



YOUR GUIDE TO AN ESTATE PLAN THAT WORKS.



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This guide is designed to introduce the world of estate planning for you and your family.

There are four sections of this guide:

- 1. Why You Need an Estate Plan**
- 2. The 4 Stages of Your Estate**
- 3. What Documents You Need**
- 4. The Risks of Not Planning Your Estate**

Every person and estate is different and should be treated as unique. The information in this guide is generic and therefore should not be considered legal advice. While this guide strives to provide as much detail and reliable information possible, it cannot substitute for a qualified attorney reviewing your unique situation. *The choice of a lawyer is an important decision and should not be based solely upon advertisements.* © Polaris Law Group, LLC, all rights reserved.

1. Why Make an Estate Plan?

The simple fact of the matter is that without an estate plan you run the risk that when you are disabled or when you pass away your estate will not be handled in the way want. Without a plan, your estate may have to be handled through the probate courts, your family may end up fighting over pieces of your estate, or your estate may wind up in the hands of someone you would never have wanted to inherit your hard earned legacy.

What is an “Estate”?

In the most basic terms, your ‘estate’ is *everything that you own*. This can include your home, cash accounts, retirement accounts, life insurance accounts, business stocks, vehicles, jewelry, and anything else that you have. Everyone has an estate, it is simply a matter of what size your estate is.

ESTATE PLANNING TIP!

A COMMON MYTH SOME PEOPLE HAVE IS THAT THEY “DO NOT HAVE AN ESTATE TO PLAN FOR”. IN REALITY, EVERYONE HAS AN ESTATE.

What is an “Estate Plan”?

An estate plan, simply put, is a plan in place, through documents and discussions, as to how you want your estate to be handled when you are disabled or when you pass away.

At Polaris Law Group, we use the following definition to make sure we are creating an estate plan that works for you and your family:

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- ✓ I want to control my assets while I am alive and well
 - ✓ I want to plan for me and my loved ones if I become disabled
 - ✓ Then give what I have left
 - To Whom I Want
 - When I Want
 - The Way I Want(Saving every last tax dollar and professional fee possible)
 - ✓ All while assuring my WISDOM is transferred along with the rest of my WEALTH!
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What if I don't have a plan?

Without a proper estate plan, there are three major consequences that your family and loved ones could face upon your death.

Probate

One of the major risks of not planning your estate properly is that your family will have to go through the process of Probate to rightfully take possession of your property. Probate is the legal process in the Probate Court in which your assets are administered and delivered to your legal heirs.

If you die with a Last Will and Testament, then your estate will be administered according to your Will and your assets will pass to those you named in your Will to receive them.

ESTATE PLANNING TIP!

SIMPLY HAVING A LAST WILL AND TESTAMENT DOES NOT AVOID THE NEED FOR PROBATE. THERE ARE OTHER STEPS WHICH MUST BE TAKEN IN YOUR ESTATE PLAN TO MAKE SURE YOUR FAMILY DOESN'T HAVE TO GO TO PROBATE COURT.

If you die without a Last Will and Testament, then your estate will pass according to the laws of your state. This is often referred to as passing by "intestacy". Your estate will pass to your *legal heirs*, those that the state has determined to be your heirs. These may or may not be the people whom you would choose to receive your property, and it may or may not be in the same way you would give your property to them.

Family Fights

One of the worst consequences of not having an estate plan are family fights. Too many times, an unplanned estate will lead a family to fighting over even small amounts of money. When the expectations of a family member are not met, or a perceived injustice is done, many families will spend years fighting each other. Often these fights end up with nobody winning except for the attorneys who have their fees paid. Without a proper plan in place *ahead of time* it is hard for the family to understand what your wishes truly are when it comes time to separate out your estate.

A Rough Transition

The goal we see most clients request when it comes to their estate plan is to have a "smooth transition" for their family. Your estate plan should make sure your family is able to accomplish everything as smoothly as possible, while avoiding probate and family fights. If there is no plan put together ahead of time, it is almost guaranteed that your family will have a rough time making the transition from your estate to where your stuff should go. A proper estate plan is key to making sure your family knows what you want done, when to do it, and who is in charge to make that transition as smooth as possible.

2. The Four Stages of Your Estate



Stage 1. Alive and Well

The first stage of your estate is the one you are hopefully currently in: Alive and Well. This means you are not suffering from any mental disability which would interfere with your ability to make an estate plan. There are two things to consider during this stage. First, this is the time to make your estate plan while you still can. Second, you will want to make sure that your estate plan does not interfere with your ability to use your own property.



Stage 2: Disability

In many cases, you will become disabled before you pass away. This is referring to a period in which we are unable to make decisions regarding yourself or your property. This could mean a physical disability, but more often, this is a mental disability such as dementia or Alzheimer's. During this time, you would not be able to make decisions as to your financial affairs, legal affairs, or how you want to be treated by your health care providers. It is essential that you have someone in place to be able to make these decisions for you.



Stage 3. Death Transfer of Assets

This is the stage most people think of when thinking of "Estate Planning". It is important to have a plan in place to make sure when you pass away that your property goes to whom you want, how you want, and the way that you want. A proper plan will not only avoid the costs and burdens of Probate Court but will also be designed to avoid family fights. With a proper plan in place you can make this process as smooth as possible for your family.



Stage 4: Wealth Reception

The final stage of your estate does not come upon your death. While most people think that death is the end of your estate, you would be missing out on one of the most important stages: Wealth Reception. This is the time that your beneficiaries (spouse and children in most cases) receive your wealth after you are gone. With a proper plan in place, you can plan even for this stage. Do you want to protect your legacy from a second marriage? Do you want to make sure the children use the money for education? Do you want to make sure your children have a financial plan in place before spending your money? Do you want to make sure your legacy is protected from creditors and predators looking to take your hard-earned legacy away from your children? With a proper estate plan, focused on *all four stages of your wealth*, you can accomplish these goals and many more.

3. What Documents Do You Need in Your Plan?

There are 5 basic documents that almost every estate plan should use.

1. Last Will and Testament

Your Last Will and Testament is your final instructions regarding where you want your property to go when you pass away. In your Will you will name a Personal Representative, or an Executor, to carry out your wishes. This will be the person in charge of your estate while it is under the rules of the Probate Court. It is important to choose a trustworthy individual that will carry out your wishes and follow any orders from the Court. However, as discussed earlier, your Last Will and Testament only covers your property that ends up in the probate court. Thus, it will only cover the property that you had when you passed away that you did not plan for already. In most cases this will be a small percentage of your overall estate. In some cases, where the property is less than \$40,000 in Missouri (different in other states), a full probate will not even need to be opened in order to settle your estate.

But remember, a Last Will and Testament is only useful in the Probate court and most families want to avoid having to go to probate at all. Thus, if the only tool you have in your estate plan is your Will, you will not have achieved your goal of creating an estate plan that works.

2. Durable Power of Attorney for Legal and Financial Matters

In many cases, a Durable Power of Attorney is more important to you and your family than your Will. A Durable Power of Attorney allows you to name an “attorney in fact” or an “agent” to step in and manage your legal and financial affairs if you cannot. This would allow your agent to pay your bills, cash your checks, sell your property, access your retirement accounts, and many other tasks that you may need someone to do for you if you are unable to due to a disability.

If you do not have a Durable Power of Attorney when needed, your family will be forced to go to Court to have a guardian and conservator appointed to you. This is a long and costly process which cannot be accomplished in time to handle a crisis event. The Court may appoint someone you would not have picked yourself. By being prepared for a crisis with a proper

Durable Power of Attorney, you will be able to make sure you are protected ahead of time and that you get to pick who will be in charge.

ESTATE PLANNING TIP!

NOT ALL POWERS OF ATTORNEY ARE CREATED THE SAME. MANY ONLINE FORMS AND SELF-HELP FORMS LEAVE OUT IMPORTANT INFORMATION THAT MUST BE INCLUDED FOR YOU TO ACCOMPLISH YOUR GOALS!

3. Durable Power of Attorney for Health Care and an Advanced Medical Directive

If you do become disabled to a point where you are unable to communicate, it is important to know who is going to make health care related decisions for you. With a Durable Power of Attorney for Health Care, you can name the individual you want to make health care decisions on your behalf. This means, if you aren't able to communicate because of a disability or medical condition, this person would be able to determine what treatment you receive, what doctors you see, which hospital you go to, and if you allow, whether you are provided artificially supplied food or hydration.

In addition to a Power of Attorney for Health Care, you will need to have an Advanced Medical Directive. This document allows you to list your desires on how you want to be treated. This will allow you to make a clear plan as to what you want done or not done if you are not able to communicate with your health care providers.

Picking someone you know and trust, and someone who knows how you would want to be treated at end of life and during a disability crisis is vitally important to creating a plan that works for you.

4. Beneficiary Designations

A beneficiary designation refers to the ability on some assets to assign the asset to someone upon your death without the need for probate. This is very common on financial assets such as retirement accounts and life insurance. This can be done on other property such as cars and homes. If you don't have a beneficiary deed filed for your home and both you and your spouse pass away at the same time, your home may have to go through the probate process to be passed along to your beneficiaries.

However, one of the biggest drawbacks of beneficiary designations is that they create outright gifts, with no instructions or protections for your beneficiaries. Thus, in many cases, simply avoiding probate with a beneficiary designation may not fulfill your wishes regarding your estate.

5. Revocable Living Trust

A Revocable Living Trust is the most important and powerful tool in your estate plan. In its most basic definition and Revocable Living Trust is a way for a trustee to hold property for the benefit of a beneficiary. The trust governs how the property should be used and who the property is to be used for. Not all trusts are the same though. Many trusts focus on a few things while leaving out others. Many Trusts are too simple to accomplish your goals. Your personal estate planning goals are what will drive the creation of your trust and your trust should be custom designed to your goals.

There are numerous advantages to having a Revocable Living Trust in your estate plan.

Probate Avoidance

If you properly fund your trust with your property, all the property you own in trust upon your death will follow the terms of your trust. This will be done without the need for your family to go through probate as all the rules for who receives your property are contained in the trust.

ESTATE PLANNING TIP!

THE BIGGEST MISTAKE WE SEE PEOPLE MAKE IS CREATING AT REVOCABLE LIVING TRUST AND THEN NOT MAKING SURE THEIR PROPERTY IS TIED TO THEIR TRUST. THIS PROCESS IS CALLED TRUST FUNDING. WITHOUT PROPER TRUST FUDNING SOME OF YOUR PROPERTY WILL STILL GO THROUGH PROBATE, EVEN WITH A TRUST!

Privacy

Unlike a Will, which has to go through the Probate Court, which is open to the public, a Trust will be able to be kept private, dealing only with those beneficiaries that have an interest in the trust.

Tax Savings

A properly drafted trust can create tax savings advantages for your family after you have passed away.

Asset Protection

One of the most powerful advantages with a Revocable Living Trust is Asset Protection. What this means is that you can leave your property to your loved ones in a way that protects their inheritance from being taken away in a lawsuit, during a divorce, or if they require government benefits such as Medicaid.

You can also use an Asset Protection trust to protect children from themselves if they are unwise with money, have a substance abuse issue, or for any other reason that you may not want them to have full access to the inheritance to squander away.

Because every trust is unique and different, and the laws are constantly changing, it is important to have your trust prepared by a qualified estate planning attorney who works in the area of Revocable Living Trusts on a regular basis.

4. The Risks of Not Having an Estate Plan

If you have not updated your estate plan within the past two years, or worst yet, you have never created an estate plan at all, you may be setting up yourself and your family for major problems down the road. These can include:

Expensive, Long, and Complicated Probate Process

The first risk of not having an estate plan, is that without one, your property will have to go through the probate process when you pass away. Depending on what you own, and how much you own this process could take months to years to complete and cost your family thousands of dollars in court costs, attorney fees, and other expenses.

Family Fights

If you don't have a written plan in place, preferably discussed with your family ahead of time, your family may have drastically different expectations of what will happen if you become disabled or pass away. When these expectations are different family members may start fighting over who is right. This could lead to a long, expensive court battle. Worst yet, nobody wants to see their family split apart simply because they never put their wishes in writing.

Property going to the wrong people

Without a proper estate plan your property may end up in the hands of people you never intended. If you have an estranged child, an ex-spouse, or a minor child that you don't want to receive your property, it is important to make an estate plan to lay out your instructions. Without a properly updated estate plan, the Courts may be deciding who receives your property regardless of your wishes.

The Wrong People Being in Charge of You If You Are Disabled

Maybe more important than who receives your property when you pass away, without a proper plan, you may not have the right people in charge of you while you are alive but disabled. Imagine the Courts appointing someone to be your guardian and conservator who you would not have picked yourself. Without a proper estate plan, this is a possibility. Especially if you are not married or if your spouse is disabled or unable to act.

Even if the right person is put in charge of you, they may not know what you want or how you want to be treated. They may be left making hard decisions with no guidance from you. This not only leaves them in a stressful position but can lead to many family fights when other loved ones have different ideas of what to do disability and end of life.

Property Passing with No Protections

Without a plan in place, after your property has finally cleared probate, there may be additional disasters if your children are not prepared to handle an inheritance. If they are not old enough, not mature enough, suffering from substance abuse issues, in a bad marriage, or any other issue which may be a threat to their inheritance, an outright distribution through probate or beneficiary designation may not be the way you would want them to receive property. With a proper plan in place you can provide protections and instructions to your beneficiaries that will help protect them from spending the money unwisely or having it taken away in a lawsuit or divorce.

Start Your Estate Plan Today!

If you do not yet have an estate plan, or if it has been more than 2 years since you updated your estate plan, now is the time to work on it. The attorneys of Polaris Law Group, LLC focuses their practice on estate planning, elder law, probate, and business planning. *Planning is all we do.* If you would like to start the process of creating an estate plan that works, or if you have any additional questions, please contact us today.

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**Let us help you protect yourself,
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