

WHAT YOU SHOULD CONSIDER

Essential estate planning

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 TIAA Wealth Management



Whether you're married, widowed, in a committed relationship, or single, estate planning is your chance to shape the future for yourself, your loved ones, and the causes important to you

Planning allows you to change or opt out of your state's default rules (known as intestacy). It allows you to make choices about your future placement and care, how your assets will be managed if you can't manage them yourself, and how your loved ones and preferred charities will be provided for after your death.

In this guide, we'll review the components and choices involved in an estate plan. We'll also explore the significant advantages of proactive planning—and the risks of neglecting not doing so.

As Benjamin Franklin said, nothing is certain but death and taxes.

Some people need to plan for taxes, and all of us need to plan for our eventual death. Even more urgent is the need to prepare for the possibility of incapacity—becoming unable to handle your financial and legal matters before you die. If you don't plan, the courts will make decisions for you.



Section 1: Protect yourself

10 Incapacity: You choose or the court will

Choose who will represent you if you become incapacitated, or the court will decide for you. Your choice should be specified in legal documents.

10 Guardianship

Every state encourages people to avoid the court-supervised system through the use of an advance health care directive and a durable power of attorney or trust.

12 Medical directive and power of attorney

A medical directive provides general health care instructions to your doctor or treating physician if you become incapacitated and are unable to make such decisions for yourself. You also choose who makes the decisions for you rather than relying on a process under which parties have to seek authority from a court.

13 General durable power of attorney

A power of attorney is a document that allows you to designate someone to act on your behalf, also called an attorney-in-fact or an agent, to manage your financial or personal affairs. Your agent generally doesn't have to seek court approval or permission to act.



Section 2: Protect your assets

16 Who inherits: You choose or state law does

If you don't plan for the transfer of your assets upon death, each state legislature has a plan that includes both the administrative steps required to transfer assets and to whom they'll be transferred—this is the law of “intestacy.” State law determines who inherits your assets. The law will also decide who is designated to administer the process by choosing a personal representative or executor if you don't appoint one.

17 You choose: Last will and testament

Want to choose your heirs rather than dying intestate? A will is a written declaration of your intentions for the disposition of any probate assets owned by you at the time of your death.

Note: Probate assets can include any asset titled in a decedent's sole name without a co-owner. Probate assets can also include a decedent's one-half interest in tenant-in-common property or community property. Probate assets commonly include bank accounts; investment accounts; stocks; bonds; vehicle, boat, and airplane titles; business interests; and deeds for real estate. Probate assets don't include assets containing beneficiary designations or assets utilizing a pay-on-death or transfer-on-death designation. In addition, probate assets don't include property co-owned as joint tenants with right of survivorship.

19 **Avoiding probate: Adding a revocable trust**

If you want to choose your own heirs rather than having the state choose for you, you might also decide to transfer those assets without court intervention and oversight. One way to do this is by incorporating a revocable trust in your plan. A revocable trust is a written document that governs how property is administered and distributed, both during the life of the grantor and after the grantor's death.

20 **Trusts need a trustee**

Every trust needs a trustee. It can be an honor to be asked to serve as trustee, but before you designate someone to act (or you accept the appointment by another party), you should understand what a trustee does and the legal consequences of accepting the position. Also, consider the benefits of a professional fiduciary, such as a bank or trust company.

24 **Preserving your legacy: Trusts for your heirs**

Whether you have a will or a revocable trust, your plan can look to reduce or avoid estate taxes and to preserve your legacy for the people you choose.

Are you concerned about a child who isn't good with money? Are you married or in a committed relationship and want to support your loved one, yet have different goals or wishes for what happens when both of you are gone? Is your child good at managing money, yet you want to protect them from creditors, including the IRS in the form of estate taxes? Do you want to avoid family conflict?

If you have these or other concerns, consider holding an inheritance in a trust for your heir(s) instead of a lump-sum distribution.

25 **Preserving your legacy: Lifetime trusts**

You may choose to have assets distributed outright to your loved ones as a lump sum or held in a trust. A lump-sum distribution is easy and makes sense in some cases. Alternatively, a continuing trust—which can continue to a specific age or milestone, or for a beneficiary's lifetime—may provide protection from creditors, keep assets in your family, and reduce future estate taxes.

27 **Preserving your legacy: Trusts for non-U.S. citizen spouses**

For married couples who reside in the United States but aren't both U.S. citizens, special financial and estate planning rules apply. These include limits on transferring assets to your spouse, whether

by changing the name on an account, adding your spouse's name to an asset, or transferring an asset while you're living or when you die.

28 Preserving your legacy: Trusts for special beneficiaries

Disabled children or other family members may require special care both during and after your lifetime. To ensure your loved ones receive appropriate care, you'll need to carefully consider how much of your estate to allocate toward funding that care, and how to best structure the gift to protect your loved ones and the assets you leave for their benefit.

29 Preserving your legacy: First and second beneficiaries

Are you married or in a committed relationship and want to support your loved one, but you and your partner have different goals or wishes for what happens when you're both gone? Understand the impact of the death of a joint owner or a beneficiary and how intestate succession and local laws may apply to certain types of assets, such as your personal residence.



Section 3: Protect your plan

32 **Bringing it all together: Coordinate asset ownership and beneficiaries**

Now that you've spent the time and resources for the legal documents, don't commit one of the most common estate planning mistakes—failing to coordinate the ownership and beneficiary designations with your plan.

35 **Choosing an estate planning attorney**

We recommend working with a qualified estate planning attorney. Consider these basic guidelines to help you make the best decision for your personal circumstances. A TIAA financial advisor can provide a list of attorneys to consider.

38 **10 reasons to consider updating your estate plan**

As a general rule, it's a good idea to review your estate plan every five years or more often if you've moved or experienced a change in your family or finances.



**Section 4:
Appendix**

42 A summary of the current federal estate and gift tax landscape



Protect yourself

Making your end-of-life wishes clear—to yourself and others and through the right legal documentation—helps ensure even the toughest decisions are made with your values and needs at the forefront.

Incapacity: You choose or the court will

Incapacity: What is it?

Incapacitated individuals have been judicially determined to lack the capacity to manage at least some of their property or to meet at least some essential health and safety requirements for themselves. This section explores the definition of incapacity and the legal process to appoint another person to care for an incapacitated individual. Incapacity can strike anyone at any time. Unfortunately, neither youth nor wealth can protect you.

Meet Doug

He lives alone and loves visiting with his grandson. One day, his neighbor calls 911 after finding Doug on the ground in his yard. The emergency medical personnel get him to the hospital, noting that he seems confused. They find he's been living in a dirty home with spoiled food in the kitchen and his medicines in disarray. Hospital tests reveal Doug is suffering from dementia. He's asking to be discharged and demands to go home. Is he competent? Will he be safe if he returns home? Who is responsible for helping him?

Meet Beth

She's 19 years old, single, and going to college, where she majors in biology. Recently, she has started to act strangely, so her roommate calls Ruth (Beth's mother) and says she's worried. After medical testing, Beth is diagnosed with schizophrenia. Can Ruth make decisions for Beth? What if Beth disagrees with the treatment plan or refuses treatment all together? Can Ruth get copies of Beth's medical records without Beth's consent? Can Ruth discuss treatment decisions with Beth's medical provider?

The answers to these questions depend on whether the person is legally incapacitated and if someone is appointed as their guardian.

Guardianship

Guardianship is a legal procedure that appoints someone to exercise an incapacitated person's legal rights. How it works will vary depending on whether the guardianship is for a minor, a person with developmental disabilities, or an incapacitated adult.

A guardian is a court-appointed individual or institution charged with overseeing the affairs of an incapacitated person (often referred to as a ward).

FREQUENTLY ASKED QUESTIONS

How is a person determined to be incapacitated?

Any adult can file a petition with the court to determine someone's incapacity, stating the facts upon which they base that belief. The court then appoints a committee, typically including two physicians and someone else who, by knowledge, skill, training, or education, can form an expert opinion. The court can also appoint an attorney to represent the allegedly incapacitated person, who may use their own attorney instead.

The examination of the incapacitated person normally includes:

- A physical examination

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- A mental health examination
- A functional assessment

If the majority of the examining committee decides the alleged incapacitated person isn't incapacitated at all, the judge must dismiss the petition. If the committee decides the person is unable to exercise certain rights, the court will schedule a hearing to determine whether the person is totally or partially incapacitated. If the person is found to be incapacitated in any respect, the committee will appoint a guardian (unless there are less restrictive ways to adequately address the person's incapacity).

What does a guardian do?

A guardian who is given authority over property of the ward must inventory that property, invest it prudently, use it for the ward's support, and keep track of it by filing detailed annual reports with the court. The guardian must also get court approval for certain financial transactions. The ward's guardian can exercise the rights that have been taken away from the ward, such as providing medical, mental, and personal care services and deciding where and how the ward should live. The guardian of a partially incapacitated ward can only perform the specific rights that were taken away from the ward. Every year, the guardian must also present to the court a detailed plan for the ward's care, along with a physician's report.

The guardian's annual report helps the court oversee each action a guardian takes. Between reports, the guardian has the authority to pay routine bills but has to get specific authority from the court to take certain actions, such as selling a residence. To make sure they're following the rules correctly, most guardians need help from legal counsel throughout the relationship.

The challenges of this process include:

- Publication of notice to creditors
- Medical records and other testimony become part of the public record
- Court hearings for routine decisions
- Delay caused by the process
- Legal fees incurred to follow the process

Who can serve as a guardian?

Any adult can serve as a guardian unless they've been convicted of a felony, can't carry out the duties of a guardian, or are disqualified by some other state law. Unless they're closely related to the ward, the guardian, must be a resident of the state that has jurisdiction over the ward. People who are professional or public guardians can also be guardians. Institutions like a bank trust department or nonprofit corporation can be appointed guardian, but a bank trust department can only be guardian of property. The court will take into account the incapacitated person's wishes in a written declaration of "pre-need guardian" or at the hearing.

Is guardianship the only way to help an incapacitated person?

No. Most states encourage people to avoid the court system by using an advance health care directive and a durable power of attorney or trust.

People who create an advance health care directive, durable power of attorney, or a trust while they're competent might not actually need a guardian if they become incapacitated. The form and content of each document varies by state, and although all 50 states recognize these documents, the provisions vary as well.



Medical directive and power of attorney

Medical directives

A medical directive gives general health care instructions to your doctor or treating physician if you become incapacitated and can't make those decisions for yourself. If you're terminally ill and have specific preferences about medical issues, like life-sustaining procedures or life-support systems, this document is essential.

Medical power of attorney or durable power of attorney for health care

A medical power of attorney lets you name an agent, sometimes called an attorney-in-fact or health care proxy. You can and generally should name at least one alternate. This document authorizes your agent to discuss your treatment with medical care providers and to make health care decisions for you, including decisions about your custody and personal care.

Your agent or proxy

Generally, you should choose either a family member or a close friend who's familiar with—and will respect—your wishes. Remember, this document is how you choose for yourself the best person(s) to handle these tasks. With a legal guardianship, a judge chooses for you.

Protecting your privacy

The Health Insurance Portability and Accountability Act (HIPAA) is a federal privacy law that protects your medical records and other health information. Unfortunately, HIPAA rules are complicated and, unless you state otherwise, could prevent health care providers from sharing enough information with your attorney-in-fact to make decisions. You can, however, express your wish that your health care agent/proxy be treated just like you would when it comes to your rights to use and disclose your health information or other medical records.

General durable power of attorney

Durable power of attorney

In general, a power of attorney is a document that lets you choose someone to act on your behalf, called an attorney-in-fact (or an agent). If the power of attorney is described as “durable,” it will stay valid if you become incapacitated or disabled.

Who’s eligible for appointment?

Generally, anyone over the age of 18 can be appointed (although some states impose restrictions on individuals convicted of certain offenses). Keep in mind that your attorney-in-fact will be involved with your financial and personal matters, so it’s important to choose someone with financial acumen and with whom you’re comfortable sharing sensitive information. This person could be different from the one you appoint to make your medical treatment decisions (and you should choose at least one alternate agent just in case the original one can’t serve).

Revoking powers of attorney (health care and general)

As provided under state law, a power of attorney can be revoked by your own action or by a triggering event in the document’s provisions. To avoid confusion about whether the document is still in effect, you might want to revoke it in writing (i.e., power of attorney and health care proxy) and collect and destroy copies of the revoked document. Note: Both documents (i.e., power of attorney and health care proxy) become void when you die.

FREQUENTLY ASKED QUESTIONS

What powers can be granted to an attorney-in-fact?

Attorneys-in-fact are allowed to do a number of things, such as signing tax returns, accessing safe deposit boxes, receiving your income,

writing checks, paying your expenses, accessing your retirement accounts and Social Security information, and handling other day-to-day financial matters. You can give your attorney-in-fact more powers, but they often have to be specifically authorized.

Do I need to specifically list each power that I want to give my attorney-in-fact?

The answer depends on where you live. Some states authorize “general powers,” which let you just use certain phrases, like that an attorney-in-fact can act with respect to “all lawful subjects and purposes” or “with respect to one or more express subjects or purposes.” These states may or may not have a limited list of powers that must be specifically included. Even more states detail the powers that can be given to an attorney-in-fact and let residents use a “short form” by referring to the corresponding state statute.

Financial institutions often demand specifics that aren’t required under state law. There are few, if any, ramifications for refusing to accept a power of attorney, so consider listing the specific powers in the document when they’re not clearly listed in state law.

When does the attorney-in-fact have the authority to act?

Some states recognize two types of powers: springing and nonspringing. A springing power empowers your attorney-in-fact only if a designated event happens, such as you become

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incapacitated. A nonspringing power is effective on execution, giving your attorney-in-fact the authority to carry out specified powers immediately. Some states only allow immediate powers of attorney—your attorney can advise you about this. Both types become void—and your attorney-in-fact’s authority ends—upon your death or revocation of the power.

Are laws in place to protect my privacy about health care matters?

The HIPAA Act of 1996 is a federal privacy law that generally states that medical and care providers can talk only to you about your diagnosis and care unless you specifically authorize others to receive this information. This law is intended to protect your medical records and other health information, and it allows you to obtain and control access to your information. Because the rules are complex, medical providers often decline to release even basic medical information. If you include an authorization that refers to the law in your health care power of attorney, or have a separate authorization, providers will be allowed to release this information to your designated parties.

Are there any limitations on what my attorney-in-fact can do?

Yes. Each state prevents you from giving certain abilities to another person, even an attorney-in-fact. Financial and other institutions might have internal policies and procedures that limit the actions an attorney-in-fact can take, especially if there could be a conflict of interest.

What if I don’t have anyone I trust to appoint as my agent or proxy?

Many people don’t have a specific person they want to empower to make medical or legal and financial decisions for them, possibly because they won’t be leaving family behind or don’t have a family member or friend they want to trust (or burden) with the responsibility.

If this is the case, your choices are limited. You can decide to not appoint anyone, with the understanding that the court will appoint and oversee a third party. Alternatively, you can look for a professional third party, either an individual or entity, that agrees to act on your behalf if it becomes necessary. If you choose the latter, you should look for a bonded and insured professional with experience and knowledge.

My financial provider has a power of attorney form for my account. Do I still need a power of attorney prepared by an attorney?

Yes. A financial institution’s power of attorney forms are account specific and don’t grant your agent the power to deal with any assets held by another institution or to carry out the powers we’ve discussed in this section.



Protect your assets

Defining where your assets will go (and how) isn't just about distributing wealth. It's about protecting the people you love by providing them resources in ways that best meet their needs.

Who inherits: You choose or state law does

The law of intestacy

If you don't plan for what happens to your assets when you die, each state legislature has a plan (the law of intestacy) that lays out who will receive them and how—which means if you don't choose your heirs, state law will choose them for you.

Meet Sam and Gayle

Sam and Gayle are married. Sam is the father of two children from a prior marriage and has no will. Sam dies without a will, leaving \$300,000 in cash in a bank account in his name and a house that he and Gayle own together as joint tenants with the right of survivorship. Under the intestacy statute in Sam's state, Gayle receives the first \$100,000 plus one half of the balance, for a total of \$200,000. Sam's children receive \$50,000 each. Gayle, the joint owner, also inherits the house.

Did Sam intend to leave more to Gayle to ensure she was adequately supported? Did Sam intend to leave more to one or both of his children? If the above was not the intended result, Sam could have planned better with a will or trust.

Let's change the facts

Sam and Gayle are retired with no children or living parents, and neither of them has a will. They have \$300,000 in assets, all held in joint names "with right of survivorship." Sam dies on January 1. Gayle dies one month later. Under the intestacy law in her state, Gayle's sisters and brothers inherit the entire \$300,000. Sam's family receives nothing, even though Sam's brother lived next door and frequently helped Sam and Gayle with errands and rides to the grocery store and medical appointments. This is because Sam's relatives aren't considered Gayle's relatives under the law of intestacy.

Sam and Gayle probably didn't want either of these things to happen and could have avoided them with a will or trust.

Your intestate heirs

Whether you're single or married, have children or not, if you die without a will, the state in which you live has a will substitute for you: intestate succession. Intestate succession applies to any assets that transfer under the probate process—although it doesn't apply to assets held jointly (with right of survivorship) with another person or to assets for which you have a completed beneficiary designation on file, including life insurance and retirement accounts.

Your intestate representative

The person appointed to settle your estate can be a relative, a creditor, or even a court-appointed attorney. Remember, the person the court selects may not be the one you would've chosen. More than one applicant can request appointment. In that case, the probate court generally conducts a hearing to figure out which applicant is best suited to be your executor (sometimes called "administrator" or "personal representative"). If you don't have a will, the court typically will require the executor get a surety bond to protect the estate, which can be costly. The court may require them to follow a more regimented path through probate and to get more frequent approval to initiate transactions. Your executor will probably need to retain legal counsel to help with the court's annual reporting requirements.

You choose: Last will and testament

A will is a written declaration of your intentions for what happens to the assets you own (either titled in your name alone or titled as tenants in common or community property with another person) when you die.

A will allows you to:

1. Choose an executor to handle your affairs when you die in a way that waives surety bond requirements and allows for independent (rather than supervised) administration
2. Direct where your assets go
3. Designate a guardian for a loved one who is a minor
4. Make provisions for the causes and people who are important to you

Once you decide who is to get what when you die, you need to consider how those assets will be distributed. You can direct your executor to distribute all, or part, of your assets to your loved ones outright as a lump sum. This makes sense in some cases, yet people often choose it without much thought because it seems like the easiest option. An alternative strategy is to create trust provisions to give one or more of your loved ones additional protections with respect to all, or part, of their inheritance. A trust can last until the person turns a specified age or reaches a milestone, or it can last for their lifetime. You can also do the same for charities, either by leaving a gift to the charity outright or creating restrictions, such as scholarships for nursing students, endowing a chair for the engineering department, or funding to research a specific disease.

Keep in mind that your will and the probate process only affects what happens to your individually owned asset—the ones subject to

probate. Assets you own with someone else, as joint tenants with right of survivorship, automatically become the legal property of your surviving joint owner after you die. The terms of your will don't affect the disposition of these assets. Likewise, assets transferred by beneficiary designation, such as retirement plan assets or life insurance, will be transferred according to the terms of the designation, not by the terms of your will (unless, of course, your beneficiary designation directs these assets to your "estate").

Capacity to make a will

To make a will, you have to be of sound mind and of a certain age (as determined by the state where you live). If a will is contested, it's usually after a person dies and because someone has medical evidence or eyewitness testimony that proves the testator lacked capacity or was subject to undue influence or coercion when they made the will. A court will attempt to decide whether the person, when they made the will, could understand, know, or recognize:

1. That a will was being made
2. The extent of their estate or property
3. The estate's potential heirs (beneficiaries) and whether or not psychiatric or medical conditions impaired the testator's ability to recognize or identify close relatives and friends
4. The way they made the will and how it distributes their property

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Probate administration

Probate establishes clear title to, or ownership of, an asset. Think about it this way: When you die and before title to your assets can pass to your heirs, everyone who has a claim to those assets must be satisfied or eliminated. Probate is simply the court-supervised process of accounting for your individually owned assets after you die, settling your debts and expenses, and making final distribution of your remaining assets to the ultimate beneficiaries of your estate. Your estate is subject to probate regardless of whether or not you have a will.

Upon opening your estate, the court usually requires the person requesting appointment as your executor to notify all interested parties (not just your closest blood relations), those identified in your will, and your creditors. This person, however, doesn't have to notify your stepchildren, other extended family, or neighbors and friends, even if they helped care for you.

Probate's disadvantages

Historically, probate has been criticized for delays, costs, and unwanted publicity. We've all heard stories about how long the courts can tie up an estate in probate, or the potential for high costs and professional fees.

Although a number of states have simplified the probate process in recent years, many people still want to avoid it—often using a revocable trust. Your attorney can advise you about the probate laws in your jurisdiction.

CONSIDER:

- Where and when was your will written?
- Is it consistent with your current wishes?
- Is your executor (aka “personal representative”) still the best choice?
- What has changed since your will was executed?
 - Have children or other loved ones grown older or more responsible?
 - Has your choice of charitable causes changed?
 - Has a parent become dependent on you?

Avoiding probate: Adding a revocable trust

If you wish to simplify administration of your estate or if you're concerned with privacy, you might want to incorporate a revocable trust into your plan.

A revocable trust is a written document that governs how property is administered and distributed both before and after you die, avoiding state intestacy laws and probate. The person who creates and funds the document is called the “grantor.” The grantor can change or remove the trust's terms at any time and add or remove property from trust ownership when they want, usually tax-free. A trust is a binding contract between the grantor and the trustee. Just like with a will, the terms of your trust determine who gets your assets, as well as how and when (immediately or delayed) they'll receive them.

FREQUENTLY ASKED QUESTIONS

Should you have a trust?

Revocable trusts may not be for everyone. You should consider one if:

- **You have real property in multiple states**

Real property requires a probate proceeding to be opened in the state in which it's located. If the property is outside the state you live, there will be a probate proceeding in each location, unless it's owned by a trust.

- **Privacy is important to you**

In many states, the public can access a copy of your will and an inventory of what's in probate. In these states, anyone interested in your estate (for business or creditor reasons, or just out of curiosity) can find out what's in your estate and who will receive what. Assets held in your trust bypass the probate process and are generally private information.

- **You want continuity of management upon incapacity and death**

If you become incapacitated or die, assets owned by your revocable trust can be managed by the trustee for your benefit or the benefit of your heirs—with little or no delay.

If you have a revocable trust, do you need a will?

Even with a revocable trust, it's critical that you still have a will to distribute any assets you didn't transfer to the trust during your lifetime, as well as for designating an executor (or personal representative) and a guardian for any loved one who's a minor. In this case, your will can add non-trust assets to your revocable trust after your death and distribute them according to the trust's provisions. This kind of will is sometimes called a “pour-over” will.



Trusts need a trustee

If you've decided to incorporate a trust into your estate plan, you'll need to choose a trustee. You can be the trustee of your revocable trust, but if you become incapacitated or die, you'll need a successor. This could be your spouse, a family member, relative, friend, business associate, professional advisor, or corporate fiduciary, such as a bank, trust company, or a combination.

When you're choosing a trustee, you want to know that:

- Your wishes and desires will be carried out
- You can rely on your trustee's responsibility, judgment, common sense, good organizational skills, and willingness to seek professional guidance
- The trustee is available and willing to serve

Your choice could depend upon your trust's:

- Nature and value
- Expected duration
- Assets
- Complexity
- Beneficiaries—i.e., their age, location, and any special needs or circumstances
- Other factors

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FREQUENTLY ASKED QUESTIONS

What does a trustee do?

A trustee has both administrative tasks and legal obligations.

The administrative tasks include:

- Preserving and protecting the estate assets (including investing)
- Keeping records of income and principal, and not mingling trust assets with non-trust assets
- Exercising discretionary authority in a reasonable manner
- Filing state and federal tax returns
- Collecting all trust receipts and determining whether each receipt belongs to principal or income—or both
- Paying all expenses and deciding if each expense is principal or income, or allocable between them
- Providing accountings and communicating with the beneficiaries

A trustee must act as a fiduciary.

Fiduciary duties include:

• Exercising skill and care

In most states, the trustee must administer the trust with the care, skill, prudence, and diligence that a person familiar with the job of acting as trustee would, even if they're unfamiliar with the role. They'll still be held to a high standard of performance.

• Acting with impartiality

The trustee must treat all beneficiaries impartially, unless the trust says otherwise. The trustee shouldn't let one beneficiary use trust property to the exclusion of other beneficiaries without obtaining their approval or operating in the best interest of the whole

group. For example, if the trust has real estate holdings, the trustee could allow one of the beneficiaries to live in one of the properties only if they pay rent, or if the others agree to allow the beneficiary to live there.

• Being loyal

The trustee must be loyal and avoid conflicts of interest. The trustee must administer the trust in the sole interest of the trust beneficiaries and can't use trust property for personal gain or any other purpose unconnected with the trust—even if there's no loss to the trust. They must keep trust property separate from their personal property at all times. They might also be called upon to enforce or defend claims involving the trust. The trustee must keep the terms of the trust confidential and information regarding the assets of the trust and its beneficiaries private.

Should you choose a family member or professional trustee?

You might want to choose a family member because family members are familiar with you, your situation, and your values. They're also often willing to take on the role of trustee for little pay or no compensation. They might even be honored and think it's a great idea.

However, consider that the family member might:

- Not have specialized knowledge or experience to manage the trust
- Have to deal with other family members' anger, jealousy, and resentment of their power
- Be unable to act unemotionally and with true impartiality
- Not have the financial resources to cover mistakes

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- Die or become disabled
- Be exposed to unforeseen liability, like an aggressive charity, spouses of deceased children, or jealous siblings

What should you look for in a trustee?

Personal characteristics

The trustee should be fundamentally honest, able to handle significant responsibility, and capable of making decisions fairly and with integrity. The trustee should communicate openly with the beneficiaries while still keeping appropriate confidentiality.

Judgment

You're choosing a trustee to make decisions on your behalf, so that person should share your values, virtues, spending habits, and faith. If the person you have in mind doesn't have accounting or investment experience, would they seek out an appropriate qualified professional?

Interpersonal skills

A good trustee needs to be able to work calmly and well with everyone. If the person you nominate is easily intimidated or particularly headstrong, it can strain relations between the beneficiaries of your trust.

Impartiality

The trustee shouldn't have any bias about any of the beneficiaries or have adverse interests to the trust as a whole. They have to act in a way that's totally consistent with your intent and the best interests of all beneficiaries.

Time

Administering the trust might involve a significant time commitment. The trustee has to understand this and have enough time to carry out the duties.

Specialized knowledge and experience

Being an effective custodian requires knowledge and expertise—or hiring advisors familiar with estate, trust and tax laws; accounting principles; and investments. If the trustee hires outside experts, they should be able to evaluate the skills of such advisors.

Investment experience

A trustee doesn't need investment experience, but it can definitely be helpful. If not, they should be willing and able to hire professional counsel to help manage the trust's investments.

Administrative capabilities

Trustees undertake serious duties and are held accountable for their actions as fiduciaries. A well-organized trustee who can maintain good records is less likely to get into trouble if their authority is challenged. They need to have the resources to handle the responsibilities of the office, including maintaining records and safeguarding trust assets, or the authority under the trust document to retain assistance.

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Longevity

How long will the trustee be needed? Many grantors are most comfortable with friends who share their values and have wisdom from life experiences, but someone near your age may not live long enough to complete the job.

Your trustee and state income taxes

The trustee you choose can impact how much tax your beneficiaries pay. Each state has its own rules for deciding if trusts are taxed. This tax is called the fiduciary income tax and can range from 3% to more than 10%, and when the trust tax is imposed varies. The basis for taxation can include where the trustee lives and where the trust is administrated, no matter where you lived when you died. For example, in some states, trusts are taxed just because the trustee is a resident. So, if you've named your child or sibling as a trustee or successor trustee and they're a resident of one of those states, your heirs could be paying as much as double the state income tax on trust earnings.



Preserving your legacy: Trusts for your heirs

Whether you have a will or a revocable trust, you can plan to reduce or avoid estate taxes and preserve your legacy for the people you choose.

Are you concerned about a child who isn't good with money? Are you married or in a committed relationship and want to support your loved one, yet have different goals or wishes for what happens when both of you are gone? Is your child good at managing money, yet you want to protect them from creditors, including the IRS? Do you want to avoid family conflict?

If you have these or similar concerns, you might consider holding an inheritance in a trust for your heirs rather than planning for a lump-sum distribution.

These trusts can include:

- Spendthrift trusts
- A trust for a spouse or other loved one
- A trust for a spouse who's not a U.S. citizen
- A trust for someone with special needs



Preserving your legacy: Lifetime trusts

You may choose to have assets distributed outright to your loved ones as a lump sum or held in a trust. A lump-sum distribution is easy and makes sense in some cases. Other assets—such as a continuing trust—can continue until a beneficiary attains a specified age or milestone, or can last for their lifetime, providing protection from creditors and keeping assets in your family.

Such trusts can help you:

Avoid family conflict

Unfortunately, money can bring out the worst in people, even in the best families. One of the most important reasons to have a plan is to keep your family out of conflict. A trust can help you express your wishes, choose a party to carry them out, and direct the immediate and future use of the assets

For example, you want to make sure your spouse is well provided for, yet you understand that they might remarry after you die. Instead of giving all assets to your spouse upon your death, you can set them aside in a trust.

The trustee can use the income and principal to benefit your spouse during their lifetime and pay the rest to your children—and not a new spouse or stepchildren.

Keep the assets in your family

Instead of having assets distributed according to your loved one's will (or lack thereof), you can have them held in trust for your spouse or child, with the remainder to your grandchildren (instead of in-laws or others who may not be related to you).

SECTION 2: PROTECT YOUR ASSETS

Provide help and education on managing money

A trustee is responsible for managing and distributing trust funds. If your child or another person is inexperienced or irresponsible, choosing a third party as a trustee can ensure you don't have to worry your funds will be mismanaged or spent unwisely. Your trustee can also work to educate your beneficiary until they're older and wiser.

Minimize future estate taxes

Most estates won't pay an estate tax because they're valued at less than the estate tax exemption amount. But does that mean you shouldn't bother creating a generation-skipping transfer trust for your children? Not necessarily. When a child's wealth is (or will be) larger than the exemption, creating a generation-skipping transfer trust might increase your grandchildren's inheritance. Plus, your child or grandchild might live in a state that has its own death tax. If you choose to start a lifetime trust for the benefit of your spouse or other loved one(s), consider TIAA Trust, N.A. as your trustee. We can be a neutral decision maker, adhering to your intent as set out in your trust document.

Through lifetime trusts coupled with a spendthrift clause, you can also:

Protect assets from an heir's creditors

Most state trust laws allow the creator to include a spendthrift clause that says trust assets may not be voluntarily or involuntarily transferred to most creditors. In most states, this means a creditor of a trust beneficiary can only try to collect directly from the trust beneficiary after they're paid. The creditor can't collect against the trustee or the assets held in the trust. Your child can still be a beneficiary of the trust, and in many states can be the trustee of the trust for their benefit, and still have the built-in creditor protection.

Preserving your legacy: Trusts for non-U.S. citizen spouses

A different set of estate tax rules apply to non-U.S. citizens. These include limits on transferring assets to your spouse whether by changing the name on an account, adding your spouse's name to an asset, or transferring an asset while you're living or when you die.

Lifetime transfer and gifts of property

As a U.S. resident, you can give any person up to \$19,000 per year. As long as your gift doesn't exceed this amount, it won't trigger a gift tax or a requirement to file a gift tax return that uses up some of your lifetime gift and estate tax exemption. As a U.S. citizen, you can also give (either by an outright transfer or by adding a name and creating a joint account) unlimited assets to your spouse who's also a citizen (known as the "unlimited marital deduction").

If your spouse isn't a U.S. citizen, the gift is currently limited to an annual maximum of \$190,000 (the amount is indexed to inflation and rises annually). Transfers above this amount will generally trigger additional requirements.

Transfers at death

The unlimited marital deduction can be applied to most gifts between spouses at death. However, if the spouse receiving the gift isn't a U.S. citizen, estate taxes will affect gifts over the deceased spouse's available estate tax exemption if they're not structured properly.

One way to structure a gift is with a qualified domestic trust (QDOT), a trust for your spouse created upon your death. Since it's a more restrictive trust, it requires a U.S. trustee. In addition, any principal distributions made from the QDOT are subject to estate tax. If, after you die, the transfer to your non-U.S. citizen spouse will exceed the available federal or any applicable state estate tax exemption, it's best to meet with a qualified estate planning attorney.

Preserving your legacy: Trusts for special beneficiaries

If you have disabled children or family members, they might need special care after you're gone. To ensure these loved ones always get the care they deserve, carefully consider how much of your estate goes toward funding that care. The choices you make here are vital, as your gift will help protect and benefit your loved ones after you die.

Key factors that determine level of care:

- The nature and severity of your loved one's disability or medical needs
- If they're self-sufficient and can make a reasonable living
- Whether they're mildly disabled (therefore ineligible for government disability) and need long-term living arrangements, like subsidized housing
- Whether they're severely disabled (yet could count on government assistance) and living arrangements would probably be taken care of

Supplemental needs trusts

If your disabled loved one is (or will be) eligible for government assistance or benefits, figure out if that eligibility is need based or based solely on their disability.

Eligibility

Eligibility for need-based programs—such as Supplemental Security Income (SSI) and Medicaid—takes into account your loved one's assets. As a general rule, they can't have more than \$1,000 to \$2,000, and a larger inheritance will most likely delay government assistance temporarily or permanently.

In some states, through specific trust terms, an inheritance can benefit your heir but not be

considered an "available resource" for the purpose of determining eligibility.

This type of trust gives your trustee the authority and flexibility to access funds to pay for your disabled loved one's:

- Medical treatments and equipment not covered by government benefits
- Advocacy to help them access and continue receiving vital services
- Residential expenses like repairs, maintenance, real estate taxes, and utilities
- Computer equipment, internet, and cable television
- Vacations, social events, and other entertainment
- Funeral and burial costs



For a detailed look at special needs trusts, TIAA clients can read our white paper "Setting up a special needs trust for a disabled loved one." Reach out to your advisor for a copy.



Preserving your legacy: First and second beneficiaries

Are you married or in a relationship and want to support your significant other in their estate plan, yet your goals or wishes differ on what happens when either of you are gone? It's important to think about this and understand the effect intestate succession and local laws might have on certain assets (like your home) for your joint owner or beneficiary.

Meet Kris and Pat

They jointly own a house. Kris has an IRA and lists Pat, his partner, as his primary beneficiary and Jeffrey, his child with Pat, as his contingent beneficiary. Kris has an investment account, but it doesn't list a payee upon death.

Pat also has kids from a previous relationship, and neither Kris nor Pat have a will or trust. Sadly, while traveling, the two get in a serious accident. Kris dies, and Pat never regains consciousness, passing away a week later. Since Pat survived Kris, Pat inherits Kris' IRA, and because Pat didn't have a will and trust that said otherwise, Jeffrey and the children from the earlier relationship are Pat's legal heirs and now share Kris' IRA and the house.

What happened: A contingent beneficiary (generally) only applies if the primary beneficiary didn't survive the owner of the IRA.

What if Kris decides to share the house, yet wants his IRA to go solely to Jeffrey? Is this possible?

Absolutely. Kris and Pat meet with an attorney and create wills. However, each will says that the testator's own children are to inherit the property owned by Kris and Pat, respectively. Due to the survival rules and terms of their wills, the same thing will occur: Because Pat survived Kris, Pat inherits the IRA, and since the will says all of Pat's children are his heirs, the result is the same, as if Kris and Pat didn't have wills.

SECTION 2: PROTECT YOUR ASSETS

The solution: A trust for Pat

Both of these unintentional outcomes could have been avoided with a well-thought-out estate plan, which might include a trust for the benefit of Pat or the kids. The benefits of using a trust include:

- Your spouse can get trust income at least annually
- Your trustee has the choice to use the trust principal to benefit your spouse
- Your kids and other loved ones know the trust assets are safe from your spouse's creditors and from inheritance claims made by your spouse's family
- Your kids and other loved ones know they'll get the trust assets after your spouse dies

If you choose to start a lifetime trust for the benefit of your spouse or other loved one(s), consider TIAA Trust, N.A. as your trustee. We can be a neutral decision maker, balancing the needs of your spouse and your other loved ones.

Common residence

There's always the chance that, after you die, your home could become a source of friction between your spouse and children or other loved ones. Consider who will own the house, who can live there, and how the space will be divided up.

Antenuptial or postnuptial agreement

An antenuptial agreement is a contract between soon-to-be spouses. A postnuptial agreement is a contract between a married couple. While there are major differences between the two agreements—related to timing and legal obligations within marriage—you need both for one reason: to sort out your spouse's property, support, and inheritance rights if there's a divorce or one (or both) of you die. It's important to make sure your estate plan is consistent with the terms spelled out in these agreements.

Tangible personal property

Tangible personal property, like jewelry, artwork, collections, family photos, and family memorabilia, can cause a rift between your spouse, your kids, and other loved ones. When you create your estate plan, ask each person what financial or sentimental value these items have to them and then figure out who gets each item.

Along with this legally binding list of personal items in your will, some states let you include a list of who gets what. This is easy to do, and you can change it at any time.

In states that don't recognize these lists as legally binding, you can still use them, but they're only morally binding for your executor or those who inherit your property. To guarantee specific items go to certain people, it's best to have them as bequests.

Joint property and beneficiary designations

If you want to create a trust for your first beneficiary and a second beneficiary, make sure you understand the dynamic between the ownership of your assets and both beneficiaries. Please refer to the next section to learn more.



According to a 2012 survey conducted for Allianz Life Insurance Co. of North America, baby boomers say personal keepsakes, family stories, and last wishes are a far more important bequest than money. More than half (64%) of boomers and 58% of elders say family mementos and heirlooms are an important inheritance. Just 9% of boomers say they're eager to inherit money, while 14% of elders say financial assets are a vital legacy to leave.



Protect your plan

Aligning your individual instructions into a comprehensive estate plan that identifies your desires will smooth the often-complex process of executing your estate.



Bringing it all together: Coordinate asset ownership and beneficiaries

Now that you've put in the time and effort to create your legal documents, make sure you avoid the second most common estate planning mistake—forgetting to coordinate ownership and beneficiary designations. To better understand how this works, let's look at how assets transfer when you die.

Sole ownership

This type of ownership happens when you have complete title to the property. When you die, the property is often given through a beneficiary designation, a pay-on-death designation, or in probate court based on your instructions in the will or state law if you don't have a will.

Assets like retirement accounts have to be owned (only) by you throughout your life. Many of these accounts let you use a beneficiary form to choose the next owner, whether it's your trust or someone else. It's also best to check your beneficiary designations regularly to make sure they're up to date and match your wishes.

Tenancy in common

Two or more owners, including you and your spouse, can own property concurrently without a survivorship feature, and with the same or different percentages of ownership. This type of ownership is like sole ownership in that when one owner dies, that person's property interest doesn't automatically pass to the other. Instead, the deceased person's share of the property passes either by beneficiary designation, the deceased owner's will, or state intestacy law.

SECTION 3: PROTECT YOUR PLAN

Joint tenancy with right of survivorship

Two or more people—who don't have to be related—can create a joint tenancy with right of survivorship for many kinds of property, including real estate. Each person, with an equal ownership stake, has full rights of survivorship. When one dies, by state law, property ownership automatically shifts to the surviving owner. In general, joint ownership offers the benefits of survivorship without probate court while still allowing cash access right away. If you don't want the surviving owner to have the entire account (as seen with Kris and Pat in an earlier example), or you don't want separate heirs of a surviving owner to get the entire balance, think about changing ownership.

For example, Pat has two sons from her first marriage, Paul and Richard. Pat puts \$200,000 in joint tenancy with right of survivorship with Paul “for convenience.” Pat's will distributes the estate equally to Paul and Richard. Not long after, Pat dies, so Paul gets \$200,000, while Richard gets nothing. In most states, the account goes to Paul by law, regardless of the will provisions.

Beneficiary designations of transfer-and pay-on-death

Assets with payable-on-death or transfer-on-death beneficiary designations are two types of nonprobate transfers. The beneficiaries you choose are controlling, and unless the beneficiary is your “estate” or your revocable trust, neither your will nor trust will direct how the account is disposed.

If your wishes are laid out in the trust, but the beneficiary designated on the form isn't the trust, the trust terms don't apply. For example, the creation of a creditor-protected trust for your child or as a place to hold assets in trust for your spouse for life, and then to your chosen beneficiaries, not the ones your spouse might choose.

It's important to understand how your beneficiary forms, your will and trust, and property ownership all work together. It's a good idea to talk with a tax or legal advisor before making changes because there might be income tax consequences on retirement account minimum payout requirements, which depend on who your beneficiary is.

Revocable trust

If you've chosen a trust, its terms only apply to assets owned by the trust. If you don't transfer the ownership of assets while you're alive or specify a nonprobate transfer upon your death, the main reason for the revocable trust—avoiding probate—can't happen. What's more, a beneficiary designation that lists one or more people trumps the provisions of your will and trust. Understanding how these choices—and the order of death of joint owners or beneficiaries—affect inheritance is a critical aspect of your plan.

Plan default rules

Just like the laws of intestacy—a default plan in the event you die without a will or trust—a retirement plan might have default terms. You'll want to understand those rules and your right to choose different beneficiaries.

For example, Pat dies with \$25,000 in her bank account and \$100,000 in her retirement account. Kris is her widower, and Paul and Richard are her two sons from her first marriage. Pat's will says that 50% of her property goes to Kris and 25% each to Paul and Richard. However Pat didn't choose a beneficiary for her retirement account. So under the plan rules, the entire account goes to Kris alone. Kris gets \$112,500, Paul gets \$6,250, and Richard gets \$6,250, which is 25% of the only asset: the bank account that transferred by Pat's will.

SECTION 3: PROTECT YOUR PLAN

How does the order of death affect inheritance?

Let's take a look. For example, you and your spouse state in your will that you want your spouse to inherit your property, and if your spouse doesn't survive you, your children should inherit it. Plus, on your beneficiary forms, you list your spouse as primary beneficiary and your kids as contingent beneficiaries. That's great, right? Wait. Your kids aren't your spouse's children. This means if your spouse survives you (in some states, survivorship requires only a few minutes; in others, several days), your spouse's heirs, as listed in their will, may inherit all your assets. Your kids won't get anything.

For example, John and Jane jointly own a house. John has an IRA and listed Jane as his primary beneficiary, with his children as the contingent beneficiaries. Jane has an investment account that doesn't list a payee upon death. She also has children of her own. Both Jane's and John's wills say that their jointly owned property will be divided equally among all their kids, and Jane and John's separate property will go to their respective children.

While traveling, John and Jane are involved in a serious accident. John dies, and Jane never regains consciousness, passing away a week later. Since Jane survives John, she inherits his IRA, and because her will specifies that her kids inherit her property, they get John's IRA and 100% of the house. This happens because a contingent beneficiary generally only applies if the primary beneficiary didn't survive the owner. The house was no longer jointly owned because Jane was the surviving owner.

This might not have happened if John and Jane had coordinated their wills and beneficiary designations with very specific instructions, including potential beneficiary scenarios like the ones above.

CONSIDER:

- When's the last time you looked over the titling of your real estate?
- What about the titling and beneficiary designations for your other assets?
- Are you comfortable that your asset titling and beneficiary designations match your wishes?
- Are you comfortable that your asset titling and beneficiary designations are organized to minimize income and transfer taxes?
- How are your safe deposit box, automobile, and U.S. savings bonds titled, and have you designated beneficiaries for these assets?



Choosing an estate planning attorney

You have various available methods to start preparing your estate plan today. Many websites and software options offer estate planning guidance or the chance to create your own documents—and for much less than it costs to work with an attorney.

While these technology-driven options are pretty good bargains, partnering with an attorney for your estate plan can prove invaluable.

For example, because a document is signed and dated doesn't automatically mean it's valid. Courts can look beyond the document to determine:

- Whether its maker has “capacity”
- Whether its maker acted freely
- Whether the document was done according to applicable state law

If a court finds otherwise, it can set aside the document or even take charge of its maker's personal and financial affairs, sometimes at

significant emotional (and administrative) cost to the family.

We recommend working with an attorney. You might have to do some initial legwork, but the time and effort you put toward getting yourself the right estate planning attorney is something you simply can't put a price on. Plus, you'll have the peace of mind you deserve.

Here are guidelines to help you make the best decision for your circumstances:

Knowledge and experience

With tax law constantly changing, it's key that you pick an estate planning attorney who knows the tax laws inside and out, and how they might affect your plan.

SECTION 3: PROTECT YOUR PLAN

Your comfort level

Working on an estate plan is not a one-time task. It's the start of a long-term relationship in which you place your confidence in a professional to guide you, now and into the future, with the solutions that fit you best. Since you'll be revealing sensitive confidential information to this person, you need to feel confident that they've completely earned your trust.

Your attorney's knowledge and experience as an estate planner is also key, but your comfort level with this person is just as important, if not more so. Do they truly listen to and understand any concerns you have, and do they genuinely want to be of service, explaining all your options simply and clearly? Or does the attorney seem put off by your questions, making you feel like you're getting a stock answer or solution?

Expense

When you hire an attorney, make sure you get the most for your money. Don't sacrifice quality just to save a few dollars, especially when it comes to something as important as your estate plan.

To maximize the value of service and support you get in return, don't hesitate to ask questions about billing:

- Do you bill by the hour or a flat fee?
- If you bill at an hourly rate, how much is it and roughly how many hours do you think you'll need to complete my estate plan?
- If you charge a flat fee, what services does it include?
- Do you charge extra for a basic consult (answering questions I have up front)?

Timeliness and responsiveness

A good attorney will always get back to you quickly, so be sure to ask how long it takes to have a draft(s) for you to review and how much time they'll need to make any changes you request.

Location

Think about how important where you live is to you. Can you—or are you willing to—potentially work with the attorney at their office out of town? Does traveling that distance pose a major challenge? Take your time to consider how or if these things might factor into deciding who to hire.

Retainer agreement

Earning your trust is essential to the client-attorney relationship. Your attorney should provide a written retainer agreement that details their responsibilities and your role in the process. You'll want to make sure the agreement breaks down every aspect of the fee structure in layman's terms and is clear about when you're expected to pay. The more specific your written agreement, the more you reduce the chance of any misunderstanding between the two of you.



Important note

Delays could have a major impact on you and your heirs. For example, let's say your attorney promises your will is going to be done before you have your surgery. However, if your estate plan isn't finished and you die on the operating table, your estate is then considered intestate, and your assets will pass to the state according to state law, rather than according to your wishes and instructions. So check the attorney's references and ask questions about their responsiveness ahead of time.

SECTION 3: PROTECT YOUR PLAN

What's next?

Now that you know you want to start an estate plan or need to update your plan, what else do you need to think about before you visit with an attorney?

It's as easy as who, what, when, and how. Here are some ideas:

- Who would you choose to be your health care decision-maker?
- Who would you pick to take care of legal and financial matters while you're alive but unable to do it yourself?
- Who do you want to receive your inheritance?
- What do you want them to inherit?
- What are your goals?
- How do you want your inheritance managed?
- Who will take care of gathering and dividing assets according to your wishes?
- Who will take care of managing the wealth for your beneficiary?

The TIAA attorney referral list

TIAA created a process to help you choose the attorney who may be right for you. Your TIAA advisor can give you a list of local attorneys who have experience in estate planning.

The attorneys contained in the list indicate they have experience with estate planning. This list is provided to assist our clients in identifying estate planning attorneys in certain geographic locations, but it isn't a substitute for determining whether a particular attorney is qualified to meet your needs. TIAA and its affiliates don't specifically recommend, endorse, or sponsor the individual attorney, law firm, or services provided. Moreover, TIAA and its affiliates aren't liable for any damages, losses, or causes of action of any nature that may arise from any legal services provided by the attorneys or law firms contained in the estate planning attorneys list.

10 reasons to consider updating your estate plan

As a rule, it's a good idea to look over your estate plan every five years to give you peace of mind in knowing your estate plan is done right. Regular check-ins also give your attorney opportunities to review your plan and let you know of any changes in estate planning law.

Here are 10 things that signal it's time to take a look at your plan:

1. A new family member

Many people who create an estate plan have a new child or other descendants come into the family after the plan is completed. If this is the case for you, review and update your plan soon after they become part of your family, while it's fresh in your mind.

2. Someone passes away

If you're a surviving spouse, child, or successor trustee, don't hesitate to reach out to an attorney (or other tax and financial advisors) for help. They can prove invaluable on what to do in light of your loved one's death and can review and update your plan accordingly.

3. You or a family member gets married

If you or one of your beneficiaries plans to get or were recently married, make sure you understand the effect the marriage has on your estate plan. A surviving spouse and the spouses of your kids might then have rights to your wealth, no matter what your existing plan says. Understanding your rights in these cases is important.

4. You or a family member separates or divorces

In most states, there are laws that don't allow your ex-spouse to have certain fiduciary positions, which often kick in when the divorce is final. In the meantime, you might not want your spouse making any decisions (including about health care) for you. It's also a good idea to update your estate plan right away.

5. Financial trouble

If you haven't already included spendthrift trusts for your heirs—especially if they're in financial trouble or bankruptcy—you might want to find out if you can set up a plan to protect their inheritance.

6. You start or close a business

Opening and running a business can be quite rewarding. To keep it going and profitable in the event you become incapacitated or die, make sure to have a plan in place. Whether that's with a will or a trust, take the necessary steps to make sure your business will be managed by the person you want and passes to the beneficiary you choose.

7. You add assets

Your estate plan accounts for the assets you included when you first created the plan. In some cases, adding new assets or converting old ones might alter your estate plan in a way that no longer serves your needs the way you pictured them.

If that's the case, contact your estate planning attorney every time you buy a new home or other property. They'll make sure this new asset gets added to your estate plan. If you have a revocable trust, they can help move the new property to your trust. If your new property is in a different state, you might want to bypass a simple will and go with a revocable trust instead.

SECTION 3: PROTECT YOUR PLAN

8. Changes in federal or state law

While many laws are permanent, a change can happen at any time. Changes in estate tax law are usually well publicized. If you hear of one, contact your attorney right away to find out if it affects your estate plan.

9. It's been a long time since your last update

If it's been more than five years, consider reviewing your estate plan to make sure it still reflects your wishes.

10. You move

If you move for a job, loved one, or even for better weather and you're wondering if you need to redo or update your legal documents, talk to your attorney. You've invested a great deal of time, effort, and money to create your estate plan, and chances are you really don't want to have to start over.

In general, if your plan is valid in your previous home state, it's also valid in your new one—most state laws confirm this. Sometimes, however, state laws and requirements differ, so it's a good idea to have a fresh set of documents that meet the laws of your new home state.

If you move to a state that doesn't tax earned income, list your residency in new legal documents to prove to officials in your previous home state that you're no longer a resident subject to taxes.

What's moving got to do with it?

No two states have the same laws, which includes the trust code. So a trust that says it has to be governed under the laws of another state might create confusion and disagreements that end up costing your heirs time and money. Additionally, certain elements of your trust may no longer be enforceable under the new state's laws, in which case you might want to just cancel it and start over.

Marital property rules

If you marry and then move from a community property state to a noncommunity property state—called a common law state—or vice versa, the rules about what you and your spouse own and who you can pass those assets on to in your will or trust are going to change.

In common law states, property belongs to whoever's titled on the asset, such as a deed or account holder. If both you and your spouse are listed as asset owners, then your property is owned by both of you. However, some states treat these assets as community property, where both spouses share equal ownership of the property or earnings. It's important to understand if your move affects the ownership of your properties.

Homestead

A few states have creditor protection for your home so it can't be sold to satisfy debts, such as Florida, which has unlimited protection. Often, there's also a property tax break for homeowners (benefits vary by state). Some states have restrictions on who can inherit your home (such as requiring that it be your spouse). If your plan doesn't address homestead rules in your state, it may have unintended consequences.

SECTION 3: PROTECT YOUR PLAN

Formalities

In almost every state, your trusts, wills and general powers of attorney have to be notarized. Some require all of your documents to be witnessed; in others, you'll need one or two witnesses; and in a few states, you don't need any. While your out-of-state documents might be valid, some local financial institutions won't recognize the documents if they don't comply with local laws. Plus, no matter what state law says, your family might have an easier time with a health care directive and living will if it's in a format familiar to local medical providers.

Probate: wills versus trusts

State and local procedures in probate matters vary. In some jurisdictions, probate is a relatively simple matter and wills are the norm. In others, probate is more complex, costly, or time consuming, and you'll find that attorneys generally recommend revocable trusts. Your local expert can help you decide.

Your personal representative

In many states, someone who's not a resident might not qualify as a personal representative, also called an executor, unless that person is a relative, so you might have to change that designation in your will.



Appendix

A summary of the current federal estate and gift tax landscape

Federal estate taxes

As a U.S. citizen or resident, your estate and assets are subject to an estate tax before they go to your heirs. Estates valued at more than \$15,000,000 for 2026 may be subject to federal estate tax. The tax rate on estates greater than this amount is 40%. The tax exemption is per estate, so if you're married, you may each be able to transfer this amount.

Another important exemption, the unlimited marital deduction, applies to transfers made to your spouse. This deduction lets you transfer any and all property to them, free of estate taxes, as long as your spouse is a U.S. citizen.

What's included in your estate?

In general, everything you own when you die is in your taxable estate. This includes property that'll be transferred under your will or revocable trust and property that transfers by law, like jointly held property with right of survivorship or property that transfers by beneficiary designation, for example, life insurance and your retirement assets.

This means your total estate includes assets such as:

- Property in your name
- Half of all property you hold jointly with your spouse
- The death benefit of life insurance on your life and the cash value of life insurance that you own on another's life
- IRAs, pensions and annuities, and so on

Liabilities like your funeral expenses, debts, and charitable bequests are deducted from your gross estate before figuring out any estate taxes.

Gift tax

What if you just start giving it all away while you're still here? If you don't own it when you pass away, it won't be part of your taxable estate. Unfortunately, the government knows you just might consider doing this, so there's potentially a tax (there is an exception) on any transfers/gifts you make while you're alive.

That said, there are generally four exemptions or exceptions to protect those gifts:

- The unlimited marital exemption on gifts to your U.S. citizen spouse
- Gifts that don't exceed the annual exclusion, which you can make to anyone—plus, your spouse may join you to double the gift
- Part or all of your \$15,000,000 lifetime gift tax exemption (indexed for inflation each year)
- Qualified transfers in any amount, free of gift tax, that you make on behalf of another (though not an exemption, they're an exception to the rule) directly to:
 - An educational organization for tuition payments (can't include dormitory fees, books, supplies, or other expenses)
 - A person or organization that offers medical services, including insurance (can't include medical expenses where the individual gets an insurance reimbursement)

State gift, inheritance, and estate taxes

Beyond federal estate taxes, many U.S. states have their own taxes. Estate taxes will come from your estate no matter who gets your assets.

SECTION 4: APPENDIX

Inheritance taxes will be collected on the transfer of those assets to your heirs, depending on your relationship to them.

Currently, 17 states and Washington, D.C., will levy an estate tax or inheritance tax. Maryland is the only state with both levies in 2026. New Jersey repealed the estate tax but retained the inheritance tax on nonlineal heirs, such as siblings and nieces or nephews. That said, these tax rules have constantly changed in recent years, so make sure you confirm those listed here with your tax advisor.

Please note: This is especially important because the top rate has been as high as 20% in some states, which can have a substantial effect on your heirs if you live in one of these states.

Generation-skipping transfer tax

Finally, there's the generation-skipping transfer (GST) tax, a tax on transfers to your grandchildren or great-grandchildren. It's a flat tax at the rate of 40% for federal purposes. As with most other taxes, there's an exemption, just like your other federal estate tax exemption.

Secure your legacy and take care of those who matter most to you.

Your TIAA advisor can collaborate with your other financial partners (like attorneys and accountants) to achieve your legacy goals, including by setting up an estate plan, creating a trust and planning a family meeting.

To learn more, schedule a meeting or call us at **866-220-6583**.

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