

CLAREMONT EAP

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ESTATE PLANNING

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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
- ✓ Get your estate organized
- ✓ 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.

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.

DO YOUR FAMILY A FAVOR: GET ORGANIZED

Perhaps you've decided to make your will, and maybe you're even thinking about more complex estate planning strategies, including ways to pass your property without paying probate fees or estate tax. These are important steps to take, but don't overlook practical issues as well. After you die, your loved ones will have to cope with many things not covered in your basic estate planning documents.

Among these are:

- Do you want a funeral or a memorial ceremony? If so, what type?
- Who should be notified about your death and funeral?
- Did you prepare a will or living trust? Where is the original?
- Did you own a life insurance policy, pension, retirement account or annuity? Where are the documents stored?
- Where did you have bank accounts? Did you have a safe deposit box?
- Did you have stocks, bonds, or money in mutual funds? Where are the records?
- What real estate did you own? Where are the deeds?

Costly or painful losses can result from a failure to organize your affairs. Stocks, bonds, bank accounts, real estate, and insurance policy benefits may go unclaimed and be turned over to the state government. This happens surprisingly often. In fact, billions of dollars currently sit in state treasuries because the rightful property owners couldn't be found.

On a more personal level, relatives or friends may not be promptly informed of a death, and valuable pieces of family history may not be passed down to future generations.

Fortunately, losses like these can be avoided with a little bit of advance planning, sorting and organizing. Making things easier for your family is not difficult, but it may be time-consuming. It's best to break the task into manageable sections and take it one step at a time. Start by thinking about some broad categories of information:

- Funeral plans (arrangements and whom to notify)
- Insurance policies
- Wills, living trusts, deeds and other important documents
- Pensions and retirement accounts
- Bank, money market and mutual fund accounts
- Items in safes, safe deposit boxes and other locked or hidden places
- Information about family history including location of photos and other items

Then think about organizing this information in a way that will help your family handle your affairs after your death. You can structure the information any way you like—even notes scribbled on a piece of paper and left in an accessible location are better than nothing. But if you have the time and energy for it, consider a more thorough approach.

When you've got everything in order, be sure to store your information in a safe place. You might consider keeping your papers or computer disk with your will in a fireproof metal box, file cabinet or home safe. And be sure to discuss your new records with those closest to you. All your careful work will help them only if they know where to find it when the time comes.

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.

WHY YOU MAY NOT NEED A LIVING TRUST

One of the most common questions is whether making a will is enough, or whether it's really much smarter to create a probate-avoidance living trust.

The real answer to the question of whether you need a living trust is, "It depends." Some people, it turns out, need a living trust immediately, and others don't need one at all—and most of us fall somewhere in the middle.

Opting Out of Probate With a Living Trust

Enter the concept of probate avoidance. There are a growing number of ways to transfer assets to inheritors free of probate within weeks or, at most, months of death. These include making gifts before death, adding a pay-on-death designation to a bank account, holding your house in joint tenancy with right of survivorship with your spouse or partner, and naming a beneficiary for life insurance and retirement accounts.

But only the living trust can be used for all types of property and offers the broad planning flexibility of a will. With a living trust, for example, you can name alternate beneficiaries to inherit property if your primary beneficiary dies before you do. That's something you can't accomplish with joint tenancy or a pay-on-death bank account.

Since it makes sense to avoid probate, does everybody need a living trust? Not so fast. Living trusts do have a downside. Compared to wills, living trusts are considerably more time-consuming to establish, involve more ongoing maintenance and are more trouble to modify. And if you hire a lawyer, you'll probably pay upwards of \$1,000 for the document. The cost will shrink dramatically, of course, if you use an attorney from the Claremont EAP panel (whereby you receive a 25% discount) or a self-help tool to make your own trust. (And you'll still need a simple will, as a back-up device, even if you create a trust.)

These drawbacks are clearly outweighed by the benefits for people who have large estates—and therefore will achieve big savings by avoiding probate. The same goes for older people who are likely to die in the next few or even ten years.

How Old Are You?

Living trusts make a lot less sense for most middle-income people in decent health who are under age 55 or 60. Remember, a living trust does nothing for you during your life. It follows that there is usually little reason for a 45-year-old to worry about probate costs for many years. In the meantime, a serviceable will, which is easier to establish and live with, will do a fine job of transferring your property to your loved ones in the highly unlikely event that you die without warning.

Another reason why it makes little sense for a healthy younger person of moderate means to worry about probate avoidance is that the problem may go away. In just the last ten years, easy-to-use probate-avoidance techniques, such as being able to name a beneficiary to inherit securities free of probate, have gained wide acceptance. It's a good guess that this trend will accelerate.

How Rich Are You?

After age, the biggest factor in deciding whether or not to create a living trust is wealth. At the risk of oversimplifying, the wealthier you are, the more you can save for your inheritors by avoiding probate. For example, a 45-year-old with \$10 million might conclude it's not too soon to think about probate avoidance, just in case. A 45-year-old with \$300,000 might sensibly decide to wait 15 or 20 years or more.

What kinds of assets you own is significant, too. Owning a small business or other assets that you don't want tied up during probate might push you to create a living trust at a younger age. Even if there's only a small chance that you'll die soon, you don't want to risk making your executor report to a judge for a year or more if you die unexpectedly.

Are You Married?

If you are married, and you and your spouse plan to leave the bulk of your property to one another, there is less reason to obsess about avoiding probate at an early age. If, like many couples, you own your big assets together, in joint tenancy or (if available in your state) as survivorship community property, probate won't be necessary for those assets. And for other property, most states let surviving spouses use expedited probate procedures that are faster and cheaper than standard probate.

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.**