

Your Family's Quick-Start Guide to **ESTATE PLANNING**

Talking about one's legacy can be discomfoting. Estate planning, after all, is primarily about what will happen to your physical and financial assets when you are no longer around.

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But in my experience as an estate planning attorney, I've come to see that once my clients understand why estate planning is important, they get over any discomfort about the process.

Why?

When you create your estate plan, you do it out of love. ***Having a plan means that your loved ones are exactly the ones who will inherit your hard-earned wealth.*** If your last act is to ensure the security and well-being of those you care about, then you're going to need an estate plan. Seen in this light, estate planning can be empowering. Not depressing.

One other powerful result of proper estate planning is that it ensures that the ***taxation of your estate can be minimized.*** Done strategically, your estate plan could provide for your heirs to inherit the maximum that the law permits.

Lastly, as you age, you may become less able to care for yourself, or perhaps become entirely unable to do so. An estate plan that includes ***health directives and powers of attorney*** can help ensure that your wishes regarding your own well-being are respected.

This short guide covers just the basics of estate planning, so it's not meant to be exhaustive. But it will help you take that all-important first step.

As the father of two young people, my appeal to you is to do the right thing for your loved ones. If you commit to one thing this year, let it be your estate plan. The fullness of one's life is never completed until the consequences of one's demise are responsibly settled as well.

Sincerely,

Robert



1. WHAT IS ESTATE PLANNING?

Estate planning is the process by which you create legal documents that set out your wishes when you are no longer around or no longer able when still living to implement them. For most of us, estate planning makes clear our intentions as to who inherits your estate (physical and financial assets) when we've passed. A comprehensive estate plan can also include your instructions on what is to be done in the event of your incapacitation i.e. when you can no longer make decisions for yourself or act as regards your well-being. Lastly, an estate plan provides for the minimization of estate taxes that have to be paid upon any transfer of wealth to heirs.



A typical estate plan should include:

- a **will** that is the primary document regulating your wishes as regards inheritance and guardianship
- a **trust** that relates to protecting assets for the benefit of yourself and/or specific persons
- a **healthcare directive and proxy** that specifies your intent as regards decisions on your physical well-being and end-of-life arrangements respectively
- a **power of attorney** that enables a trusted Agent to make financial decisions for you in the event that you are incapacitated
- for parents with minor children, a **temporary guardianship document** that names a trusted adult to care for minor children in the event of your incapacity

*If your last act is to ensure the security and well-being of those you care about,
then you're going to need an estate plan to get that done.*

You don't need to have all of the above – it all depends on your assets and your specific situation and wishes. But even single people should have a will and advance directives because all of us want to make sure the fruits of our life's labor go to the people and organizations we care about. And also, that we always retain our independence as individuals.

2. INTESTACY

When you die without a will, you die "intestate". Which means that your family and heirs have to endure a prolonged probate process. Probate is the process whereby the legal courts distribute all estates – with or without a will. When the situation of intestacy arises, it almost always means a delay in the distribution of the estate because the court – in the absence of a will – has to become your estate planner. Judges need more time to consider the facts and then apply the law. **In New York State, the laws of distribution in intestacy are perhaps one of the most complicated in the country.** Having a will means you avoid this serious challenge.

So, without a will, someone else (the state) decides who gets what and how much. The statutes rarely accomplish results that truly match your own wishes. In New York, your spouse receives \$50,000 and one-half of the remainder of your estate. Your children receive the other half, even as minors.

The other key thing to consider is this: if your family is entirely reliant on your estate to generate income, the absence of a will can be a traumatic experience for them if **they do not have sufficient funds to live on.** In New York, it can take several months to probate a will, and certainly more time is needed to distribute an estate that does not have a will.

In intestacy, the lack of a will can be complicated by claims to some or all of your assets. While this may be unlikely in most cases, it can prolongs the process and **added litigation** can further muddy the waters.

*Not having a will can be a prolonged, stressful and costly process for your family.
Why put them through it?*

One last thing: when the courts has decided on distribution, it will appoint someone to be the "**administrator**" (aka "Personal Representative") of your estate. It can be someone you know (such as a relative or friend) who could agree to take up the responsibilities. In the absence of this, the court will appoint someone (likely a professional like a lawyer). Administrators are also entitled to a free, which comes out of the estate assets. (note: where you do have a will, your administrator is called an "Executor").

Having a will is likely to ensure that your assets get to the people you love quickly and without incident or stress. Probating a will is generally an inexpensive and smooth process, provided you've got it properly drafted and executed. Dealing with intestacy should simply be avoided. And it can be – with a properly executed will.