

Choosing Your Will and Estate Planning Attorney

This document is for general informational and educational purposes only and is not intended to offer legal advice. All actions and documents pertaining to estate planning should be reviewed by a lawyer in your jurisdiction to be sure they meet your needs and will be held valid by a court in the jurisdiction where you reside.

Why Do I Need Legal Advice for Wills and Estates?

Do-it-yourself “legal” documents and estate planning software can be found in office supply superstores and scores of websites. Some publications and advertisements lead you to believe that you can handle planning your estate either by yourself or with just one phone call plus a hefty fee to a slick attorney operating on the Internet. You may question whether you really do need an attorney to order your affairs.

Estate planning is the process of choosing among alternatives to ensure financial security during your life and to arrange for the well-being of heirs upon your death. To plan your estate yourself, you will need to study the law to such a degree that all documents articulate your end-of-life wishes in a way that is legally valid and also minimizes heirs’ tax implications. If you have

property in more than one state, and because different states may have different laws, your estate planning documents need to take your state of residence and the other states’ laws into account. As laws change, you will have to keep your documents up to date with any changes in the laws. In the final analysis, doing it yourself will keep you quite busy and may leave you not knowing for certain whether you have solved the end-of-life issues that you wish to address.

There are good reasons to get personal advice from a trusted and qualified attorney to prepare for the inevitable. Common misconceptions are that only wealthy or elderly people require an attorney to draw up wills, trusts, guardianship, healthcare advance directives, and powers of attorney. The fact is that estate planning is necessary for all people and that even relatively simple estates can be handled better, more quickly and sometimes with less tax liability when an attorney is consulted.

People of all ages and asset values need to create a plan that will take care of essential obligations in cases of disability, give guidance on critical personal medical choices, transfer property, and arrange for care of dependents according to their wishes and their family’s needs. Everyone who wishes that loved ones are cared for in the event that he or she is suddenly incapacitated

or deceased must plan their estate and have a written will.

What Kind of Legal Advice Do I Need?

You will need to examine for yourself whether the most basic advice is sufficient or whether you require specific advice on certain investments or property holdings, advice relating to guardianship of minor children or care for elderly or disabled dependents, or comprehensive planning services that will address a number of these specific concerns. Think about your situation. In addition to an attorney, for certain aspects of their estate planning process, many people use advisors such as bankers, accountants, insurance agents, stockbrokers, or financial planners.

Who you choose as an attorney will depend on what type of advice you want. Not all attorneys are created equal. You want someone who knows wills, trusts and estates, but an attorney who knows other fields as well can be an added benefit. For example, if the person who is planning his or her estate has extensive real estate holdings, the ideal lawyer should also know about real property law. Likewise, a person with plans for large or complex charitable gifts will want to seek an attorney who knows the tax implications and related laws. It can be helpful to have someone who knows enough about other relevant areas of law to ensure that all actions being taken and documents being put into place will ultimately work together without conflict.

What Kinds of Issues Do I Need to Consider?

Asset Distribution

A will is a legal document that allows you to determine how you want your assets to be distributed. Should you die without a proper and legal will in place, it is the responsibility of the state to distribute your property to your heirs according to that state's intestacy (when there is no will) laws. Intestacy laws might call for the distribution of your assets and property in a manner that is similar to what you had wished. Then again, they might not. Even if the state's decision making is in line with what you would have wanted, it may not sit well with

your survivors. Legal challenges to an estate from disgruntled heirs after your death are far more likely if you have neglected to obtain legal counsel and failed to execute the essential formal documents. For those left behind, having no will or having an inadequate will can lead to enormous emotional distress and legal expense.

Asset Management for the Surviving Spouse and Others

There are strategies to manage assets that you leave to your spouse and/or others. Within a will, your attorney may suggest creating a trust as a way to manage your assets. A trust is an entity that is created to hold assets for the benefit of named persons. Establishing a trust may help reduce the tax burden of the heirs. You can set up a trust that provides for your surviving spouse and then upon their death is distributed to designated heirs. Trusts are especially useful for blended families and unmarried couples who may not have other legal means of distributing assets.

Guardianship of Dependents

A will can assist you if you have children under age 18 or children/relatives with special needs or limitations who depend on you to provide their care and manage their affairs. Within the will, you may nominate a capable and willing guardian (someone to care for dependents in your absence). Nominating a guardian can help prevent any disagreements between well-meaning relatives who might step forward to supervise and care for your dependents. If you pass on without appointing a guardian, a legal guardian is appointed by the court to manage the affairs and assert the rights of another person who is unable to do so given their age (as is the case for minor children under age 18), special needs (severe disability or illness), or cognitive status (the person is deemed incompetent, or unable to make important decisions regarding their health or care).

Charitable Giving

There are many ways to give a charitable gift through your estate. When considering a charitable gift as part of your estate planning, you will need legal and tax guidance to ensure that your gift is shared, accepted, and allocated as you intend. Charitable gifts may include endowment,

stock, property, life insurance, retirement accounts, and trusts, to name a few. Consulting with an attorney will ensure that your individual situation and plans will maximize the potential of your intended gifts and allocations to beneficiaries.

Healthcare Decisions

Other important documentation that a lawyer can assist with is advance health care directives. These are the instructions on whether or not you want certain specific medical procedures. It is impossible to predict what might happen in life, but it is possible to communicate your wishes ahead of time for certain circumstances. No matter what your age or health status, it is conceivable that the unexpected could happen — an accident or injury, sudden illness, or incompetence — leaving you unable to communicate or make decisions about your own care. In light of this possibility, it is important to communicate your wishes ahead of time through advance health care directives.

Advance health care directives are set forth in a legal document called a Living Will. A Living Will identifies your preferences and assigns specific people to make decisions for you in the event you cannot decide or communicate so that your wishes can be honored and used as a guide for your care and treatment. In this document, you need to clearly state the kind of medical care you would like to receive or refuse. A Living Will allows you to document your wishes to family, friends, and healthcare professionals so that medical decisions can be made based on your own preferences and can help to avoid confusion and reduce emotional distress that might otherwise be felt by those making choices on your behalf.

It is important to know that if you ARE capable of making decisions and communicating them during medical emergencies, your advance health care directive is NOT activated and you will be able to make decisions that may differ from what you have documented in your Living Will. For example, if competent and communicating, you may choose to have a feeding tube inserted or consent to other types of medical intervention even if you previously documented in your Living Will that you would not want that treatment. The Living Will speaks for you only when you cannot.

Powers of Attorney

A Power of Attorney is a legal document that designates someone to assist with specified aspects of your life for a certain defined time period when you are unable to handle them. A Limited Power of Attorney specifies a single action or limited range of actions that another person is authorized to undertake on your behalf (ONLY medical decisions or ONLY financial decisions for example). A General Power of Attorney authorizes another to perform any actions pertaining to your personal matters with few exceptions. Powers of attorney can be set forth either as durable (permanent) or springing (only when in a period of inability does another named person handle your affairs and, when you are capable, control reverts back to you).

It is important to identify someone you trust to hold your Power of Attorney. Typically it can be a spouse, but it doesn't have to be. The person you designate can be changed by updating this document over time as circumstances change. For example, you may assign powers of attorney to your spouse when you are younger, but, as you age, you may identify a trusted child or even your attorney.

How Do I Shop for Legal Advice?

Choosing your will and estate planning attorney can take a little time and effort. People often procrastinate in shopping for legal advice because dying or becoming disabled is something we generally prefer to not think about. Lack of understanding about the estate planning process and fear about how complicated or expensive it may be are other reasons people put off planning. It is important to remind ourselves how devastating for our families not planning can be — financially, legally, and emotionally — and that getting started is the better choice.

When trying to find the right legal help, compare services and costs. A good attorney will have the right credentials, be experienced, and be trustworthy. A good attorney will educate you, help you navigate through the process, and will work within your budget to provide as much assistance as possible at an affordable charge. Obviously, you want to choose an attorney who has a law degree, has passed the bar exam, and is licensed in your state.

Some Delaware attorneys choose to be recognized as having special knowledge and experience by becoming “certified specialists” in certain fields of law. Delaware lawyers are permitted to communicate information regarding specialty certification when the program has been accredited by the American Bar Association. A Delaware specialist designation in the area of wills and estates will indicate some legitimate specialty training, but may not guarantee competence.

Unlike Delaware, The Maryland Rules of Professional Conduct prohibits lawyers from holding themselves out as “specialists,” so you should not expect to see this kind of advertising from a Maryland lawyer. If you do hear or see this language from a Maryland attorney, you should be wary.

The bottom line when shopping for legal advice is that the best person to help you prepare for your future is a professional who is knowledgeable about major estate considerations, tax impacts of decisions, state and federal laws, and the relationship between financial planning, healthcare planning, and estate planning. A good lawyer will educate you and will walk you through the decisions you need to make and the consequences of each of the alternatives presented.

Where Do I Find Wills and Estates Attorneys?

Perhaps the easiest way to locate an attorney is to look in the phone book under “lawyers” or “attorneys.” This will give you an idea of the availability and location of advisors. You may find some of their areas of practice concentration

listed and it may indicate that they perform estate planning and the writing of wills.

Since phone listings tell you little about the real people or their skills, ask trusted friends and neighbors if they have heard of the attorneys and what experiences they have. Especially if you have business, farm or property interests, make it a point to talk to other business or farm owners and ask them about their contacts and experiences.

State Bar Associations provide a Lawyer Referral Service or Lawyer Referral and Information Service. The Lawyer Referral Service refers you to a pre-screened private attorney with whom you can meet or speak to by telephone to discuss your particular situation. This attorney will consult with you for thirty to forty minutes for a fee of \$35–\$40. After the initial consultation, you may choose to hire that same attorney for further work on your behalf, or you may decide to seek a different attorney. The Delaware and Maryland Bar Associations’ lawyer referral contacts are listed in the box below.

How Much Will it Cost?

An individual attorney and the client make arrangements between themselves regarding payment of attorney’s fees. Attorneys generally bill in one of two ways. They may have a flat fee for each document prepared. In this case, you’ll want to know how much it will cost for each document you think you will need.

Alternatively, some attorneys charge by the hour. There may be a charge for the attorney’s time and there may be separate charges for their paralegal assistant’s time (usually much less expensive). During your initial visit you will want

Lawyer Referral Services in Delaware and Maryland

In Delaware, contact:

Delaware State Bar Association
Lawyer Referral Service

Areas served:

New Castle, Kent, and Sussex Counties

Phone:

302-478-8850 or 800-773-0606 (in-state only)

Website:

http://www.dvls.org/LRS_Public.htm

In Maryland, contact:

Maryland State Bar Association
Member Service Center

They will direct you to your local/county
Lawyer Referral Service

Phone:

410-685-7878 or 800-492-1964

Website:

<http://www.msba.org/public/referral.htm>

to ask for the breakdown in time charges between each of these professionals and an estimate, in writing, of the total time it will take for the attorney to complete your estate plan, including the hourly breakdown of each aspect in the planning process.

A “free consultation” may not be absent of charge. Find out in advance how much time is allowed at no charge and, if you go over the time limit, what the fee rates and total estimated cost will be.

Special programs for older and lower income clients exist in both Delaware and in Maryland. The Delaware Volunteer Legal Services organization will provide free support for the development of wills, guardianship, powers of attorney, and advance directives for individuals who are 60 years and older or terminally ill. There is an income eligibility requirement. To find out more about this program, ask when you contact the referral service or go to http://www.dvls.org/DVLS_services.htm.

For eligible older Maryland residents, there may be discounted service for a person who is 60 years or older through the Maryland Sixty Plus Program. This program matches a moderate income person age 60 and older with an attorney in private practice who will handle certain types of cases for a low fee. With this program, the first meeting with the attorney is free and then, if you decide to have the attorney represent you, the services are provided at a reduced cost. You must meet certain income and asset guidelines for the Maryland Sixty Plus Program. Information on the program eligibility guidelines is available at http://www.msba.org/sec_comm/sections/elder/public_serv.htm.

Regardless of how an attorney charges, you have a right to ask to be provided a copy of the fee policy and the legal services agreement or retainer agreement (a document that is usually signed by you when an arrangement is made for payment or when a deposit is paid in advance for services). Have all documents relating to fees explained to you and be sure that you fully understand the fee policy and agreement before you decide whether this is the lawyer for you.

How Do I Start My Estate Planning Process?

Though thinking about the inevitable can be difficult, beginning discussions with your

loved ones and a legal advisor benefits you by identifying issues and bringing everyone into a conversation about financial stability now and in the event of loss.

Your next step is to choose and meet with your attorney and other advisors. Take notes in your meetings, gather the needed information and provide it to your attorney so that the documents can be created. Be sure to follow through in a timely manner to ensure that you and your family have end-of-life documents in order. Inform your legal advisor of any need for speed.

Where appropriate, share the documents with family members. Inform family members of your choices for guardians, advance healthcare directives, and powers of attorney. To help keep the family harmonious, schedule time with family members to discuss your decisions and why. The research suggests that the more family members are on the same page, the better family members handle times of crisis and transition.

A valuable document to consider writing is a letter of last instructions—separate from the will—to your lawyer, your executor or your family. This letter, to be opened upon your death, can provide additional information, such as where important papers are located; funeral and burial instructions; an inventory of your savings and investments; instructions and directions concerning your business; and a listing of various advisors, their addresses and phone numbers. A letter of last instructions is not a substitute for a will, but it enables the survivors to handle financial affairs in an orderly manner, get a clearer picture of their situation, and remind them where important papers are located.

It is never too late to make your end-of-life plans and it is important to not treat estate planning like a once-and-done task. Estate planning is ideally an ongoing process of evaluating the use and distribution of assets to accomplish personal and financial objectives while living and after one’s passing. Estate plans should be reviewed annually and adjusted for births, deaths, marital changes, health issues, and other circumstances that indicate a potential shift. Though it takes time, organization and some money, it is well worth the effort for your own and your family members’ peace of mind.

Additional Information Available Online

eXtension Financial Security for All Community of Practice has compiled in-depth information to educate you on specific financial issues and strategies including estate planning at http://www.extension.org/pages/Financial_Security:_Estate_Planning and many other topics in managing personal finances at http://www.extension.org/pages/Financial_Security_for_All_Community_Page.

The American Bar Association publishes helpful information on estate planning, probate and administration of estates, transfer taxes and tax planning for your assets, and healthcare and disability planning. See the 'Estate Planning Frequently Asked Questions' page available at <http://www.abanet.org/rppt/public/home.html>.

Maryland State Bar Association, Inc., publishes a 'Public Resources' page at <http://www.msba.org/public/index.htm>.

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