

# Estate Planning

A BIRD'S EYE VIEW  
Michelle Fabio, Esq.



# Contents

- Introduction** . . . . . **3**
- Chapter 1 | Estate Planning Basics** . . . . . **5**
- Chapter 2 | Why an Estate Plan Is Important** . . . . . **7**
- Chapter 3 | What an Estate Plan Is** . . . . . **10**
- Chapter 4 | When to Make an Estate Plan** . . . . . **14**
- Chapter 5 | Getting Started** . . . . . **15**
- Chapter 6 | Other Estate Planning Tools** . . . . . **17**
- Chapter 7 | Updating Your Estate Plan** . . . . . **19**
- Chapter 8 | Talking to Your Family  
About Your Estate Plan** . . . . . **21**

# Introduction

Ann was sixty when she rushed to the hospital to be by her mother's side. Her mother, Loraine, had just broken her hip and was taken to the hospital by ambulance. When Ann arrived, the hospital staff wanted to know who Loraine's health care agent was, since Loraine had dementia. Ann had no clue.



She immediately called her father and each of her five brothers and sisters only to discover that Loraine didn't have one. Her parents had a joint will, but didn't know they needed anything else. They had nothing that covered medical or financial decisions in the event of a crisis—like this one—which sent her family scrambling.

“When the hospital staff and attorneys first began telling us what we needed and all of

the legalities we were shocked. We had no clue you need all of this done. Or how much of our time and money it would take because we didn't have anything ready,” recalls Ann.

Neither Ann nor her siblings knew the repercussions of not having a comprehensive estate plan that extended beyond a will. “We had a will, but didn't realize there was more to it. When were these laws passed? Does every state have to do it? How long has this been going on? Had we known, we would have made sure our parents had this in place, along with ourselves.”

Ann's experience is certainly not unique. It's happening every minute in hospitals across the country. Usually, it's not until after the fact when people realize that not having an estate plan can be detrimental. Many people don't know they need one until it's too late and they're sitting in court and paying an attorney a lot of money because they or someone in their family didn't get it set in place.

This short guide gives you the tools to be proactive and start your own simple estate plan. You'll find more information on the following topics:

- ▶ **Why** an estate plan is important (and no—age and financial status don't matter)

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- ▶ **What** an estate plan is

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- ▶ **When** you should make an estate plan

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- ▶ **How** to get started on an estate plan

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- ▶ **Other** estate planning tools

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- ▶ **When** to change an estate plan

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- ▶ **How** to talk to your family about an estate plan

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- ▶ **And more**

Everyone's plan will be unique—it can be as simple or as extensive as you wish. And the good news is, you can create a foundation for yours in just a few short afternoons.

## CHAPTER 1

# Estate Planning Basics

An estate plan is essential for everyone, regardless of age, ethnicity, or financial worth. You've worked hard for what you have, and surely you want to have some say over where it goes once you're gone. Well, the only way to do that is by getting together an estate plan. And the bonus? You can also breathe a little easier in the meantime knowing that your loved ones will be taken care of.



## What Estate Planning Is

First of all, don't get hung up on the fancy-sounding phrase, "estate planning." It is just the term to describe the process of getting your affairs in order. It doesn't have to be complex or complicated, and in fact, may even be done without any outside help, depending on your circumstances.

And while we're on the subject of what not do: Don't think estate planning is only something the wealthy or elderly need to worry about. Even if you own only a few things or haven't yet reached a certain age, you need an estate plan, too.

Why? Let's start with age. The majority of wills are made by people over the age of sixty. Unfortunately, death doesn't discriminate by age, and none of us knows what the future holds. This is why it is vital for every adult to have an estate plan in order—to be prepared for the unexpected—and that is especially true if you have minor children as you can name a guardian for your children in your will.

Or perhaps you don't own much, so you think you don't need a will? Wrong. Without a will, even your few assets can get held up in probate, the court-supervised process of distributing a decedent's property and paying off debts. A lengthy probate could not only cut into what your loved ones inherit, it could also mean a long wait for them to get their share as well.

And don't forget your pets! You'll want to make sure they are provided for after your death. As much as you consider them family members, they are classified as property under the law, so be sure to think about your fur babies, too.

Keep in mind that an estate plan isn't necessarily just a will, and you can tailor yours to your needs, including as much or as little as you want. You can also use estate planning to choose people you trust to handle your affairs, including financial and health care decisions should you become unable to do so. Plus, you can specify the types of medical treatments and procedures you would or would not want done should you become unable to communicate your preferences.

Still not convinced? Maybe you believe that all you have to do is tell a loved one what to do after your death or in case of incapacitation, and everything will be fine.

Sadly, that couldn't be further from the truth.

Without an estate plan, you are leaving everything up to someone else to figure out for you once you're gone—and that "someone" is often your state's laws, which may not reflect your wishes.

## Testamentary Freedom

Believe it or not, how you choose to dispose of your property upon your death is a right protected by the U.S. Constitution. You exercise that right by creating a will.

Yet few people do. Without formally expressing your intent in writing, what happens to your property will be determined by your state's default rules of heirship.

**If you are married, your spouse** will receive some or all of your property. In general, the portion not distributed to your spouse, or your entire estate if you are not married, **will be given to your children**. In many cases, your children will receive their share of the property **when they turn 18**. Generally, if you don't have children, that portion will be given to **your parents, siblings, or other relatives**, depending on state law and who is living at the time.

### The result can have far-reaching, unintended consequences:

- ▶ **creates uncertainty** and possibly frustrated expectations for beneficiaries;
- ▶ **is unsuitable** for nontraditional, blended families; and
- ▶ **contributes** to the growing problem of economic unfairness in the United States, which impacts middle and lower income families the most.

## CHAPTER 2

# Why an Estate Plan Is Important

Having an estate plan in order is useful on many levels, but its main function is to provide instructions for what should happen to your stuff—which includes everything from your children to your lawnmower—upon your death.

Everyone has an estate, even if it is small or of little monetary value, and remember it includes everything you own. Through smart, comprehensive estate planning, you can ensure that all of your assets are distributed according to your wishes, but that is not the only advantage.

**Some other benefits of estate planning include the following:**

- ▶ **Naming a guardian for your children.** If you have minor children or dependents with special needs, you can name a guardian as well as someone to manage their financial affairs through your estate plan.
- ▶ **Providing for care of loved ones, including future generations.** How you manage your estate now can affect the lives of your loved ones for some time to come. You can use your estate plan to make sure they are financially in the best possible position you can manage.
- ▶ **Helping to avoid probate.** Probate, the court-supervised process of settling a decedent's estate and distributing his or her property to heirs, is the Big, Bad Wolf of estate planning, something many people want to avoid, and usually with good reason. Probate can eat up both time, delaying the distribution of your property to your heirs, and money, cutting into inheritances, and those are

two rather undesirable traits indeed. An important consideration, however, is that state law varies greatly regarding probate, and in some states, the Big, Bad Wolf actually isn't too bad. California, for example, has simplified the process by permitting small estates (\$150,000 value or less) to be transferred via affidavit and by capping the maximum fees attorneys and personal representatives—executors, administrators—can collect. Many other states also have simplified procedures for small estates, so remember it is essential to understand your state's laws.

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- ▶ **Ensuring the continued success of a family business.** If you have a family business, you have likely spent countless hours making it all that it is. Don't let that slip away just because you didn't have a plan in place for succession after your death.

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  - ▶ **Supporting charities or other causes.** You can use your estate plan to make sure the groups of your choice receive a share of your estate.

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  - ▶ **Giving authority to people you trust to make decisions if you become unable to do so.** Along with choosing an executor to handle your estate through your will, you can also choose to create powers of attorney—durable, financial, and health care—to name people to handle your affairs if you become incapacitated or otherwise cannot communicate your wishes.

## Costs of Probate

A study estimates that probate costs American families up to \$2 billion per year, of which up to \$1.5 billion is paid in attorneys' fees. It can take six months or more (some even years!) before people can get what they are entitled to under the will.

## No Will, No Cry? Quite the Contrary.

Avoiding ending up like Bob Marley—at least, avoid your estate ending up like his. The reggae legend didn't have a will as it was contrary to his Rastafarian beliefs, and that left his family—wife, mother, children, other relatives—as well as business associates and bandmates scrambling for clarity and a share of the estate for thirty-six years. That is not a typo. Marley's estate has been in nearly constant litigation since his death in 1981, mostly intra-familial fighting over his money and legacy.

▶ **Making the uncertain more certain.** No one knows what tomorrow will bring, but through an estate plan, you are planning as best you can for the unexpected, and, again, your loved ones will thank you for it, even if you're not around to receive the gratitude.

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▶ **Doing it for your family.** Speaking of your loved ones, remember, your estate plan is largely a tool to help make sure your family is taken care of and will be able to avoid the stress of handling your affairs after you're gone without your guidance. Basically, you are pre-paying now to save your family from time, expense, and hassle on the back end. You are locking in your price rather than leaving it up to your family to deal with uncertain costs that could significantly affect their lives later. And again, they will love you all the more for it.

## CHAPTER 3

# What an Estate Plan Is

With all this talk of an estate plan, it's time to get down to some concrete info. An estate plan is a collection of legal documents that put your affairs in order in the event of your death or incapacitation. What it includes is different for everyone as it depends on your particular circumstances, so you will need to define what an estate plan means for you.

**The following are the documents most commonly found in an estate plan:**



## Will

### **Also known as**

last will, last will and testament

### **Origins**

Ancient Greece

### **What it is**

Written by a “testator” detailing his or her wishes regarding the distribution of assets, which will be carried out by an “executor” of the testator’s choice. The testator may also name a legal guardian for minor children and, depending on your state, specify funeral arrangements in a last will. A will must go through probate.

### **Roles**

You’re called the “testator”; your “beneficiaries” are those who inherit your assets (friends, family, charities, etc.); and your “executor” carries out your wishes, ensuring all goes according to plan.

### Why you need it

If you don't decide what happens to your property or your children, the state in which you live will.

### Important

- ▶ **You need to have two witnesses** sign it for it to be valid and a will often goes through probate, which is a state court-supervised process. This means it will eventually become public information.
- ▶ **Contrary to its name**, a will is not literally your "last" will. You can (and should) check and update it as often as you need. Your latest version is what is meant by your "last" will.
- ▶ **Your digital property.** You can include electronic files, photos, videos, music, etc. in your will.



## Living Trust

### Also known as

revocable living trust, inter vivos trust

### What it is

Written by a "grantor" through whom assets are placed into a trust for the benefit of the grantor during his lifetime and then are passed on to selected beneficiaries at the grantor's death facilitated by the "successor trustee," who is chosen by the grantor. A living trust also includes a will where you can name a guardian for your children.

### Roles

Here, you're called the "grantor," your "beneficiaries" receive your property, and it's managed and carried out by your "successor trustee."

### Why you need it

Living trust property passes directly to beneficiaries at the death of the grantor, bypassing the probate process entirely (if properly created and managed), which saves both time and money for beneficiaries, making it an attractive estate planning tool. Also, because there is no court involvement, your information stays private. Many people who own property (such as real estate) get a living trust.

### Important

- ▶ **A "revocable" trust** can be changed or cancelled at any time, while an irrevocable trust cannot. There are limited strategies that call for an irrevocable trust, which should only be created by an attorney.
- ▶ **For a living trust to actually work**, you have to "fund the trust" by changing the title to the property you own into the name of the trust.
- ▶ **Can include real estate** as well as digital property (photos, videos, music, etc.)
- ▶ **Can include a business**
- ▶ **Does not go through state court** (if properly set up) and, thus, is private
- ▶ **A trust only becomes public** if it is challenged, or is otherwise required to go through court proceedings.



## Advance Directive

### Also known as

health care directive, living will, power of attorney for health care

### Origins

Attorney Luis Kutner first proposed the concept of a living will in 1969. In 1976, California became the first state to legalize the living will, and by 1992, all 50 states had legalized some type of advance directive.

### What it is

Details the medical directions you want followed should you become incapacitated or seriously ill and incapable of communicating your preferences yourself. Matters addressed usually include feeding and breathing tubes, life support, and life-sustaining procedures.

### Roles

Your power of attorney for health care names an “agent” or an “attorney-in-fact,” and you can specify which duties they can perform.

### Why you need it

Health care decisions are often cause for family disagreements and can be the cause of lawsuits. An advance directive provides guidance to family and doctors rather than leaving it up to fate.

### Important

- ▶ **Many people don't just make a living will,** they also make a power of attorney for health care, which allows you to designate someone to be your representative if you are unable to make or communicate your

decisions regarding health care. A health care power of attorney goes farther than a living will in that it applies even if you are only temporarily unable to communicate your wishes.

- ▶ **An advance directive also includes an authorization for medical records (HIPAA),** and your desires for making anatomical gifts, also known as organ donation.
- ▶ **You can also consider a DNR (Do Not Resuscitate) order** with your doctor, but this only addresses the issue of the use of cardiopulmonary resuscitation (CPR) or other cardiac life support and not other types of medical care.



## Power of Attorney (for Finances)

### Also known as

durable power of attorney (for finances), springing power of attorney

### Origins

The concept dates back to 452 B.C., but the modern version was born in 1969.

### What it is

Grants someone of your choice the authority to make decisions for you if you are unable to do so. This person is called an agent or an attorney-in-fact, and you can specify which duties they can perform, which may include handling legal claims, dealing with insurance and retirement benefits, managing property,

entering into contracts for services, and more. You can give them only one power or give them many—make it active now or only when you say to. You choose what they handle and when.

### Roles

This person you give power to is called your “agent” or “attorney-in-fact.”

### Why you need it

If you have financial matters that you cannot be there to manage personally and you want someone to be able to handle your financial affairs on your behalf.

### Important

- ▶ **You can set up your power of attorney** to only “spring” into effect with a triggering event, such as becoming mentally or physically incapacitated.

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- ▶ **Must be notarized** or signed by two witnesses

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- ▶ **Can use or cancel** at any time

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- ▶ **Can take effect** immediately or only under certain circumstances

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- ▶ **Can authorize** only specific powers

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- ▶ **Sometimes registered** at the County Recorder’s office



## Estate Planning Add-Ons

**While these are components of many estate plans, you can add whatever you like, including:**

- ▶ **Digital will:** Keeps a record of your online banking, social media and other accounts, including logins and passwords and may designate someone to be your “power of online access attorney,” so to speak, to have access to such information.

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- ▶ **Pet trust:** Provides pet owners an opportunity to leave money and name a guardian for their furry or feathered friend. State laws vary greatly on these.

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- ▶ **Ethical will or legacy letter:** Communicates to your loved ones information about your values, thoughts, dreams, lessons learned, etc. This comes from a Jewish tradition, but anyone can write one.

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- ▶ **Funeral playlist:** Compiles a list of songs you would like played at your memorial service.

## CHAPTER 4

# When to Make an Estate Plan

Simply put, there is no time like the present to put together an estate plan. You never know what will happen, so it's best to think of having an estate plan in the same way as about putting on a seat belt when you get into a car: Sure, nothing may happen, but at least you'll be prepared if it does.



Also, if you are in relatively good health and not facing serious medical issues, you are also in the best position to evaluate things objectively and devise the best estate plan possible.

Still, there are certain situations in which it is even more imperative that you act quickly on getting your estate in order, including the following:

- ▶ **You have minor children or dependents with special needs**
- ▶ **You are going in for surgery**
- ▶ **You are going on a trip**
- ▶ **You have a family business that you need to plan succession for**
- ▶ **You have a complicated family structure** (divorces, remarriages, stepchildren, etc.)
- ▶ **You have a nontraditional family structure** (cohabiting couple, domestic partnership, etc.)

In sum, the right time to begin estate planning is now. Yesterday is better, but now is the next best option.

## CHAPTER 5

# Getting Started

Now that you're convinced you need an estate plan, surely you want to get moving. Excellent!

First of all, know that you can either draw up your documents yourself or consult with an estate planning attorney. While there is no law that says you need to hire a lawyer, experienced legal professionals can guide you through the process and help you figure out which documents you need. In general, as these are some of the most important documents you'll ever sign, you might want to get some help just to make sure you've got everything covered.

Legal advice is especially advisable in complicated cases such as when there may be estate taxes applied, children from more than one relationship, dependents with special needs, and other potentially murky situations.

One huge, enormous caveat here as you proceed: state laws vary greatly regarding estates, so it is essential that you understand your state's laws. While you can always look up the relevant probate statutes yourself online, a great source for finding more information is your state's bar association website as well as your local probate court's website.

### Get Organized

Even before you seek out legal assistance, you can start the estate planning process by getting organized at home. You need to understand what you own and where you want it to go, if it will get passed down under a will, or if there is already a beneficiary assigned to it.



## Assets

List all your assets and figure out where you would like them to go after you die. Remember that assets include everything you own or have an interest in, including:

- ▶ **Real property** (homes and other real estate)

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- ▶ **Personal property** (vehicles, furniture, jewelry, etc.)

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- ▶ **Investments** (stocks, bonds, mutual funds)

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- ▶ **Retirement accounts** (401(k)s, and IRAs)

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- ▶ **Bank accounts** (even if jointly owned)

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- ▶ **Business interests**

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- ▶ **Life insurance policies**

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- ▶ **Annuities**

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- ▶ **Trusts**



## Debts

List any current or potential debts, including federal and state estate taxes that your estate may face. This is where you may need some legal help if your estate could be subject to taxes.



## People

While drawing up your estate plan, you will also be called upon to choose the people you will trust with handling your affairs both after your death (executor) and in the event you become incapacitated (attorneys-in-fact).

And since estate planning can also include your wishes for the kind of medical treatment you wish to receive (or not receive) should you not be able to express your preferences when the time comes, think about that, too.



## Information Gathering

While you're at it, you might as well gather up relevant documents such as:

- ▶ **Deeds**

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- ▶ **Mortgages**

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- ▶ **Loans**

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- ▶ **Recent tax returns**

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- ▶ **Prenuptial agreements**

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- ▶ **Marriage, death and divorce certificates**

Compile information for credit card, banking, checking, savings, investment and other accounts as well as any logins and passwords that would be helpful to have in your estate's file.

Also, as you think about your beneficiaries—the people who will get your stuff—and other people who you would like to name in your estate plan, gather their contact information so you have it handy. You should also get together info for other people in your life, perhaps your doctor, someone at the bank, etc.

## CHAPTER 6

# Other Estate Planning Tools

There are several estate planning tools available to most people that can be used to your and your beneficiaries' advantage, mostly because they will avoid probate, so they may be other avenues for you to explore.

This list is not exhaustive, but the following are some of the most commonly used estate planning tools to avoid probate:

### Joint ownership of property

Jointly held property with the right of survivorship passes directly to the joint owner who is still living. Generally, there are three main ways to hold property jointly with another person:

- ▶ **Joint tenancy with a right of survivorship:** the owners are “joint tenants” of the property and the survivor takes full ownership upon the death of the other owner.

- ▶ **Tenancy by the entirety:** similar to joint tenancy only this type of ownership is available only to married couples (including same-sex couples in some jurisdictions).

- ▶ **Community property with right of survivorship:** in states with community property laws, spouses hold property jointly with the right to survivorship.

### Life insurance and retirement accounts

Life insurance and retirement accounts including 401(k)s, annuities, and IRAs all have designated beneficiaries within the documents; those funds pass directly to the beneficiaries without having to go through probate.

### Pay-on-death (POD) and transfer-on-death (TOD) accounts

Some states allow you to designate a beneficiary for your bank account, which is called a “pay-on-death” or POD account. You may also be able to designate a beneficiary for your investment account through a “transfer-on-death” or TOD account.

### **Revocable living trust**

Through a living trust, the person writing the trust (grantor) must “fund the trust” by putting the assets he or she chooses into it. The grantor retains control over the trust’s property until her death or incapacitation. At that point, the trust is turned over to the successor trustee, who had been chosen by the grantor and who will distribute trust property according to the grantor’s wishes. All of this happens outside the probate process.

### **Giving away property**

If you pass ownership of an asset to someone else within your lifetime, the property can’t and won’t be part of your estate when you die. Obviously, then, it also wouldn’t be part of the probate process as your chosen beneficiary would already have ownership of the asset. Depending on the situation, however, you may have to consider the possibility of a gift tax, so do keep that in mind.

## CHAPTER 7

# Updating Your Estate Plan

If you're wondering if you can change your estate plan, yes, you can!

Once you have your estate plan in place, know that it is still a living, breathing thing so long as you, too, are living and breathing. What does that mean? It means that right now all you have to do is you start with a good foundation that reflects your current circumstances. Then, in time, you can build or change your estate plan as needed.

In fact, you should absolutely revisit your estate plan and update it regularly. When updating your documents, you should consider not only the property and assets that are being distributed, but also the people involved. Carefully consider beneficiaries as well as people with whom you have entrusted other responsibilities, including the executor of your will, trustee of a trust, attorneys-in-fact, and guardian of your children.

These aren't particularly funny, but they are the:

## Top 10 Reasons You May Need to Update Your Estate Plan



**1 | Marriage.** If you, your child, or anyone else named in your estate plan got married.



**2 | Divorce.** If you, your child, or anyone else named in your estate plan got divorced.



**3 | Birth or adoption of a child, grandchild, etc.** If you, your child, or someone else gave birth or adopted a child that you would like to include. Also, if you name a guardian for your children.



**4 | A child has reached the age of majority.** If a child named in your estate plan turned 18 or otherwise reached a milestone set in your estate plan.

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**5 | Death or serious illness.** If someone named in your estate plan died or has fallen seriously ill. This is especially important if it's someone who has been named as your executor, financial or health care power of attorney, or trustee.

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**6 | Changes in relationships with people, pets, or organizations.** If you've started a new relationship with someone or an organization you would like to include. Alternately, if you've severed any such relationships, it's time to write them out.

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**7 | Acquisition or sale of major assets.** If you've bought or sold a house, opened or closed a business, inherited property, etc.

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**8 | New insurance policies or pension plans.** If you've acquired new insurance policies or pension plans that require adjustment of beneficiaries in your estate plan, or reached the age at which you are required to take distributions from a pension plan.

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**9 | Change of your state of residence.** If you've moved to a new state, the laws governing how your estate plan is administered could have changed.

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**10 | Tax law changes.** If there are new or different provisions in the tax law that affect your estate plan.

Even if you think you've kept up with all of the above events, you could also consider revisiting your estate plan annually on a set date, such as the new year, around tax time, or even your birthday. Yes, happy birthday to you as you consider your mortality, but, again, think of the big picture—you are really doing your loved ones a favor by planning so meticulously now so they can avoid problems later.

## CHAPTER 8

# Talking to Your Family About Your Estate Plan

Once you've done all the hard work, it's time to talk to your friends and family to make sure everyone is on the same page, set expectations, and communicate your wishes.



Although talking about your demise with your loved ones may not be high on your list of priorities, your estate plan

gives you a great jumping off point for discussing what you'd like for your future—whether it's after your death or in the case of incapacitation.

Before your conversation, you may want to prepare copies of your estate planning documents. Be sure to store the originals in a safe place, and tell at least one person, preferably the executor of your will, where to find them.

The conversation with your loved ones doesn't have to be all dreary and sad, though. You might also take this opportunity to tell them some treasured family history or remind them how special they are to you, how proud you are of them—or even how lucky they are to have inherited your good genes. Just because the backdrop of the conversation is a bit gloomy in nature, if you try to make the best of the situation, the conversation is bound to go more smoothly. Hopefully everyone walks away feeling a little more confident that things will go according to your estate plan when you're no longer here.

Just keep thinking of the effort you're putting into your estate plan now as your final gift to your loved ones. No one wants to deal with money issues during an already stressful time, so once your documents are filed, you can rest easy knowing you've done all you can, while you still can.

# Thank you.

## About the Author

Michelle Fabio, Esq. is an attorney and freelance writer who has been writing for LegalZoom since 2004. Fabio earned a Juris Doctor degree from Temple University's Beasley School of Law in Philadelphia, Pennsylvania, which she attended on a Law Faculty Merit Scholarship. She is a *cum laude* graduate of Duke University with degrees in English and history and a minor in criminology. She currently lives in her family's ancestral village in southern Italy. She can be found at [MichelleFabio.com](http://MichelleFabio.com) and on most social networks [@michellefabio](https://twitter.com/michellefabio).

If you're ready to get started on a Last Will or Living Trust Estate Plan or speak with an attorney through our legal plan, reach out to us at [Info@UPNIN.com](mailto:Info@UPNIN.com)

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