

CLAREMONT EAP

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ESTATE PLANNING

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November 2005

ESTATE PLANNING

Most Americans haven't made even a simple will, to say nothing of a more comprehensive plan to avoid probate or save on estate taxes. No surprise there—we all have things we'd rather do. However, preparing a simple will is easy and free through your EAP. All you have to do is call Claremont EAP at 800-834-3773 and ask for a will kit. We'll send you the forms; you complete and send them back. If everything is in order and a simple will is appropriate for your needs, you will receive instructions on how to have it executed.

Whether you are considering making a will or more complex estate planning strategies, it's best to start with some basic knowledge of estate planning.

These resource materials provide helpful tips on how to:

- ✓ Determine the right estate plan for you
- ✓ Understand the ins and outs of a living trust
- ✓ Use your EAP for support

Remember that your EAP benefit includes *legal services* such as:

- Free “simple will” kits available upon request
- 30 minute telephone or in-person consultations with a network attorney on matters such as estate planning, real estate matters, family/domestic law, consumer/contract issues, personal injury, traffic tickets, bankruptcy and more!
- 25% discount off additional legal services
- Mediation services available upon request
- Call now: 800-834-3773

Disclaimer

This Resource Packet provides information about estate planning designed to help users address their legal needs. However, legal information is not the same as legal advice. Although we strive to provide accurate and useful information, we recommend you consult an attorney if you want professional assurance that our information, and your interpretation of it, is appropriate to your specific situation.

**For confidential help with estate planning, call: 800-834-3773
or visit www.claremonteap.com.**

THE RIGHT ESTATE PLAN FOR YOU

Depending on your age, health, wealth and innate level of caution, you may not need to do much at all in the way of estate planning.

We've sorted our tips into broad categories of family situation and age. But keep in mind that age is an imprecise proxy for life expectancy, which is affected by all sorts of other factors—heavy smoking while participating in extreme sports or driving a motorcycle, for example. It's up to you to add or subtract a few years, based on your health and lifestyle.

You're 25 and Single, No Kids

What are you doing reading about estate planning? You're supposed to be dancing until dawn. But you might as well keep reading; this won't take long.

At your age, there's not much point in putting a lot of energy into estate planning. Unless your lifestyle is unusually risky or you have a serious illness, you're very likely to live for a long, long time.

If you're an uncommonly rich 25-year-old, though, write a will. That way you can leave your possessions to any recipient you choose—your boyfriend or girlfriend, your favorite cause, the nephew who thinks you're totally cool. If you don't write a will, whatever you leave behind will probably go to your parents. Think about it.

You're Paired Up, But Not Married, No Kids

If you've got a life partner but no marriage certificate, a will is almost a must-have document. Without a will, state law will dictate where your property goes after your death, and no state gives anything to an unmarried partner. Instead, your closest relatives will inherit everything.

Other options to make sure that your partner isn't left out in the cold after your death is to own big-ticket items, such as houses and cars, together in "joint tenancy" with right of survivorship. Then, when one of you dies, the survivor will automatically own 100% of the property.

You Have Young Children

Having children complicates life—but then, you already know that. Estate planning is no exception. Here's what to think about:

First, write a will. Nothing fancy—just a document that leaves your property to whomever you choose and names a guardian for your children. The guardian will take over if both you and the other parent are unavailable. That's an unlikely situation, but one that's worth addressing just in case. If you fail to name a guardian, a court will appoint someone—possibly one of your parents.

The other big reason to write a will is that if you don't, some of your property may go not to your spouse, but directly to your children. The problem with the children inheriting directly is that the surviving parent may need to get court permission to spend or invest the money—a waste of time and money in most families.

Second, think about buying life insurance to replace your earnings if that falling brick chooses you. Term life insurance is relatively cheap, especially if you're young and don't smoke. You can shop for the best bargain online, by consulting free services that compare the rates of lots of companies.

You're Middle-Aged and Know the Names of at Least Three Mutual Funds

If you've made it to a comfortable time in life—you've accumulated some material wealth and enough wisdom to know that other things matter, too—you will probably want to take some time to reflect on what you will eventually leave behind. But given that you may well live another 30 or 40 years, there is no need to obsess about it. Chances are your conclusions will be different in ten or 20 years, and your estate plan will change accordingly.

To save your family the cost (and hassles) of probate court proceedings after your death, think about creating a revocable living trust. It's hardly more trouble than writing a will, and lets everything go directly to your heirs after your death, without taking a circuitous and expensive detour through probate court.

While you're alive, the trust has no effect, and you can revoke it or change its terms at any time. But after your death, trust property can be transferred quickly, according to the directions you left in the trust document.

There are other, even easier ways to avoid probate: you can turn any bank account into a "payable-on-death" account simply by signing a form (the bank will supply it) and naming someone to inherit whatever funds are in the account at your death. You can do the same thing, in almost every state, with securities.

If you have enough property to worry about federal estate taxes, think about tax avoidance as well. Currently, estates worth more than \$1 million are taxed. (The estate tax is being phased out, but its future is uncertain.) If estate tax does take a bite, it can be a big one. Tax rates now start at 37% and rise to 55% for estates worth more than \$3 million.

One way to reduce these taxes is to give away property before your death. After all, if you don't own it, it can't be taxed. Gifts larger than \$10,000 per year per recipient are subject to gift tax, at the same rate as estate tax. Still, an annual gift-giving plan can reduce the size of even a big estate, especially if you have a covey of kids and grandkids. Gifts to your spouse (as long as he or she is a U.S. citizen), direct payment of tuition or medical bills, and gifts to a tax-exempt organization are exempt from gift tax.

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Another way to cut taxes is with trusts. Many older couples use an AB trust to leave property to each other for life, and then to their children. The surviving spouse can spend trust income and in some circumstances, principal. As of 2002, an AB trust shields up to \$2 million from estate tax.

Charitable trusts, which involve making a gift to a charity and getting some payments back, can also save on both estate and income tax. There are many other complex trusts; learn about them on your own, and then have an experienced estate planning lawyer draw up the documents you want.

You're Elderly or Ill

Now is the time to take concrete steps to establish an estate plan pronto. First, the basics: Consider a probate-avoidance living trust and, if you're concerned about estate taxes, a tax-saving trust. (These devices are discussed just above.) Write a will, or update an old one.

Then, although no one wants to do it, take a minute to think about the possibility that at some time, you might become unable to handle day-to-day financial matters or make healthcare decisions. If you don't do anything to prepare for this unpleasant possibility, a judge may have to appoint someone to make these decisions for you. No one wants a court's intervention in such personal matters, but someone must have legal authority to act on your behalf.

You can choose that person yourself, and give him or her legal authority to act for you, by creating documents called durable powers of attorney. You'll need one for your financial matters and one for healthcare. In these documents you choose someone to act for you (called your agent or attorney-in-fact) and spell out his or her authority. You can even state that the documents won't have any effect unless and until you become incapacitated. Once signed and notarized, they're legally valid, and your mind can be at ease.

Claremont distributes this information to provide employees with useful information on a variety of topics. If you have concerns about these or other behavioral health issues, you can call Claremont to arrange for assistance. You will be directed to an appropriate, experienced professional who can offer guidance in a variety of work and personal matters. **For confidential help, call: 800-834-3773 or visit www.claremonteap.com.**

LIVING TRUST FAQs

What is a living trust?

A trust is an arrangement under which one person, called a trustee, holds legal title to property for another person, called a beneficiary. You can be the trustee of your own living trust, keeping full control over all property held in trust.

A "living trust" is simply a trust you create while you're alive, rather than one that is created at your death under the terms of your will. Different kinds of living trusts can help you avoid probate, reduce estate taxes, or set up long-term property management.

Do I need a living trust?

The big advantage to making a living trust is that property left through the trust doesn't have to detour through probate court before it reaches the people you want to inherit it. In a nutshell, probate is the court-supervised process of paying your debts and distributing your property to the people who inherit it.

The average probate drags on for months before the inheritors get anything. And by that time, there's less for them to get: in many cases, about 5% of the property has been eaten up by lawyer and court fees. Still, not everyone has to worry about probate, and some people don't need a living trust at all.

How does a living trust avoid probate?

Property you transfer into a living trust before your death doesn't go through probate. The successor trustee—the person you appoint to handle the trust after your death—simply transfers ownership to the beneficiaries you named in the trust. In many cases, the whole process takes only a few weeks, and there are no lawyer or court fees to pay. When all of the property has been transferred to the beneficiaries, the living trust ceases to exist.

Is it a hassle to hold property in a trust?

Making a living trust work for you does require some crucial paperwork. For example, if you want to leave your house through the trust, you must sign a new deed, showing that you now own the house as trustee of your living trust. And in a few states, you may need to use special language in your trust document to avoid wrinkles in your state's income tax laws. This paperwork can be tedious, but the hassles are fewer these days because living trusts have become quite common. If you have questions, it's always advisable to consult a lawyer.

Is a living trust document ever made public, like a will?

No. A will becomes a matter of public record when it is submitted to a probate court, as do all the other documents associated with probate—inventories of the deceased person's assets and debts, for example. The terms of a living trust, however, need not be made public.

Does a living trust protect property from creditors?

Holding assets in a revocable trust doesn't shelter them from creditors. A creditor who wins a lawsuit against you can go after the trust property just as if you still owned it in your own name.

After your death, however, property in a living trust can be quickly and quietly distributed to the beneficiaries (unlike property that must go through probate). By the time creditors find out about your death, your property may already be dispersed, and the creditors may not know exactly what you owned (except for real estate, which is always a matter of public record). It may not be worth the creditor's time and effort to try to track down the property and demand that the new owners use it to pay your debts.

On the other hand, probate can offer a kind of protection from creditors. During probate, known creditors must be notified of the death and given a chance to file claims. If they miss the deadline to file, they're out of luck forever.

If I make a living trust, do I still need a will?

Yes, you do—and here's why: A will is an essential back-up device for property that you don't transfer to yourself as trustee. For example, if you acquire property shortly before you die, you may not think to transfer ownership of it to your trust—which means that it won't pass under the terms of the trust document. But in your back-up will, you can include a clause that names someone to get any property that you haven't left to a particular person or entity.

If you don't have a will, any property that isn't transferred by your living trust or other probate-avoidance device (such as joint tenancy) will go to your closest relatives in an order determined by state law. These laws may not distribute property in the way you would have chosen.

Can a living trust reduce estate taxes?

A simple probate-avoidance living trust has no effect on taxes. More complicated living trusts, however, can greatly reduce the federal estate tax bill for people who own a lot of valuable assets. One tax-saving living trust is designed primarily for married couples with children. It's commonly called an AB trust, though it goes by many other names, including "credit shelter trust," "exemption trust," "marital life estate trust," and "marital bypass trust."

Each spouse leaves property, in trust, to the other for life, and then to the children. This type of trust can save up to hundreds of thousands of dollars in estate taxes, money that will be passed on to the couple's final inheritors.