

Estate Planning FAQs

1. Why do I need an estate plan?

Most of us spend a considerable amount of time and energy in our lives accumulating wealth. As we do this, there also comes a time to preserve wealth both for our enjoyment and for future generations. A solid, effective estate plan ensures that your hard-earned wealth will pass intact to those you intend to be your beneficiaries, instead of being siphoned off to government processes and bureaucrats.

2. If I don't create an estate plan, won't the government provide one for me?

YES. But your family may not like it. The government's estate plan is called "Intestate Probate" and guarantees government interference in the disposition of your estate. Documents must be filed and approval must be received from a court to pay your bills, pay your spouse an allowance, and account for your property and it all takes place in the public's view. If you fail to plan your estate, you lose the opportunity to protect your family from an impersonal, complex governmental process that is a burden at best and can be a nightmare.

Then there is the matter of the federal government's death taxes. There is much you can do in planning your estate that will reduce and even eliminate death taxes, but you don't suppose the government's estate plan is designed to save your estate from taxes, do you? While some estate planners favor wills and others prefer a Living Trust as the Estate Plan of Choice, all estate planners agree that dying without an estate plan should be avoided at all costs.

3. What's the difference between having a will and a Living Trust?

A will is a legal document that describes how you want your assets distributed at death. The actual distribution, however, is controlled by a legal process called probate, which is Latin for "prove the will." Upon your death, the will becomes a public document available for inspection by all comers. And, once your will enters the probate process, it's no longer controlled by your family, but by the court and probate attorneys.

Probate can be cumbersome, time-consuming, expensive, and an emotional trauma in a family's time of grief and vulnerability. Con artists and others with less than pure financial motives have been known to use their knowledge about the contents of a will to prey on survivors.

A Living Trust avoids probate because your property is owned by the trust, so technically there's nothing for the probate courts to administer. Whomever you name as your "successor trustee" gains control of your assets and distributes them exactly according to your instructions.

There is one other crucial difference. A will doesn't take effect until you die, and is therefore no help to you with lifetime planning, an increasingly important consideration now that Americans are living longer. A Living Trust can help you preserve and increase your estate while you're alive, and offers protection should you become mentally disabled.

4. The possibility of a disabling injury or illness scares me. What would happen if I were mentally disabled and had no estate plan or just a will?

Unfortunately, you would be subject to "living probate," also known as a conservatorship or guardianship proceeding. If you become mentally disabled before you die, the probate court will appoint someone to take control of your assets and personal affairs. These "court-appointed agents" must file a strict accounting of your finances with the court. The process is often expensive, time-consuming and humiliating.

5. If I set up a Living Trust, can I be my own trustee?

YES. In fact, most Living Trusts have the people who created them acting as their own trustees. If you are married, you and your spouse can act as co-trustees. And you will have absolute and complete control over all of the assets in your trust. In the event of a mentally disabling condition, your handpicked successor trustee assumes control over your affairs, not the court's appointee.

6. Will a Living Trust avoid income taxes?

NO. The purpose of creating a Living Trust is to avoid living probate, death probate, and reduce or even eliminate federal estate taxes. It's not a vehicle for reducing income taxes. In fact, if you're the trustee of your Living Trust, you will file your income tax returns exactly as you filed them before the trust existed. There are no new returns to file and no new liabilities are created.

7. Can I transfer real estate into a Living Trust?

YES. In fact, all real estate should be transferred into your Living Trust. Otherwise, upon your death, depending upon how you hold title, there will be a death probate in every state in which you hold real property. When your real property is owned by your Living Trust, there is no probate anywhere.

8. Is the Living Trust some kind of loophole the government will eventually close down?

NO. The Living Trust has been authorized by the law for centuries. The government really has no interest in making you or your family go through a probate that will only further clog up the legal system. A Living Trust avoids probate so that your estate is settled exactly according to your wishes.

9. Isn't a Living Trust only for the rich?

NO. A Living Trust can help anyone protect his or her family from unnecessary probate fees, attorney's fees, court costs and federal estate taxes. In fact, if your estate is greater than \$100,000, you'll find a Living Trust offers substantial benefits for you and your family.

10. Can any attorney create a Living Trust?

NO. You should choose an attorney whose practice is focused on estate planning. Members of the American Academy of Estate Planning Attorneys receive continuing legal education on the latest changes in any law affecting estate planning, allowing them to provide you with the highest quality estate planning service anywhere.