HOW TO PROTECT YOUR FAMILY AND WEALTH WITH SMART ESTATE PLANNING

By: Stephen Bronner - April 1, 2025

It took about 10 years, but Charlie Wright, a retiree from Brooklyn, New York, finally listed her late mother's house for sale, closing a chapter that had been delayed amid a disagreement with one of her siblings. Wright said she "waited it out" until "she gave in," and now Wright and her two siblings plan to share the home sale proceeds equally. But Wright acknowledged this decade-long saga could have been avoided had her mother put in place an estate plan that laid out who would receive her assets after her death from cancer.

"If [my mother] would have done it years ago, before we found out that she was sick, that would have been fine," Wright said. "People: Handle your business, get things in, put things in a proper place so that those who come behind you don't have to deal with it."

Wright's situation is common in the United States. According to a survey conducted by Caring.com, a website that provides information on care of the aging, the number of Americans with a will declined from 33% of respondents in 2022 to 24% in 2025.

Without key estate planning documents such as a will in place, an individual cannot convey how their assets should be distributed upon death, potentially leading to family conflicts and court visits.

For this reason, and to protect your family's wealth and ensure the financial security of future generations, it's critical to put an estate plan in place.

Understanding Estate Planning

You may be familiar with the concept of a will, but there are many mechanisms involved in estate planning.

"On its most basic level, estate planning allows anyone to have the ability to determine and communicate to the rest of the world how they want their assets to be handled upon their passing," says Christina Rosas, member of the trust and estate and property departments at Bond, Schoeneck & King in Melville, New York.

Patrick Simasko, an elder law attorney and financial advisor based in Mount Clemens, Michigan, likens estate planning to building a toolbox.

"You go out in the garage, you've got a hammer, a screwdriver, and a wrench," Simasko says. "Our toolbox is making sure that while you're alive and healthy, you're the boss. If you get sick, someone's there to make your medical and financial decisions. Then, if you pass away, you want your stuff to go to your beneficiaries without probate, without court involvement."

Here are the estate planning mechanisms that will help you ensure your wishes are honored.

Key Components of Smart Estate Planning

Wills and Trusts

A will is a legal document that lays out how an individual's assets will be distributed upon their death. It could also outline custody arrangements of minor children. Typically, the individual names a trustee or executor to oversee the estate and ensure that the deceased's wishes are fulfilled. Trusts are legal structures in which an individual (the grantor or trustor) transfers assets to a trustee for management and distribution according to their wishes. Unlike wills, trusts can go into effect while an individual is still alive.

"The law fills the void if a person doesn't actually have a will or a trust in place, but very often, people want to have the ability to have some say in what happens with their assets upon their passing," Rosas says. "Under a will or trust you have certain abilities to maybe even eliminate some of the people who would naturally be entitled to receive a share of an estate, like a child."

Simasko said that lay people often overestimate the weight of a will—while it's important, it is still susceptible to probate court. For this reason, Simasko highlights the need to designate beneficiaries across different assets to ensure a testator's desires are followed. Trusts, on the other hand, bypass probate.

Power of Attorney and Healthcare Directives

While trusts and wills ensure your wishes are followed after your death, power of attorney and healthcare directives ensure your wishes are followed while you're alive but unable to make decisions for yourself, such as if you are hospitalized or if your mental abilities decline.

"It's important when there are emergencies to be able to take actions in fairly short order," Rosas says. "Having those advanced directives in place ahead of time will facilitate that process and make it easier for everyone involved."

These directives also cover decisions around assets that cannot be overseen by trusts, including an IRA, 401(k), life insurance, utilities such as cable, pension checks, and health insurance, according to Simasko.

Beneficiary Designations

While wills and trusts are vital estate planning instruments, beneficiary designations can supersede them. Beneficiary designations often dictate the distribution of assets such as retirement accounts or life insurance policies.

Rosas notes that outdated designations can buck the wishes of the deceased. Take a 30-year-old man who names his two children as beneficiaries on a life insurance policy. If he subsequently has two more children but neglects to add them as beneficiaries, only the two named children will receive shares of the asset upon his death.

Or consider an individual who has named their spouse as the beneficiary of retirement benefits and who subsequently files for divorce. If the individual dies before changing their designations and the divorce is finalized, the soon-to-be ex-spouse will still receive those benefits.

"It's very important that you're cognizant of who you have named as your beneficiary designation," Rosas says, "and that you check it from time to time to make sure that it's still accurate and up to date and to make changes as needed."

A trust can also be named as a beneficiary of various accounts, which simplifies designations, as only the trust would need to be updated, Simasko said. This approach has drawbacks, however. The assets of a retirement account are subject to required minimum distributions (RMDs) that are calculated by the oldest beneficiary's life expectancy, removing the ability to maximize the deferral potential of the qualified plan's interest.

Asset Protection Strategies

Trusts for Asset Protection

Trusts can ensure that certain assets are distributed to designees, but they can also be utilized to shield those assets from future creditors and legal claims. However, only certain types of trusts have these protective attributes.

Revocable trusts, as the name suggests, can be changed at any time, but for that reason they cannot be used to protect assets from creditors or tax authorities. Since the assets remain fully accessible to the grantor, they are also susceptible to creditor claims and taxes. It should be noted that revocable trusts become irrevocable upon the grantor's death.

Trusts in which changes cannot be made are called, fittingly, irrevocable trusts. Typically, a grantor is not permitted to be a beneficiary of these trusts, meaning assets put into them will be shielded from creditors or legal claims that may arise in the future, Rosas says. (Of course, irrevocable trusts can't be used to avoid existing creditor or legal claims, as that would be a fraudulent conveyance.) An irrevocable trust is also a good mechanism to segregate the grantor's assets from the beneficiary, which protects those assets in certain situations, such as a divorce.

Irrevocable trusts can also be utilized to secure Medicaid benefits. Since the program for seniors limits the amount of money an individual can have, a grantor can elect to put funds in an irrevocable trust, meaning those funds are no longer in the individual's possession. This typically has to be done five years before Medicaid benefits are claimed.

Business Entities

Establishing an LLC (limited liability company) or corporation is a mechanism used to separate personal from business assets. For example, an individual who owns a construction company would create an LLC or corporation, along with distinct business bank accounts, in case they are sued or the business encounters legal or tax troubles. With this arrangement, only the business's assets would be susceptible to the claims. Likewise, the owner of rental

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properties should register those properties under an LLC to shield personal assets against any legal claims. LLCs and corporations aren't the be-all and end-all of protection, however. Business and home insurance, respectively, will play an important part in protecting the assets of the entities mentioned above.

Homestead Exemptions

Applicable in most states, the homestead exemption shields a primary residence from some creditors following the death of a homeowner's spouse. It also provides some property tax relief. Each state has its own limits and rules surrounding the homestead exemption.

Tax Considerations and Tax Strategies in Estate Planning

Estate and Gift Taxes

The federal estate tax applies to the recipient of the property of a deceased individual, and consists of an accounting of everything the decedent owns or has certain interests in at the date of death. According to the Internal Revenue Service (IRS), "A filing is required if the gross estate of the decedent, increased by the decedent's adjusted taxable gifts and specific gift tax exemption, is valued at more than the filing threshold for the year of the decedent's death." For 2025, that threshold is $13,990,000.

That's a level of wealth most people won't reach. But there's a solution if you do. "Let's say your estate is valued at $16 million," Simasko says. "It's a huge tax, so what you can do is give away a little bit each year to help reduce your estate."

This is where gift taxes come into play. The gift giver has to pay a tax on each gift that exceeds the limits set by the IRS. For 2025, that limit is $19,000. So, if an individual decides to give each of their children $19,000 in 2025, the annual exclusion applies to each gift.

Charitable Gifting

The passage of the Tax Cuts and Jobs Act in 2018, which bumped up the standard deduction taxpayers could claim, deflated the importance of charitable gifting in reducing an individual's tax burden, according to Simasko.

"Charitable giving is important for a philanthropic reason, but it's really not that beneficial like it was in the old days because of the tax laws that we have," he says.

However, there are certain instances where charitable giving may be advantageous. Take, for example, a New York-based estate that exceeds the estate tax limit by 5% and whose entirety would be susceptible to the full estate tax (unlike the federal estate tax in which only the excess over the limit would be taxed).

"If you're over by a few hundred thousand dollars, you might wind up paying a few hundred thousand plus in tax," Rosas says. "Because it's that weird little zone where that can apply, most people would rather not pay more tax if they can give the money away to a charity."

To accomplish this, attorneys establish a "Santa Clause" in a will or trust where a certain amount of funds will be distributed to charity upon the individual's death to avoid paying more estate tax.

Dynasty Trusts

Think of the historically wealthiest families in America—the Rockefellers or the Fords. To keep their wealth within the family from generation to generation, these families may establish a dynasty trust that allows them to pass on wealth without incurring estate or transfer taxes.

"The assets remain owned by the trust, not by the individuals," Rosas says. "As the beneficiaries change over time, as the generations go on and people die, the next generation is provided under the trust as the successor beneficiaries."

When Should You Start Estate Planning?

There are many mechanisms you can utilize to ensure your assets are passed on to your designated beneficiaries and ensure financial security for future generations. To do it in a thoughtful manner, you'll want to start planning as soon as you have assets you want to protect. After all, no one knows when they will die.

"There's a drop-dead date that you have to have it done by: the day before you drop dead," Simasko says. "You need all your medical and financial powers of attorney before you get sick. It's when you want it and when you need it. You want it now because you don't know when you're going to need it later."

What Are the Potential Risks of Not Having an Estate Plan?

When you are dead, you have no way to convey your wishes. Without an estate plan, you cannot guarantee that your assets will go to the people you want to receive them. Not having one can also lead to messy family situations, where children fight over money or property or ex-spouses try to claim a piece of an estate.

How Often Should an Estate Plan Be Reviewed and Updated?

Every five years is a good rule of thumb to review and update an estate plan, according to Simasko. It's also vital to update your plan after any big life changes, such as the birth of a child, a divorce, the death of a spouse or child, or the acquisition of a large asset.

What Are the Differences Between Revocable and Irrevocable Trusts?

As their names suggest, a revocable trust is one in which you can still make changes, while an irrevocable trust cannot be changed. Revocable trusts are better suited for younger individuals, whereas an elderly person concerned about their health or mental abilities may prefer to establish an irrevocable trust.

How Can Digital Assets Be Included in an Estate Plan?

Certain digital assets, such as bitcoin, typically don't allow for beneficiary designations. Instead, there should be a plan in place to get the recipients the necessary information (such as the private key for a wallet) in a timely manner. This could be via a letter of instruction.

Digital assets stored on a physical wallet or another kind of device can be stowed in a safety deposit box covered by a will or trust.

What Are the Legal Requirements for Setting Up a Power of Attorney?

Each state has different requirements, but in general it's a good idea to write out the power of attorney (templates can be found online), sign it, have it notarized, and then file it with the proper office.

The Bottom Line

There are many aspects of estate planning—including wills and trusts, powers of attorney and healthcare directives, and beneficiary designations—along with mechanisms to protect assets and reduce tax burdens. For anyone who has assets and wants those to be distributed according to their wishes, the best time to start estate planning is as soon as possible. Engage the services of an estate attorney and/or financial advisor to walk you through each step and ensure your assets are properly protected. With proper estate planning, you can leave your loved ones with a legacy rather than a big mess.