

ESTATE PLANNING BASICS

**Peace of mind for you.
Security for them.**

Traci O'Neal Ellis, ESQ

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Introduction

Why Every Adult Needs an Estate Plan

Depending on which source you review, only 26% to 33% of American adults have any type of estate plan in place. In many ways, it's understandable. After all, just *thinking about* our mortality, let alone *actually planning* for it, can be unpleasant and we want to avoid it. But, consider this: as responsible adults, one of the most loving things we can do for our loved ones, is to plan for their financial future and well-being, and having an estate plan is part of that. Additionally, many people think estate planning is only for the wealthy, but in reality, it's for everyone. If you are an adult or own property, or have children, or simply want to have a say in what happens to your assets and healthcare decisions, you need an estate plan. Without one, state laws (and your family) will dictate how your affairs are handled, which may not align with your wishes.

As responsible adults, one of the most loving things we can do for our loved ones, is to plan for their financial future and well-being.

1. Why Hire an Attorney Instead of Buying a Will Online?

When it comes to estate planning, many people are tempted to use inexpensive online document preparation services to draft their wills, trusts, and powers of attorney. While these services may appear cost-effective upfront, they often fail to provide the personalized guidance and legal expertise necessary to ensure that an estate plan is comprehensive, legally sound, and aligned with state-specific laws. Estate planning is not just about filling in blanks on a form—it involves making critical decisions that can impact your loved ones for generations. An experienced estate planning attorney brings knowledge, strategy, and foresight that a document preparation service simply cannot provide.

One of the biggest risks of using a document preparation service is that it does not offer legal advice or review your unique situation. Estate laws vary significantly from state to state, and a form that appears valid may not meet the specific legal requirements of your jurisdiction. Furthermore, these services do not take into account complex family dynamics, potential tax implications, or special circumstances such as blended families, business ownership, or beneficiaries with special needs. A qualified attorney will assess your individual situation, identify potential pitfalls, and customize your estate plan to ensure your wishes are properly executed without unnecessary delays or legal challenges.

Additionally, improperly drafted or incomplete estate documents can lead to costly and time-consuming probate disputes. Errors in wording, missing signatures, or failure to consider contingencies can render a will or trust invalid, leaving loved ones to navigate a complicated and stressful legal battle. By working with an experienced attorney, you gain the assurance that your documents are legally enforceable and strategically designed to minimize taxes, avoid probate complications, and protect your heirs. In the long run, investing in professional legal counsel can save your family significant money, time, and emotional distress, providing peace of mind that your legacy is secure.

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3. Why Do I Need an Estate Plan If I Don't Own Real Estate or Have Children?

Many people believe that estate planning is only for those who own property or have children, but that's a common misconception. An estate plan is about much more than just distributing assets—it ensures that your wishes are carried out in case of incapacity or death, protects your financial and healthcare decisions, and can make things easier for your loved ones. Even if you don't own real estate or have dependents, having a plan in place helps avoid unnecessary legal complications and ensures that your affairs are handled according to your preferences. One crucial reason to have an estate plan is to designate who will manage your finances and healthcare decisions if you become incapacitated. A durable power of attorney allows someone you trust to handle your financial affairs, such as paying bills or managing accounts, while an advance healthcare directive ensures your medical wishes are followed if you are unable to communicate them. Without these documents, the court may appoint someone to make these decisions for you, and that person may not be who you would have chosen. Additionally, estate planning allows you to decide how your assets—such as bank accounts, retirement funds, life insurance, or personal belongings—will be distributed. Without a will or beneficiary designations in place, state intestacy laws determine where your assets go, which may not align with your preferences. You can also use estate planning to support causes you care about by leaving charitable donations or ensuring sentimental items go to specific individuals. Even if your estate is modest, having a plan in place provides peace of mind that your affairs will be handled smoothly and according to your wishes.

Let's look at some practical examples:

Scenario 1: You are a single, working adult with no children. You own a home (well, you have a mortgage) and have built up equity in the home over and above your down payment. If you pass away, do you want your divorced parents fighting over the home? Do you want your siblings fighting over it? Would you rather it be sold and the net profit held in trust for your nieces and

nephews for college or to start a business or to buy their own home? A thoughtful estate plan can accomplish your goals.

Scenario 2: You are single parent and unfortunately your ex is just not that fiscally responsible. Do you want guardianship to default to your ex? Perhaps it is ok for the ex to have custody of your minor child together, but not ok to manage the life insurance that comes along with the child. Your wish won't automatically happen. You have to plan ahead to ensure your wishes are known and enforceable.

Scenario 3: You are a married couple with minor children. Perhaps your estate plan is straightforward, or so you think. In the event one of you dies, you each are leaving everything to the surviving spouse. The surviving spouse will need to file the deceased spouse's will with the Probate Court and open a probate case, report assets and expenses, pay any debts of the deceased spouse and taxes before taking full control of the assets. In Georgia, that process can take six to nine months if everything is perfectly in order and there are no claims made against the estate. It's easy for it to take a year or more in those instances. And it's all public. That means anyone can go to the Clerk's office and view your file and see assets and liabilities and how the estate was distributed and to whom. And if you hire an attorney to handle the probate, the costs will escalate. Perhaps a better strategy is to pay a little more money up front and create trusts. That avoids the probate process altogether as your assets are owned by the trust and your private financial matters and asset distribution can be handled privately.

Scenario 4: You and your spouse both have children from prior marriages. You must be very thoughtful about your estate planning. DIYers who do their own estate planning off a cheap DIY website risk accidentally disinherit your own biological children. Need I say more?

Scenario 5: You suddenly become ill and are unable to handle your financial affairs or make your own medical decisions. Now your family or friends are left scrambling trying to keep you from financial catastrophe (keeping your bills paid, making important healthcare decisions, deciding which surgeries, procedures or life-saving treatments to approve or not). The right powers of attorney can protect you even when you are incapacitated.

In other words, a well-prepared estate plan gives you control, protects your family, and helps avoid unnecessary legal hassles and expenses, and family discord, at a time when your loved ones are already possibly grieving. It ensures your assets go where you want them to, allows someone you trust to make healthcare decisions if you're unable to, and provides peace of mind knowing your loved ones are cared for.

4. What Are the Most Important Parts of a Will?

A will is a fundamental estate planning document that outlines how a person's assets and affairs should be handled after their passing. While wills can be customized to fit individual needs, they generally contain several common elements to ensure clarity, legality, and enforceability. These elements include the testator's information, an appointment of an executor, distribution of assets, guardianship provisions, and instructions for handling debts and taxes.

The first essential component of a will is the identification of the testator, the person creating the will (that's YOU!). This section includes your full legal name, address, and a declaration stating that you are of sound mind and legally competent to make a will. Additionally, you must clearly indicate that this document is your last will and testament, revoking any prior wills or codicils. This ensures that there is no confusion or competing documents after your death.

Another crucial element is the appointment of an executor, the individual or entity responsible for carrying out your wishes. The executor ensures that assets are distributed according to the will, debts and taxes are paid, and legal obligations are fulfilled. You may also name an alternate executor in case the primary executor is unable or unwilling to serve. Choosing a trustworthy and competent executor is essential to the smooth administration of the estate. Do not make this choice lightly.

A will also specifies how your assets should be distributed among beneficiaries. This section outlines who will inherit specific assets, such as real estate, financial accounts, personal property, and other valuables. If there are multiple beneficiaries, the will should clearly indicate the percentage or portion each person will receive. Without clear instructions, disputes may arise, potentially leading to lengthy legal battles among heirs.

In addition to asset distribution, a will often includes provisions for guardianship if you have minor children. This allows you to designate a trusted individual to care for your children in the event of your death. Without such provisions, the court may appoint a guardian, which may not align with your wishes. Similarly, a will can include instructions for handling outstanding debts, funeral arrangements, and tax obligations, ensuring that the estate is properly settled in accordance with the law.

5. Is the Executor Necessary?

An executor plays a crucial role in ensuring that a person's final wishes, as outlined in their will, are carried out efficiently and legally. When an individual passes away, their estate—comprising assets, debts, and personal belongings—must be managed and distributed according to their will. The executor is responsible for overseeing this process, which includes filing necessary legal documents, paying off outstanding debts and taxes, and ensuring that beneficiaries receive their designated inheritances. Without a responsible and competent executor, the probate process can become unnecessarily complicated, delayed, or even contested. Choosing the right executor is essential for a smooth transition of assets and to avoid disputes among heirs.

Beyond asset distribution, an executor is also responsible for handling various administrative tasks, such as notifying financial institutions, canceling subscriptions, and managing any remaining business affairs of the deceased. This role requires someone who is organized, detail-oriented, and able to navigate legal and financial matters. The executor may also need to hire professionals, such as attorneys or accountants, to assist with complex tax issues or probate filings. If the estate is large or involves multiple beneficiaries, the executor's responsibilities can be even more demanding. A well-chosen executor can provide peace of mind to the deceased's loved ones, ensuring that all matters are handled fairly and in accordance with the law.

Selecting an executor should not be done lightly. Many people choose a trusted family member or close friend, but in cases of complex estates, a professional executor—such as an attorney or financial institution—may be a better option. Executors have a fiduciary duty to act in the best interests of the estate and its beneficiaries, meaning they must be honest, impartial, and committed to carrying out their responsibilities diligently. Failing to appoint a capable executor can result in delays, mismanagement of assets, or even legal battles among heirs. By carefully selecting the right person for the job, individuals can ensure that their estate is managed effectively, and their legacy is preserved as intended.

6. Without a Will, Do All My Assets Go Through Probate?

No. Some of your assets are exempt from the probate process. Here are some examples:

- Bank accounts with a Payable on Death (POD) designation.
- Retirement Plans and IRAs that have beneficiaries designated
- Life Insurance Plans that have beneficiaries designated
- Property that is jointly titled (i.e. real estate)

Additionally, “small estates” in some states can avoid the probate process by completing a Small Estate Affidavit. In Georgia, if a person dies with no will (“intestate”), without naming an executor, no outstanding debts, the estate’s value does not exceed \$10,000, and the heirs all agree on how to divide the estate, then certain surviving heirs (spouse, children, parents, siblings)

can file the small estate affidavit in the Probate Court in the county of the deceased person’s residency. Also, if the estate has real estate, that property will have to go through the probate process. In Illinois, the deceased person’s estate has to be below \$100,000 (see how vastly different laws on the same topic can be?!), cannot include real estate, all debts must be paid, and there can be no known disputes between heirs.

Whether in Georgia or Illinois, once you have the affidavit, you can present it as necessary to take possession of and distribute the deceased’s property (e.g., bank, corporation, person, etc), who must give the property as stated in the affidavit.

As with most things, there are caveats and additional scenarios to be considered in the case of an intestate death (e.g., Spouse’s Years’s Support, intestate succession laws, etc.). Consulting with an experienced probate attorney is important.

7. What Does a Trustee of a Trust Do?

Like an executor for a Will, a Trustee of a Trust similarly is responsible for locating and inventorying the trustor's assets. The trustor, or person who created the Trust, left detailed instructions in the Trust document as to how the assets were to be managed and distributed for the benefit of the heirs. Most importantly, the Trustee is to ensure that the administration of the Trust complies with all applicable laws and regulations. Additional duties include:

- Protecting the Trust's assets from loss, damage or misuse
- Keeping accurate records of all of the income, expenses and distributions of the Trust
- Filing tax returns
- Making distributions from the principal and income as required or allowed by the Trust
- Complying with the terms of the Trust
- Acting impartially and in the best interests of the beneficiaries
- Accounting to the beneficiaries of the Trust

As with naming an Executor of a Will, naming the Trustee of a Trust should be carefully considered. The person must be mature, trustworthy and responsible. And willing to serve as the Trustee. While people may consider it an honor to be asked to be the Trustee of a loved one's trust, it is a big responsibility. The Trustee can be held personally liable for failure to meet the duties, especially failure to act to the detriment of the Trust. And of course, the Trustee (and Executor) can be criminally liable if they steal money from the Trust. The Trustee cannot borrow money from the Trust without the written permission of all the Trust beneficiaries.

8. What is a “Durable” or “Limited” Power of Attorney?

A Power of Attorney (POA) is a legal document that grants someone (the "agent" or "attorney-in-fact") the authority to act on behalf of another person (the "principal"). The distinction between a General Durable Power of Attorney and a Limited Durable Power of Attorney lies in the scope of authority granted. A General Durable POA gives the agent broad powers to handle financial and legal affairs, including managing bank accounts, paying bills, handling real estate transactions and making investment decisions. This type of POA is often used in long-term planning, ensuring that an individual's affairs continue smoothly if they become incapacitated. In all cases, POAs become invalid upon the grantor's death. At that point, the Will or Trust governs.

A Limited Durable Power of Attorney, on the other hand, grants authority only for specific actions or for a defined period. For example, a principal may execute a Limited POA that allows an agent to sell a piece of property on their behalf but does not grant authority over other financial matters. This type of POA is useful for situations where an individual needs assistance with a particular transaction but does not want to give full control over all their financial affairs. The term "durable" in a POA means that the document remains in effect even if the principal becomes mentally or physically incapacitated. Without durability, a POA would automatically terminate if the principal were to become unable to make decisions, defeating its purpose in estate planning and elder care. A Durable POA ensures continuity in decision-making, which is crucial for managing finances and protecting assets in cases of illness or cognitive decline. A poorly drafted POA can create confusion and legal complications. Ambiguous language that does not clearly define the agent's powers can lead to disputes or rejection by banks and financial institutions. If a POA lacks clarity on when it becomes effective or how incapacity is determined, it may not be accepted when needed. Additionally, a document that fails to outline the agent's responsibilities and limitations can result in misuse or abuse of power.

A well-drafted POA should include specific language detailing the powers granted, the effective date, and conditions for termination. It should also clearly define how incapacity is determined—whether by a physician’s certification or another method—to ensure smooth enforcement. Furthermore, it should outline the agent’s fiduciary duties, emphasizing their responsibility to act in the principal’s best interest. By ensuring clarity and legal precision, a properly structured POA provides peace of mind and safeguards the principal’s financial and personal affairs.

9. What is a Living Will? Is it the Same as a Healthcare POA?

A Living Will, also known as an Advance Healthcare Directive (e.g. in Georgia) or Healthcare Power of Attorney (e.g. in Illinois), is a crucial component of any comprehensive estate plan. This legal document ensures that your healthcare preferences are honored if you become incapacitated and unable to communicate your wishes. Without a Living Will, loved ones and medical professionals may struggle to make decisions on your behalf, potentially leading to conflicts or choices that do not align with your values and beliefs.

One of the primary benefits of a Living Will is that it allows you to outline your preferences regarding life-sustaining treatments, such as mechanical ventilation, artificial nutrition, or resuscitation efforts. By specifying these decisions in advance, you relieve your family of the emotional burden of making difficult choices during a crisis. Instead of guessing what you would have wanted, they can rely on your clearly documented instructions, reducing stress and potential disagreements among family members.

In addition to documenting your medical wishes, a Living Will often designates a healthcare proxy or medical power of attorney—a trusted individual who can make healthcare decisions on your behalf if you are unable to do so. This person, often a close family member or friend, acts as your advocate, ensuring that doctors and medical staff follow your directives. Choosing the right healthcare proxy is essential, as they will need to make potentially life-altering decisions in high-pressure situations.

Ultimately, having a Living Will provides peace of mind not only for you but also for your loved ones. It ensures that your healthcare preferences are respected, minimizes family conflicts, and allows for a smoother decision-making process during medical emergencies. By taking the time to create this document, you maintain control over your medical care and ease the burden on your family during difficult times.

10. What's Included in a Basic Estate Plan?

A basic estate plan typically consists of the following key documents:

1. Last Will and Testament (or Trust)

- A will outlines how your assets should be distributed after your death. It also allows you to name a guardian for minor children.
- A trust is a legal entity that holds your assets and allows for more control over their distribution, helping to avoid probate and minimize estate taxes.
- Choosing between a will and a trust depends on your financial situation and goals.

2. Healthcare Power of Attorney (AKA “Living Will”)

- This document allows you to designate someone to make medical decisions on your behalf if you become unable to do so.
- It ensures that your healthcare wishes are respected and prevents family disputes over medical treatment.

3. Durable Financial/General Power of Attorney

- This document allows a trusted person to handle your financial affairs, such as paying bills, managing investments, and making other financial decisions if you become incapacitated. Without this, your family may have to go through a lengthy court process to gain control of your finances.

4. Power of Attorney for Young Adults

Once a child turns 18, parents no longer have the legal authority to make medical or financial decisions for them. A power of attorney ensures parents can step in during an emergency, such as a medical crisis while their child is away at college.

11. Why These Documents Matter

- 1. Avoid Probate Hassles** – A will or trust ensures your assets are distributed according to your wishes without unnecessary delays.
- 2. Protect Your Family** – Designating guardians for minor children and ensuring financial stability for loved ones is essential.
- 3. Maintain Control Over Medical Decisions** – A healthcare POA ensures the person you trust makes important medical decisions if you are unable to.
- 4. Ensure Financial Stability** – A financial POA prevents bills from going unpaid and assets from being mismanaged if you are incapacitated.
- 5. Help Young Adults Stay Protected** – A POA for young adults allows parents to assist in case of emergencies.

12. Estate Planning Costs

Estate planning is an investment in your future and your family's security. Attorney Traci O'Neal Ellis offers estate planning packages at different fees so that you have a choice of what you pay based on the services you value most.

These prices ensure you receive expert legal guidance and personalized documents that reflect your unique needs and goals.

Conclusion: Secure Your Future Today

If 26% to 67% of American adults have no estate plan, then as many as 74% of adults are at risk of financial and familial disorder and possibly chaos. Don't let that be you. Estate planning is not just about documents—it's about peace of mind. It ensures that your wishes are honored, your family is protected, and your assets are managed responsibly.

Don't leave your future to chance. Take the first step in securing your legacy today.

Contact Me:

Email: traci@traciellis.com

Phone: 404-499-3792

I look forward to helping you plan for the future with confidence and ease.

About Traci O'Neal Ellis, Attorney at Law

I have been a licensed attorney for over 30 years, practicing in both Georgia and Illinois. My passion is helping individuals and families create estate plans that provide security and peace of mind. I believe in building relationships with my clients, not just drafting documents. When you work with me, you're not just another case—you're a valued client whom I am committed to guiding every step of the way.

Let's work together to create a plan that provides peace for you and protection protects your loved ones.

I can't wait to meet you!