be informed of your decision and understand the responsibilities involved.

Notes:

Choosing a Medical Power of Attorney

In your estate plan, a medical power of attorney (also known as a healthcare proxy or healthcare power of attorney) is a crucial document that ensures your healthcare decisions will be respected even when you can't make them yourself.

Without a medical power of attorney, if you become incapacitated, the court may have to appoint a guardian or conservator to make healthcare decisions for you. This process can be time-consuming and stressful for your loved ones. By appointing a medical power of attorney, you ensure that someone you trust makes decisions about your healthcare.

When choosing a Medical Power of Attorney, be sure to consider:

- **Trust and Understanding:** Choose someone who understands your values, beliefs, and wishes regarding health care. They should also be someone you trust to respect and enforce your wishes even under difficult circumstances.
- **Ability to Handle Stressful Situations:** Dealing with medical crises can be stressful. The person you choose should be able to stay calm in stressful situations and communicate effectively with your medical team.
- **Availability:** Your agent should be readily available in case of an emergency. If they live nearby and can attend medical appointments with you, that's a bonus.
- **Willingness to Serve:** Just like with choosing an executor or trustee, the person you choose should be willing and ready to act as your agent.

Once you've chosen your medical power of attorney, it's important to have detailed discussions about your healthcare preferences with them. This includes your thoughts on life-prolonging treatments, end-of-life care, and any religious or spiritual beliefs that may impact your medical care.

Notes:

Choosing a Financial Power of Attorney

A Financial Power of Attorney (POA) is a legal document that grants a person, referred to as an agent or attorney-in-fact, the power to manage your financial affairs. This can include paying bills, managing investments, selling property, or making other financial decisions on your behalf.

When choosing a Financial Power of Attorney, be sure to consider:

- **Trustworthiness:** The agent will have access to your finances so they should be someone you trust implicitly.
- **Financial Savviness:** While not required, it is beneficial if the agent has some understanding of financial matters or is willing to consult with professionals when needed.
- **Organization and Diligence:** Managing someone's financial affairs requires keeping detailed records and staying on top of various tasks.
- **Availability and Willingness to Serve:** Ensure that the person is willing to take on the responsibility and will likely be available and capable to serve when needed.

Remember to have an open discussion with the person you are considering as your Financial POA. They should understand their responsibilities and be willing to act on your behalf if needed. Also, consider naming a successor agent who can step in if your first choice is unable to serve.

Once established, your Financial POA should be kept in a safe, accessible place, and a copy should be given to your agent. It's important to review your Financial POA periodically and make updates as necessary, especially if your financial situation or personal relationships change. Always consult with a legal professional when creating or updating a Financial Power of Attorney to ensure all legal requirements are met.

Notes:

Choosing your beneficiaries

Beneficiaries are the individuals or entities that will inherit your assets when you pass away. Carefully selecting your beneficiaries is crucial to ensure your assets are distributed according to your wishes.

By naming beneficiaries, you maintain control over who inherits your assets. If you don't specify beneficiaries, state law will determine how your assets are distributed, which may not align with your wishes.

When choosing beneficiaries, be sure to consider:

- **Family and Loved Ones:** Spouses, children, and other family members are common choices for beneficiaries.
- **Friends and Non-Relatives:** You can also name friends or even caregivers as your beneficiaries.
- **Charities or Organizations:** If there's a cause you're passionate about, you might consider naming a charity or non-profit organization as a beneficiary.
- **Trusts:** You can name a trust as a beneficiary, which can be useful for managing assets on behalf of minor children or individuals with special needs.

Beneficiaries are often designated in your will or trust. However, certain assets, like life insurance policies or retirement accounts, allow you to name beneficiaries directly. It's important to periodically review and update your beneficiary designations, especially after major life events like marriage, divorce, or the birth of a child.

Notes:

Leaving gifts and heirlooms

Leaving personal possessions, like gifts and heirlooms, can be an important part of your estate plan and legacy. These items often hold sentimental value and can be a meaningful way to remember and honor your life.

In your will or trust, you can specify who you want to receive certain personal items. This could include anything from jewelry and artwork to a cherished book collection. Be as specific as possible to avoid any confusion or disputes.

When leaving gifts and heirlooms, be sure to consider:

- **Value:** Consider the monetary and sentimental value of the item, and who would appreciate it the most.
- **Personal Ties:** Some items may be more meaningful to certain people based on shared experiences or personal interests.
- **Equity:** While it may not be possible to distribute items equally, try to be fair in your distributions.
- **Open Communication:** Discuss your intentions with your loved ones. This can help manage expectations and prevent future disagreements.
- **Consider a No-Contest Clause:** A no-contest clause can discourage beneficiaries from contesting your will. If they do, they risk losing their inheritance.

Remember, emotions can run high when it comes to distributing personal possessions. Being thoughtful and clear in your designations can help prevent misunderstandings and conflicts after your passing. It's recommended to consult with an estate planning attorney to ensure your wishes are clearly articulated and legally enforceable.

Notes:

End of life considerations

Making end-of-life decisions is a critical part of any comprehensive estate plan. These decisions encompass your preferences for medical treatment, your final resting place, and your wishes for your funeral or memorial service.

Documenting your preferences provides guidance to your loved ones during a challenging time, sparing them from having to make difficult decisions on your behalf. Important elements to consider:

- **Living Will:** A living will is a document that outlines your preferences for medical treatment if you become unable to communicate your wishes. This typically includes scenarios such as terminal illness or permanent unconsciousness. A living will is crucial to ensure that your healthcare aligns with your beliefs and values.
- **Choosing a Final Resting Place:** Your final resting place is where your body or cremated remains will be placed after your death. Options can include a family plot, a columbarium niche, or a favorite location if you wish your ashes to be scattered. Your choice should be clearly documented and communicated to your loved ones.
- **Planning Your Final Arrangements:** Final arrangements refer to the handling of your body after death. This can include burial or cremation, and any specific rituals or ceremonies you wish to be observed. Documenting your preferences can help ensure your wishes are honored and can provide comfort to your loved ones.
- **Planning Your Funeral or Memorial Service:** A funeral or memorial service is a way for your loved ones to celebrate your life and begin the grieving process. You may wish to specify details like the location, readings, music, or any other personal touches. You can also indicate if you prefer a more traditional service or a casual gathering.

Notes:

Important terminology and definitions

Estate planning is filled with specific (and confusing) legal terms. Understanding this terminology will help you navigate the estate planning process more efficiently:

Advanced Medical Directive

This document is the equivalent of a “Living Will” and is a statement of the healthcare decisions that you would make when you are no longer able to do so yourself.

Beneficiary

The person or entity who is designated to receive assets from your estate or a specific account after your death.

Estate

All the property and debts left by an individual at death.

Executor

The person appointed by you in your will to carry out the instructions of the will after your death.

Financial Power of Attorney

The Financial Power of Attorney is a separate document where you are designating an “attorney in fact” to handle your financial and legal affairs.

Guardian

The person who takes care of your minor children if both parents die before the children turn 18.

HIPAA Authorization

Authorizes trusted individuals to receive your protected health information for specified purposes.

Intestate

Dying without a legal will.

Last Will & Testament (Pour Over Will)

Your final wishes for your dependents and arrangements, with specific references to the details outlined in your Trust.

Living Will

A document that outlines what medical treatments you would or wouldn't like to be used to keep you alive.

Personal Representative

Depending on your state of residence, the “executor” may be called a personal representative (PR), which is the person appointed by you in your will to carry out the instructions of the will after your death.

Power of Attorney

A legal document giving one person (the agent or attorney-in-fact) the power to act for another person (the principal).

Probate

The legal process through which a deceased person's will is validated, debts are paid, and assets are distributed to beneficiaries.

Revocable Living Trust

The central hub of your estate plan with provisions for the management, control, and distribution of your assets during life and after death.

Schedule of Assets

A listing of assets that you hold in the Trust are subject to the provisions of the Trust. This can be easily updated as you add or remove Trust assets.

Trust

A legal arrangement where one person (or institution), called a trustee, holds legal title to property for another person, called a beneficiary.

Trustee

The person or institution who manages the property that's held in a trust.

Will

A legal document in which a person specifies who will receive their property upon their death.