
ESSENTIALS

OF BASIC ESTATE PLANNING



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A Starter Conversation About Estate Planning

Congratulations on your decision to explore the need for estate planning. This is an important step for your future and the lives of your loved ones. Together, we will explore some major considerations you may keep in mind as you learn what important decisions should be made.

I have spent most of my career working in the world of business and finance. I help clients navigate important issues that lead to an intentional and successful future. Estate planning is much like any business conversation. You need to describe the successful future for your legacy and interests. The Estate Plan is the strategy that helps you realize your vision.

The following pages provide some basic information about Estate Planning. We invite you to read the insights we've provided here. Feel welcome to do your own research to compare other ways of thinking about these matters. We want you to be an informed estate planner when the time comes to make choices that will affect your life legacy.

Estate Planning Protects Legacies



One of the essentials in a financial toolbox is an Estate Plan. In this article, we explain the importance of Estate Planning. We want you to know that inaction could rob you of creating the legacy you want for your family.

I often ask prospective clients if they have a last will and testament. Some answer *yes*... some say *no*. This is a trick question. Everyone has a will. This is so whether you signed an actual document or not.

In North Carolina, there is a statute that outlines how your property is to be distributed if you should pass away without a will prepared by you. For many clients, they are not satisfied with this default will. This is because the order of inheritance may not address your specific situation. The State law also decides who is called upon to oversee inheritance decisions. The unintended results of the statute may be the best reason to plan.

We encourage clients to read NC General Statutes Section 29-14. See for yourself if this is how you want your assets distributed. If you have doubts about the ways the law divides your estate, we invite you to consider making your own choices.

For situations where you need someone to look after your health care decisions or manage your financial affairs, courts often get involved. In these instances, a guardian may be appointed by the courts to speak on your behalf. The guardian may or may not be someone you know. You should decide if you want to leave to chance who may be given this authority.

An Estate Plan includes more than a Last Will & Testament. An Estate Plan also consists of a Power of Attorney, Health Care Power of Attorney, and an Advance Directive for a Natural Death (Living Will). Combined, these documents address the estate needs for most people. For individuals with unique circumstances, such as young children, special needs heirs and charitable intent, a trust may be added to the Estate Plan.

An Estate Plan provides protection, order, and secure your wishes when the day comes you are unable to speak for yourself. The circumstances when these documents may be invoked vary. There may come an occasion when you could become incapacitated and unable to express your wishes for medical care. During such an event, you may need someone to transact financial business for you as well. This is the purpose of the power of attorney documents.

We have learned through personal experience and publicized cases that a dispute could arise between a medical staff and a family when one is in a persistent vegetated state, such as a permanent coma. In such instances, when doctors have completely ruled out the possibility of a patient's recovery, the conversation turns to what care would the patient want rendered. This is the importance of a Living Will.

When considering estate planning, one should understand what property could be estate assets. Property excluded from the estate designate heirs in other ways. It may be more useful to think about what property is *not* included in the estate.

Properties that have a specified beneficiary are not included in the estate. This includes real estate (depending on how it is titled) and financial institution accounts with a "payable on death" declaration. Also, life insurance is excluded from the estate when a beneficiary is designated.

Other properties that do not provide for a specific inheritance may be included in the estate. These properties include, singled-titled property, and intangible property such as copyrights, business assets and patents. Increasingly, social media content is viewed as assets that need protecting.

Occasionally, clients tell us that an Estate Plan is not needed for their situations. They often say they don't have enough property to worry about this. Nevertheless, there is a possibility a small estate could become a substantial estate.

When a person writes a Will, he/she knows of current assets. The current property is not necessary the size of the eventual estate. A financial windfall could occur in the meantime that changes the complexity of an estate. Depending on the cause of one's death, the estate may have a cause of action to pursue claims for the heirs. Planning in advance makes decisions clearer for the administrator.

We recommend every individual create an Estate Plan for medical care and after life inheritance. The time to make this important decision is when you decide how you want your legacy handled. Your family will appreciate your thoughtfulness and your legacy will be secure. ■

25 Reasons When Estate Planning is Vital



You may wonder how important estate planning is for you. No matter one's circumstances, we believe everyone should have an Estate Plan and documents in place for many of the situations we find in life. Here are some reasons why an Estate Plan is even more important. Take a look at these situations and make a note of all that apply to you.

- 1 -

You want to name a property manager for your minor children.

- 2 -

You have a dependent with special needs.

- 3 -

You support a parent or other relative.

- 4 -

You have serious underlying health conditions.

- 5 -

You want control over your healthcare treatment.

- 6 -

You have a spendthrift child that needs guidance.

- 7 -

You know who you want to oversee your finances if you are incapacitated.

- 8 -

You want to choose who administers your estate.

- 9 -

You don't like the way the law will distribute your estate property.

- 10 -

You have heirlooms you want to stay in the family.

- 11 -

You don't want to burden family during their time of bereavement.

- 12 -

You want to honor a specific charity with a gift.

- 13 -

You want to put certain conditions on your estate gifts.

- 14 -

You want your legacy to endure for generations.

- 15 -

You believe your family may quarrel over your estate.

- 16 -

You have complex assets and investments.

- 17 -

You want a contingency plan for heirs who may die before you.

- 18 -

You want to leave instructions to the doctors for your care.

- 19 -

You would like to reduce the estate taxes your heirs pay.

- 20 -

You want to exclude an heir who would otherwise get a share.

- 21 -

You want to be remembered as a caring individual.

- 22 -

You want to create a wealth plan for your heirs.

- 23 -

You want to clarify inheritance for a blended family.

- 24 -

You want to place your assets in a trust for safekeeping.

- 25 -

You want peace of mind your loved ones will receive the inheritance you intend.

Avoiding Unintended Results



Everyone in North Carolina has a will. The main difference is who wrote your will. Was it you or the North Carolina Legislature. North Carolina's Intestate Statute determines the order of inheritance for residents who have not written their own last will and testament.

The law can be found at N.C.G.S. 29-14 and 29-15. Here's what happens when you leave your estate decisions to the Courts.



REAL ESTATE INHERITANCE

<i>Deceased Spouse Survived by...</i>	<i>Spouse's Inheritance</i>
One Child & No Parents	1/2
Two or more Children & No Parents	1/3
No Children & Living Parents	1/2
No Children & No Parents	100%



PERSONAL PROPERTY INHERITANCE

<i>Deceased Spouse w/ No Parents Survived by...</i>	<i>Spouse's Inheritance Less than \$60,000</i>	<i>Spouse's Inheritance More than \$60,000</i>
One Child	100%	\$60,000 + 1/2 balance
Two or more Children	100%	\$60,000 + 1/3 balance
<i>Deceased Spouse w/ Parents Survived by...</i>	<i>Spouse's Inheritance Less than \$100,000</i>	<i>Spouse's Inheritance More than \$100,000</i>
No Children	100%	\$100,000 + 1/2 balance
<i>Deceased Spouse w/ No Parents or Children</i>	100%	



REAL ESTATE & PERSONAL PROPERTY INHERITANCE WHEN THERE IS NO SURVIVING SPOUSE

One Child & No Parents	The Child Inherits 100%
Two or more Children & No Parents	Children inherit equally
No Children but Both Living Parents	Parents inherit equally
No Children but One Living Parent	The Parent inherits 100%
No Children and No Parents	Siblings inherit equally

Estate Planning Questions & Answers



Creating an Estate Plan can feel daunting for many. There are many decisions to make and documents to sign. It is normal to have questions as you take this journey. You should seek honest answers to your inquiries. After all, you deserve to be fully informed on all aspects of your Estate Plan.

Here are some frequently asked questions we've heard from other clients. We hope these answers help you understand this process a little better. If you think of a topic that is not mentioned, feel welcome to contact us for answers.

Q | Must I Hire An Attorney?

The short answer is no. North Carolina recognizes a will prepared by an individual without a lawyer. However, the NC law is specific on what makes a will legal.

Some folks use a software program or self-help kit to write their own wills. This is acceptable if the person is careful to do enough research to make sure the will satisfies North Carolina law. Clients should be careful to ensure online programs are compliant with North Carolina legal standards for a last will and testament.

A will that is prepared by an attorney offers the best prospects for being enforceable and valid when the time comes for a court to supervise your wishes.

Q | Do I Need To Have Witnesses For My Last Will And Testament?

A will prepared by another person and not in your own handwriting requires two witnesses. These witnesses must attest to you having a sound mind and being over the age of 18. The mental test is whether the person has sufficient mental capacity to execute the will at time it is signed. A lawyer will follow

a set of procedural questions to make sure the client understands fully what he/she is signing.

Q | May I Leave My Estate To A Minor?

Yes. A minor may be an heir. However, the minor will need a guardian to manage the property until the minor reaches adulthood. In many instances, the guardian will be bonded to ensure the safety of the minor's inheritance.

Q | Where Should I Keep My Will?

The will should be kept in a safe place. A safe deposit box is often the place many think for an appropriate storage. Unfortunately, when a financial institution receives notice of a customer's death, the safe deposit box is sealed and remains so until a court order is provided. Clients are often advised to make copies of the will and write on the copies the location of the original.

Q | Are Wills Only For Wealthy People?

No. Our advice to clients is everyone should have Estate Planning documents. The value of one's estate could change very quickly. Take for instance someone who was killed in a vehicle accident due to the fault of another driver. The estate may sue for damages. If awarded a substantial settlement, the Estate Plan documents could be the direction the court will need to direct who inherits the monies.

Q | Should I Have My Estate Documents Recorded?

This depends on the Estate Plan documents. For a last will and testament, recordation is not required. For a durable power of attorney, North Carolina law has changed. The required recording with the county register

of deeds has been revoked. Because some businesses and institutions are unaware of the law's change, recording the power of attorney may be a good idea. The healthcare power of attorney and living will should be recorded with the NC Secretary of State.

Q | May I Change My Mind Later?

Yes. The Estate Planning documents may be changed at any time. The documents may be cancelled outright, or a subsequent form may be created that overrules the previous versions. The Estate Planning documents should be dated and reference earlier versions that are to be replaced.

Q | What Can A Person With A Power Of Attorney Do?

The person to whom power is given in a power of attorney is called an agent or attorney-in-fact. This person receives only the authority intended by the principal. A durable power of attorney often gives the agent the authority to do conduct business as if he/she were the principal. The power of attorney can limit how much authority the individual agent is given. A power of attorney can also be written to only take effect if the principal is incapacitated.

Q | What Happens If An Heir Dies Before Me?

If an heir dies before the person who wrote the last will and testament, the inheritance the heir would take goes to other persons. The alternate heirs will depend on the language in the will. The inheritance could go to the heir's descendants. Persons who prepare a last will and testament should consider such contingencies from the outset. Further, the will should specify how the property will be divided. ■

Essential Estate Forms



A comprehensive Estate Plan includes several types of documents. Depending on the needs, one or more of the estate management forms are appropriate for you. Here is a description of the various forms used to give most clients a complete Estate Plan.



Last Will & Testament

A Last Will and Testament is a document that gives directions on how your property should be distributed after life. Generally, a will contains such information that is necessary to ensure your final wishes are understood and can be accomplished. Your will should reflect your specific intent. If your direct heirs include minor children, you should consider trust services as a facility to provide for such inheritance. The will is the primary instrument that determines how personal and business assets will be distributed.



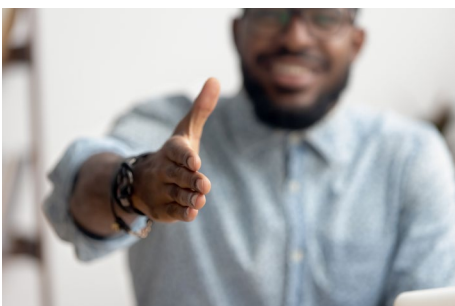
Living Will

In North Carolina, a Living Will is called a “*Declaration of a Desire for a Natural Death*.” A Living Will is a document that allows you to retain control over whether your life will be prolonged by certain medical procedures if you are diagnosed as being terminally and incurably ill or in a persistent vegetative state. Essentially, a physician will determine if you have a complete loss of awareness before following the directions of a Living Will.



Health Care Power of Attorney

A Health Care Power of Attorney is a document by which you may appoint another person to make important medical decisions for you. Your Health Care Attorney-In-Fact (Agent) may consent to or refuse medical care, including mental health treatment, on your behalf if a physician or eligible psychologist determines that you are unable to make or communicate these decisions yourself. The Health Care Agent can make decisions where the Living Will does not apply. This could be a scenario where you are unable to make the decision, but expect to recover eventually.



Durable Power of Attorney

A Durable Power of Attorney is an important document that permits another to act for you in a broad range of matters. This *Durable Power of Attorney* differs from the *Health Care Power of Attorney* in that the authority here applies to handling your financial, property, and business affairs. Under these circumstances, an attorney-in-fact may transfer money, open accounts, and conduct other transactions for your benefit in your name.



The Moment

You Realized You Need an Estate Plan After All.

You thought you did not need an Estate Plan. Perhaps you heard estate planning was just for rich people. This is false. Everyone should consider their financial protection, personal legacy and final wishes for different reasons.

M Smith | Law, PLLC is a commercial law firm. As a result, we approach estate planning like a business transaction. This is because your estate plan requires the same attention to details and thoughtfulness as any business deal.

If you need help or just someone to talk with, make this your moment to get answers.

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