



# SECURING YOUR LEGACY: BASICS OF ESTATE PLANNING

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## Introduction

Did you know that, no matter who you are, you already have an estate plan? “But, wait,” you may be thinking, “I’ve never drafted a will; I’ve never even talked to an attorney!” That may be true, but you still have an estate plan. The fact is that, upon your passing, if you have not provided for your own will or other estate planning documents, your state has a plan that it will enact for you—and the terms of the state’s plan may or may not be what you would have chosen.

Perhaps you have young children that would need to be cared for in the event of your untimely passing; perhaps yours is a blended family, with children from multiple marriages. Or you may be happily retired, but still concerned about how your grandchildren will be provided for after your death. You may be worried about the decisions that would be made about your healthcare if you were to become incapacitated. It may even be that you have a cherished cause or know of a charitable organization doing important work that you would like to assist for many years to come. Estate planning can help with each of these concerns, and many more. But each plan is as unique as the individual for whom it is designed.

This actually demonstrates the fundamental purpose of estate planning: to ensure that your wishes are carried out, even when you are no longer able to carry them out yourself. In fact, this might be a useful statement for you to write down and keep with your estate planning information: “I have an estate plan because I want to control my property while I am alive and well. I want to have a plan for my loved one and me if I become disabled. Then I want to give what I have to whom I want, when I want, in the way that I want, all while assuring my wisdom is transferred along with the rest of my wealth.”

Reading this whitepaper won’t make you an expert on estate planning, tax law, or trusts. Rather, this brief summary will give you a basic understanding of the purposes of estate planning and how it might be important for you. You’ll know the most vital questions to answer as you begin thinking about estate planning, and you’ll have a better idea of where to go for more information.

## Your Estate

At the outset, it might be useful to ask, “What, exactly, constitutes my estate?” After all, if the purpose of estate planning is to make sure your wishes are carried out for the disposition of your estate after your death, it’s probably a good idea to make sure you have a clear understanding of what is meant by “your estate.”

Here are some categories of assets that can combine to make up your estate:

- Real property: land, buildings, or residences you own or have a mortgage on
- Bank accounts: checking, savings, certificates of deposit, or money market accounts
- Digital assets: Frequent-flyer miles balances, credit card reward points, cryptocurrency, and even your log-in credentials to your accounts—all of these have value to your estate.
- Vehicles: automobiles, boats, airplanes
- Retirement accounts: IRAs (Roth or traditional), 401Ks or 403Bs (Roth or traditional) through your employer, simplified employee pensions (SEPs), health savings accounts (HSAs)
- Investments: brokerage accounts containing stocks, bonds, mutual funds, exchange-traded funds (ETFs), money market funds
- Life insurance and annuities: whole life, term life, variable life, group life insurance through your employer, variable annuities, fixed annuities
- Promissory notes: agreements to repay you a sum you have loaned someone, with interest
- Business interests: ownership or part ownership of a business, whether incorporated, a partnership, or a sole proprietorship
- Inheritances: amounts you expect to receive upon the passing of another person or from a trust from which you will benefit in the future
- Legal judgments: amounts to be awarded to you as a result of a lawsuit
- Outstanding debts: Though they “subtract” from the amounts available to your heirs, your estate plan should also consider the effect of any indebtedness you have upon your death. Settling these debts typically takes place before any remaining assets can be distributed.

All of these different asset types should be considered as you inventory your estate and make decisions about how it will be distributed or managed after your passing. You should also carefully consider how each of these assets is “titled”—how the ownership of the asset is legally described. A common pitfall is that assets are improperly titled and cause unintended

consequences for your loved ones. Make sure you know exactly how your assets are titled (individual name, jointly, or by contract) and understand what happens to each asset if you become disabled or die. Because the makeup of each estate is different, it's vital to make sure that your estate plan utilizes the proper tools for the asset types you own.

## Knowing the Players and Their Positions

Estate planning also involves the efforts of various persons or entities who are involved in carrying out your wishes as outlined in your estate plan. Let's take a look at the most important roles, related to your estate plan.

- **Executor:** if you are utilizing an estate plan based on a will, then the Executor, or Personal Representative, has the responsibility of going to court to probate your will after you die and carrying out the actions needed to settle the estate according to the terms of your will.
- **Trustee:** if you are utilizing an estate plan based on a trust, the Trustee is responsible for managing assets placed in a trust. The trustee may not have to go to court if everything was properly titled in the trust before death. The duties of a trustee can be carried out by individuals but also are often delegated to a bank trust department, a trust company, or a law firm.
- **Guardian:** In the case of young children (not yet of legal age), a deceased parent's

will should name a legal guardian for the children—a person or persons who assume legal and financial responsibility for the children until they attain legal age. A guardian can also be appointed for elderly individuals who have not made arrangements of their own for their care if they become disabled. However, a guardianship proceeding for an elderly individual is a last resort and often expensive.

- **Beneficiary:** a person or entity who receives assets (benefits) according to the terms of a will, trust, life insurance policy, or retirement account

## Some Basics

You've probably heard people talk about wills, trusts, powers of attorney, and other legal documents and terms in connection with estate planning. But what are these documents, and what are they supposed to do? In simplest terms, each of these documents is a tool intended to accomplish a specific purpose for your planning strategy. Let's take a look at some of the most basic estate planning tools and what they can do for you.

**Beneficiary designations.** Many people don't realize it, but when they designate a beneficiary for a life insurance policy, an IRA account, or their pension or 401K plan at work, they are creating an estate planning document. In addition, beneficiary designations bypass the probate process, which is the legal structure states use to determine who will own the prop-

erty and assets of the deceased. This is why it is vitally important for you to periodically—ideally, annually—verify the beneficiary designations on your retirement accounts, annuities, and insurance policies to make sure they reflect your current needs and wishes. More often than not, there's an old, forgotten insurance policy or IRA account somewhere that names an ex-spouse, a former business partner, or some other entity as beneficiary that would no longer be intended by the owner. Nevertheless, if that name is listed as beneficiary, that person or entity will receive the assets specified in the contract at your passing, even if they have been excluded from all your other estate planning documents. This also applies to any accounts held in joint name or with survivorship rights. Frequently, spouses hold the title to their home as well as joint savings, checking, or investment accounts in such form, which means that upon the death of either spouse, the survivor would own the asset outright, bypassing the probate process. Care should be taken when deciding on beneficiary designations, since the choices can have significant tax and asset protection impact.

**Wills.** A will has traditionally been the most commonly used estate planning tool. This legal document lets you specify your wishes about what happens with a number of things, including your property and assets, following your death. It appoints a person or entity as the executor of the will—charged with seeing that the terms of the will are followed—and can also specify who should be appointed as the legal guardian of any minor children. Your will directs

the probate court and other authorities as to how you want your property distributed, to whom, and when. The old word for will was “testament,” and a person who creates a will is still sometimes called a “testator.” Persons who die without a will are said to be “intestate,” meaning that the state will determine how the assets will be allocated.

**Trusts.** Trusts have recently become more popular. At its most basic, a trust is a legal entity that can own property and direct its use. Trusts created by the terms of a will and that take effect at the death of the creator of the trust (“grantor”) are called testamentary trusts. A living, or revocable trust can take effect during the lifetime of the grantor. In combination with a pour-over will (which directs that assets are “poured into” the trust at the grantor’s death), some estates benefit by the use of revocable trusts, which can function in many respects like a will without the necessity of probate, if the trust is properly funded. As the name implies, a revocable trust can be altered or revoked during the grantor’s lifetime, but once the grantor dies, ownership and control of any assets in the trust revert to the beneficiaries named in the trust. If assets have not been properly titled to the trust during lifetime, then the pour-over will directs those assets to be poured into the trust after death. Unfortunately the assets that were not titled properly in the trust will have to go through probate. This is a common pitfall to trust planning. In fact, a key question to ask an estate-planning attorney is whether they will manage the funding process for the trust, or if it is the responsibility of the

client. There are many other variations on trusts, but detailed discussion of these and their benefits for specific estates are beyond the scope of this whitepaper.

**Durable powers of attorney (DPOA).** This document appoints a person to act as your legal agent during your lifetime. Importantly, a DPOA remains in force even if you become incapacitated. The person holding your DPOA can sign contracts, open and close accounts, sell and purchase property, and conduct other legal and financial business on your behalf. DPOAs terminate upon your passing. In other words, a DPOA cannot substitute for a will. Because a DPOA becomes invalid after the death of the principal, it is vital not to use a DPOA for a deceased individual; that would be considered fraud.

**Healthcare proxies (HCPs).** If you become incapacitated and are no longer able to communicate your wishes or concerns to doctors or hospital personnel, who can make these determinations on your behalf? This problem can be solved by the use of HCPs. As long as you are able to handle this on your own, the HCP does not apply, but appointing someone as your proxy when you are clear-minded and capable of making your own decisions can relieve you and your family of significant stress in the event of an incapacitating accident or an unexpected illness. It's important to note that your HCP can designate a different person than your DPOA. For example, if you have child who is a healthcare professional, you might want to have them hold your HCP, while you might prefer

your sibling, who is a CPA, to hold your DPOA and handle your financial affairs if you become incapacitated.

**Living wills.** These documents provide written instructions in the event of your incapacity. Living wills are often used in combination with HCPs to stipulate your wishes concerning so-called "heroic measures" in the face of incurable or irreversible medical conditions.

Now that we have a basic overview of some of the more common tools for building your estate plan, let's discuss how these tools might fit into your strategy.

## Asking the Right Questions

As you begin thinking about estate planning, it's essential for you to answer some fundamental questions like these:

- If I am unable to make my own financial and healthcare decisions, who should do it for me?
- Who should be the executor of my will?
- Who should be the legal guardian for my minor children?
- Who should inherit my property and other assets upon my death?
- Who should inherit my property after the death of my primary beneficiary (often, a spouse)?
- What if my primary beneficiary predeceases me?

- If all my assets go to my minor children (or my adult child with special needs), who will decide how the assets are managed?
- I'm in a business partnership; if I die, how will the disposition of the business be handled and funded?
- Do I want to support a charitable cause with a portion of my estate?

As you can see, these questions are both important and, in many cases, uncomfortable. They require us to think about our own mortality and limitations as well as those of the people we love the most. But by not facing these questions or taking any steps to get the answers you need, you could be placing your loved ones or trusted business partners in an impossible position if the unthinkable were to occur.

By studying these questions, it's easy to see why each estate plan must be uniquely designed for the needs of the individual or family. Also, it's important to understand that these are not the only questions that might need to be considered. Estate planning can involve factors as varied as each person's circumstances.

So, where can you go to get the answers you need? Are there trusted professionals who can help you navigate the financial and legal maze to arrive at an estate plan that protects what is most important to you?

## Talking to the Right People

**Financial Advisor.** One good place to begin your search for estate planning help is with your professional, certified financial planner or wealth advisor. While these persons are, in most cases, not licensed to practice estate planning law, they typically maintain broad networks of legal, tax, and other professionals who can offer the expertise you need. Your financial advisor can also provide valuable advice about managing and organizing your finances and investments for best alignment with your estate planning goals and strategies.

**Certified Public Accountants (CPAs).** Your CPA may also be a good source of referrals to qualified estate planning attorneys in your area. Because they are familiar both with tax laws and your personal financial situation, your CPA may be able to provide helpful advice in your search for the right expert.

**Friends and Family.** Don't forget your personal network. Your work colleagues, friends, and family members can offer information about estate planning professionals they've either worked with personally or are otherwise acquainted with.

**Estate planning attorney.** Ultimately, you want to have some in-depth conversation with an attorney who practices estate planning law. This person will have detailed knowledge of wills, trusts, and all the other specialized tools needed to build an estate plan that is just right

for you. You may wish to speak with several attorneys before making your decision. When you are talking with an estate planning attorney, you should ask several key questions and listen carefully to the answers:

- Have you worked with others in situations similar to mine?
- Are you willing to provide references?
- How much experience do you have, specifically with estate planning?
- What is your fee structure?
- How are the costs for periodic reviews covered?

Depending on your age and that of the attorney, you may also want to inquire about succession plans, which personnel will be interacting with you on a regular basis, and other questions. At the end of the process, you should choose an estate planning professional with whom you feel comfortable, who can answer your questions in clear, non-technical language, and who is willing to give your estate plan the time and attention required for your reassurance and confidence.

## Case Study: Dorothy, age 80

Dorothy is widowed and has two adult children: Bill and Wendy. Bill is single, but Wendy has two daughters, ages 15 and 17. In Dorothy's will, Bill and Wendy are named as co-beneficiaries and also as co-executors of the estate. Dorothy owns a home valued at \$500,000, an investment account worth \$500,000 that she holds jointly with Bill, bank accounts jointly owned with Wendy with a balance of \$300,000, and an insurance policy with a death benefit of \$300,000 that names Wendy's daughters as beneficiaries. In total, her estate at death will be worth \$1.6 million.

Important considerations for Dorothy's estate planning include:

- Do Bill and Wendy get along? If they don't, carrying out their duties as co-executors could be awkward and could even delay the probate process. After all, they will need to decide what to do with Dorothy's house.
- Does Dorothy need a DPOA, an HCP, or a living will?
- Wendy's daughters are both minors. Does Dorothy intend for Wendy to manage the proceeds of the life insurance policy on behalf of her daughters, if she dies before they are legally adults? Are Dorothy's granddaughters well-suited to manage the money themselves, or should Dorothy consider using a trust to manage

the proceeds, with her granddaughters as beneficiaries?

- Are Dorothy's assets divided fairly? If not, should the terms of the will be revised?

### Case Study: Erica, age 47

Erica is founder and CEO of a startup tech company that has just completed a successful IPO. Erica's equity in her company is now worth \$5.5 million. She and her husband, Rick—senior manager at a Fortune 500 company—own a home valued at \$700,000, with an existing mortgage balance of \$550,000. Erica and Rick have three children: Matt, age 15; Brynne, age 12; and Clark, age 8. Erica's company is the owner and beneficiary of a key-person life insurance policy; Erica is the insured, and the death benefit is \$2 million. Erica and Rick both own personal life insurance policies with each other as beneficiary and death benefits of \$500,000 each. Erica is a volunteer and longtime supporter of a local charity dedicated to housing the homeless. Neither Erica nor Rick presently have a will.

Important consideration for Erica's estate planning include:

- Why might Erica and Rick consider adding their children as secondary beneficiaries on their personal life insurance policies?
- In the event that Erica and Rick both predecease their children, who will be their legal guardian?

- If the children receive proceeds from Erica's estate, who will manage the assets on their behalf?
- Should Erica utilize a trust to provide for her children's future education? How should such a trust be designed?
- How can Erica provide support for the homeless charity in her will?
- Who should receive Erica's ownership equity in her company, in the event of her untimely death?

## Conclusion

By reviewing this whitepaper, you have taken important first steps toward understanding estate planning and how it can benefit you and your family. Of course, this is only intended as an introduction to the most basic principles. It will be important for you to seek out reliable advisors and professionals as you formulate future plans, and we are happy to help you take those next steps. We can provide introductions to highly qualified, experienced, and dependable estate planning professionals who can answer detailed questions specific to your situation and needs.

## To Learn More:

1. Fidelity.com, “Managing Estate Planning,” <https://www.fidelity.com/life-events/estate-planning/overview>
2. Suze Orman, “Five Estate Planning Documents Every Family Should Have,” AARP.org, August/September 2018, <https://www.aarp.org/retirement/planning-for-retirement/info-2018/paper-work-suze-orman.html>
3. Fidelity.com, “What Is a Trust?” <https://www.fidelity.com/life-events/estate-planning/trusts>
4. Elizabeth Alterman, “How to Find a Good Estate Planner,” Forbes.com, September 11, 2019, <https://www.forbes.com/sites/nextavenue/2019/09/11/how-to-find-a-good-estate-planner/?sh=4b8183b52541>

## About the Author

Kimberly Foss is the president and founder of Empyryon Wealth Management. She has more than 37 years of experience helping people achieve their financial goals, with 31 of those years at the helm of Empyryon.

Beginning her career with Merrill Lynch as the youngest female account executive at the time, she quickly distinguished herself, rising to become the second leading broker in an office of 28. Despite her success, the commission-driven environment of a large stockbroker with a focus on selling proprietary investment products soon convinced her to found her own firm.

Committed to devoting her entire attention to helping clients make smart financial decisions and avoid costly mistakes, she founded E&A Investment Advisor, Inc. (now Empyryon Wealth Management) in 1989.

Foss is an acknowledged leader in the investment advisory industry, and her work has been consistently recognized. In 2020, Empyryon Wealth Management received two reputable awards from Investor.com, including the "Top Firms to Watch" and "Top Firms in California" awards. Bloomberg Wealth Manager also named Empyryon one of the nation's Top Wealth Managers out of a field of 500, ranking 116th in 2004, 91st in 2003, and 119th in 2002.

Each year since 1998, Foss has received the DALBAR seal award, a designation awarded to financial professionals who meet stringent requirements set by the Securities and Exchange Commission and who receive above-average ratings from their clients for financial results, trust, satisfaction, and overall advice quality.

In 1998, Foss was the only woman and the youngest person ever recognized by California State University, Chico College of Business as one of its Distinguished Alumni. She was a key contributor to *Secrets of the Wealth Makers: Top Money Managers Reveal Their Investing Wisdom*, written by Michael Lane and published by McGraw-Hill in 2000. More recently, she is the author of *Wealthy by Design: A Five-Step Plan for Financial Security* (2013, Greenleaf Book Group).

Foss has held the CERTIFIED FINANCIAL PLANNER™ accreditation from the Certified Financial Planner Board of Standards since 1991, and also holds the CERTIFIED PRIVATE WEALTH ADVISOR (CPWA®) designation from the Investments and Wealth Institute. As of this writing, she is a candidate for the CERTIFIED FINANCIAL THERAPIST-I™ (CFT-I™) designation.

## About Empyryon Wealth Management

Empyryon Wealth Management was founded on the principle that an effective investment portfolio directly reflects the investor's primary economic objectives. We strive to maximize the probability of achieving all that's important to our clients. We are a fee-based company, specializing in long-term investment strategy and dynamic portfolio design.

Empyryon Wealth Management provides financial and investment counseling to a limited number of high-net-worth individuals, closely held corporations, trusts, and pensions. We only take new clients when we have determined that we can add substantial value to those client's financial situations. Our services include thorough historic performance analysis, complete portfolio and investment policy development, diversified asset allocation, and comprehensive performance measurement and monitoring. In every aspect of our work, we make an uncompromising commitment to provide world-class client service and to meet every client's highly individualized wealth management needs.

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