



Senior  
Solutions LLC  
ATTORNEYS AT LAW



Estate Planning  
For Young Families

# HELPING

F A M I L I E S

## introduction

Many young families put off estate planning. They think they are too young, healthy, or simply can't afford it. Some have trouble just thinking about what could happen if they should die while their minor children and spouse are depending on them.

But even healthy, young adults can be taken by a sudden accident or illness.

Parents with young families need estate planning precisely because other people are depending on them.

### **Does the whole idea of "estate planning" seem a little scary or depressing to you?**

Or does it seem unnecessary? Many people think it's something that only rich people need to do.

Essentially, estate planning is simply the process of getting your affairs in order to make things easier for your surviving family members in the event something happens to you.

It doesn't have to be difficult, expensive, or depressing. The process takes a few simple steps: look at what you own, have a will and a few other documents drafted, and review your bank accounts, retirement accounts, and life insurance policy.

For the vast majority of people, there's no need to worry about complicated estate planning techniques.

Estate planning is something you do for your family. Get it done, and you'll feel better knowing that you've done everything you can to take care of them and the future.

# why do I need a will?

A will is a document that lets you tell the world who gets your assets when you pass away. Die without one, and state law decides who gets what, without regard to your wishes. Wills also ensure that you get the opportunity to choose your children's Guardian.

## what happens if I don't have a will?

If you don't have a will, you will have died "intestate," which is a technical term meaning that you died without having made a valid last will. When this happens, Massachusetts' intestacy laws apply concerning the distribution of your assets.

Generally, your spouse and your children will inherit your property; if you don't have a spouse or any children, then your parents and siblings will inherit your property; if your parents have predeceased you, then your brothers and sisters will inherit your property and so on. While it may seem a viable option, do you really want to have no control over what happens to your estate?

## what can I do with my will?

A will lets you do many things:

- Devise property
- Appoint Guardian(s) for your children
- Establish Trusts
- Manage affairs of the Estate
- Pay your creditors
- Appoint your Personal Representative(s)
- Determine the Powers of your Personal Representative
- Make specific bequests or devises
- Provide for the payment of taxes

## who can make a will?

In Massachusetts, anyone over the age of 18 may make a will. It must be prepared while you are mentally competent and not under undue influence. It must also be prepared while a person is aware and able to understand what they are signing.

This is why it is a good idea to prepare far in advance and before any dire situations or medical emergencies. It is best to make careful decisions while you are of sound mind and able to weigh the pros and cons of any choices you might make.

**Guardian** - a person who has the legal authority (and the corresponding duty) to care for the interests of another person, called a ward. (i.e. minor child)

**Personal Representative** - a legal term referring to a person named by a maker of a will or nominated by the testator, to carry out the directions of the will. (also called Executor)

## what are some of the steps involved in creating a will?

### **Naming a Personal Representative for Your Estate**

The Personal Representative will be responsible for handling your last financial affairs: locating and valuing assets, locating and paying bills, and distributing assets. They will also be responsible for hiring an attorney and other advisors. The person that you choose should be someone who is trustworthy, able, and will carry out your wishes.

### **Naming a Guardian for Minor Children**

If something happens to one parent, the other parent will continue to raise the children. Yet who will raise them if something happens to both of you? As unfortunate and unlikely as it may seem, sometimes both parents can be taken in an accident. Naming a guardian is often a difficult decision for parents, but a very important one. If you have not named a guardian, a court will have to appoint someone as guardian without knowing your wishes, your children, or your family members.

### **Providing Instructions for Distribution of Your Assets**

Most married couples want their assets to go to the surviving spouse if one of them dies. Some assets will transfer automatically to the surviving spouse by law. But sometimes there are others that you want to share in your assets as well. If both parents die and the children are young, parents want their assets to be used to care for their children. Regardless, an estate plan is still needed in the event a spouse becomes disabled or dies, so that the assets can be used to provide for the children.

## what is a family trust?

A family trust allows you to name someone to manage your children's inheritance. You will choose a trusted adult, called a trustee, to stand in your shoes and manage and spend the money for the benefit of your children, in the way that you would. Without a trust, your children will receive their inheritance at 18 and can do whatever they wish with this money. Most 18 year olds are not ready for this responsibility. When your children reach an age that you decide upon, they will receive the money. For example, perhaps at 25, you think that they should receive 30% of the money, and the rest when they reach 30.

If you have more than one child, it is usually best to leave the funds in the trust until your youngest child reaches a certain age or finishes college. We all want to treat our children fairly. For example, if you passed away when your youngest child had not yet graduated from college, but your older children already did, the trust money would be available to first pay for the education needs of your youngest child before being divided equally among your children.

## what if your child has special needs?

Establishing a Special Needs Trust is critical for a child with disabilities. A Special Needs Trust allows you to provide for the child, without affecting his or her eligibility for government benefits such as SSI, Medicaid, subsidized housing or food stamps. The Special Needs Trust can be used to meet any needs other than those paid for by the public benefits without affecting eligibility.

Even if you have a will, but left an outright gift to your child, he or she would lose eligibility for SSI and Medicaid. Your son or daughter would have to spend this money down to the \$2000 limit before they could become eligible for benefits. Special Needs Planning allows you to provide for the future of a disabled loved one. Our goal is to make sure that your vision for your loved one's future is known.



# what is a health care proxy?

A health care proxy allows you to appoint someone to make medical decisions for you, in the event that you are incapable of making decisions or unable to communicate your own wishes. The person that you designate, will stand in your shoes, and make the decisions for you.

The health care proxy is only allowed to act while you are incapable of making decisions. For example, if you lapsed into a coma, for 24 hours but then awoke, your health care proxy would only have the power to make medical decisions for you during that 24 hour period.

## **Choosing a health care agent**

It is important that you pick someone that will honor your wishes. If you pick someone to be your agent, you should let them know how you feel about aggressive treatment when faced with a situation where you won't recover.

## **Why do I need one?**

Without a health care proxy, if something unexpected happens to you and you can no longer make decisions for yourself regarding your health care, the court will need to appoint a guardian to make decisions for you. The decision will be out of your control. In some cases, a stranger could be appointed to make important life or death decisions for you.

## **What is an advanced directive?**

An advanced directive provides your health care agent with instructions on what type of care you would like. It provides greater details about your wishes regarding life support. An advanced directive, is a document that provides guidance to your health care agent. However, an advanced directive is not legally binding in Massachusetts. So, it is important that you pick an agent you can trust to make decisions according to your wishes.

## **Who should have a copy of my health care proxy?**

Your health care agent and your physician should each have a copy of your health care proxy document and any advanced directives.



## what is a power of attorney?

A power of attorney is similar to a health care proxy, except it pertains to financial matters. Granting a power of attorney ensures that if you become incapacitated, someone you trust (usually called your "agent"), can take care of your financial responsibilities. A power of attorney can be effective immediately or upon the occurrence of a certain event, such as an illness that leaves you incapacitated and unable to handle your own affairs.

For example, your bills must still be paid, your financial accounts must be balanced, and someone must handle insurance and benefits paperwork. There are many other matters that may need attention as well. Perhaps a storm caused damage to your home and repairs need to be made. Or perhaps you want someone to continue to actively manage your investments. It's especially important if you own and operate a small business, to ensure its continued operation if you are incapacitated. In most cases, a power of attorney is the best way to handle these issues. Agents often handle tasks such as:

Pay your everyday expenses and those of your family

Buy, sell, maintain, pay taxes on, and mortgage real estate and other property

Collect Social Security, Medicare, or other government benefits

Invest your money in stocks, bonds, and mutual funds

File and pay your taxes

Handle transactions with banks and other financial institutions

Operate your small business

Claim property you inherit or are otherwise entitled to

Transfer property to a trust you've already created

Hire someone to represent you in court

Manage your retirement accounts

## How does estate tax affect all this?

Currently, in Massachusetts an estate tax applies to estates exceeding \$1 million, unless the property is transferred to your spouse. The current federal estate tax only applies to those that die in 2016 with more than \$5.45 million.

If you are concerned about minimizing or avoiding Massachusetts or federal estate taxes, we can review your options. If your assets are over \$1 million, including life insurance, you may want to consider establishing a credit shelter trust or life insurance trust to minimize estate taxes at the end of your life. We can review these options with you.

### What is probate?

Even if you have a will, your estate may need to go through the probate process. Probate describes the process of the court reviewing and approving your will and appointing your personal representative of your estate. Probate is necessary to allow your personal representative to access your assets and distribute them according to your wishes.

### How can I avoid probate and do I need to?

Property that is held jointly or that designates a beneficiary usually does not go through probate. Assets held in a trust also avoid probate. If you are concerned about avoiding probate, please let us know and we can discuss your options. For most young people that have less than \$1 million in assets, it is more important to have a basic estate plan, than to worry about avoiding probate. This is something that you may want to re-consider when you are older or if you have over \$1 million in assets.



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To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used for the purpose of avoiding penalties that may be imposed by law.

## what part does life insurance play in estate planning?

Life insurance can be an essential tool in estate planning to replace income, provide for your family, pay off debts or fund business needs. There are numerous parties involved in an insurance policy, including: the insured (the person whose death is insured against), the beneficiary (those who would receive the proceeds of the policy on the death of the insured), and the policy owner.

Generally, the proceeds of the life insurance policy are not subject to income tax. Even so, the proceeds of a life insurance policy may be subject to estate taxes. The goal of life insurance is to provide for some purpose after the death of the insured, but that goal can be impeded if the proceeds are subject to tax. A few common issues with life insurance policies that could create estate tax liability are: the naming of the insured's estate as the beneficiary, or the insured being the owner of the life insurance policy.

There are many circumstances that could give rise to tax issues when using life insurance as an estate planning tool, however, this does not mean that it should not be used. It only illustrates the need to work with an experienced financial planner or life insurance broker when selecting a policy. It is also advisable to contact an estate planning attorney and, in some cases, to discuss the forming of an irrevocable life insurance trust.

## what is an irrevocable life insurance trust?

An irrevocable life insurance trust (ILIT) is essentially a special arrangement used to minimize the impact of life insurance proceeds on the estate of an insured. An ILIT is a trust that owns the life insurance policy on the insured for the benefit of the beneficiaries.

It sounds simple, but there are important considerations to be made in order to ensure the ILIT is effective. The preliminary question is how does the life insurance policy get into the trust? This happens in one of two ways: (1) the policy is transferred into the trust, or (2) the trust purchases a new policy. If the policy is transferred into the trust, there will be restrictions if the transfer occurs within a certain time period prior to the insured's death. Also, if the policy has cash value there may be gift tax considerations associated with the transfer.

In most situations, the policy owned by the ILIT will require the payment of premiums. Typically, the grantor of the trust (usually the insured) will gift money to the beneficiaries, in trust, in order to cover the payment of the premiums. This gift will need to meet strict requirements, and overall the ILIT will need to be administered properly to ensure it is effective.

It is critical to consult with an estate-planning attorney, accountant, and/or corporate fiduciary when establishing and administering an ILIT.

# okay I need an estate plan, what now?

## To get started, there are three simple steps to take:

1. Complete and send us the questionnaire.
2. We will contact you to schedule a 30 minute phone conference, Skype, or meeting to review any questions.
3. We will draft the documents for your review and schedule a time to meet to execute your estate plan.

In order to assist you and your family with the estate planning process, we have prepared the following estate planning questionnaire. Before you begin the questionnaire, make sure you have an hour or so of time available and access to all of your financial records.

Completing the questionnaire also helps cut down on time you have to spend on the phone and meeting with us in person. Many families who fully complete the questionnaire only have to come into our office one time to execute and receive their estate plans.

Our basic estate planning packages include a **will, power of attorney, healthy care proxy, and family trust**. Prices start at \$750 for individuals and \$995 for married couples. \*This package does not include any estate tax planning, probate avoidance, or planning for children with special needs. For families concerned about these issues, please contact us and we can customize a plan to meet your needs

Once you've completed the questionnaire, you can get it to us in a variety of ways:

- [kmcnair@seniorsolutionsinfo.com](mailto:kmcnair@seniorsolutionsinfo.com)
- Fax: 617-489-5922
- Mail to Belmont: 30 Church Street, Suite 210, Belmont, MA 02478

After we receive it, we'll be in touch with you within 48 hours. Once we have reviewed your questionnaire, it takes approximately two weeks to complete your estate plan. At any point you can reach out to us to discuss your estate planning needs by calling us at:

617-489-5900



## Senior Solutions, Attorneys At Law LLC

It's tough starting a family. With young families ourselves, we've been in your shoes. We can help plan and protect for your family's future. We know your time is precious, so we strive to make the process as efficient as possible. In addition to private meetings, we also offer “will signing” parties. This is a fun way for you to gather a group of friends and turn it into a positive experience. To get started, please contact us by:

Phone: 617-489-5900

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