# Why Most People Need an Estate Plan

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Thanks to the $5 million federal estate tax exemption for those who die in 2011 or 2012, most folks are not exposed to the federal estate tax right now. However, if you have some assets (maybe just a car and some nice furniture) or minor children, you still need an estate plan--even if taxes are not an issue. Here's the scoop.

## Why You Need a Will or Living Trust Document

If you die intestate (without a will), the laws of your state determine what happens to your assets and your minor children. So unless you have an inordinate amount of faith in your beloved state legislature, you need a written will to make your wishes known.

In addition to drafting a will, you may also want to set up a living trust in order to avoid probate.

For simple wills, good do-it-yourself software is readily available.

I think you should hire an attorney to draft a living trust document, and you don't have to be "rich" to need one.

## The Will

The main purposes of a will are to name a guardian for your minor children (if any), name an executor for your estate, and specify which beneficiaries (including charities) should get which assets.

The guardian's job is to take care of your kids until they reach adulthood (age 18 or 21 in most states).

The executor's job is to pay your estate's bills, pay any taxes due, and deliver what's left to your intended heirs and charitable beneficiaries.

Remember: if you die without a valid will, state law generally controls what happens to your kids and your stuff. Not good!

## The Living Trust

Another basic estate planning goal is to avoid probate. Probate is a court-supervised legal process intended to make sure a deceased person's assets are properly distributed. Probate typically means legal fees and red tape. Also, if your estate goes through probate, your financial affairs become public information. These are things to be avoided when possible. That's where the living trust comes in. Here's how it works.

You establish the living trust and then transfer legal ownership of certain assets (such as your home, your cars, your antique furniture, and your coin collection) to the trust.

In the trust document, you name a trustee to be in charge of the trust's assets after you die, and you specify which beneficiaries will get which assets from the trust.

The trustee could be your CPA or attorney, a financial institution, or a trusted friend or relative.

Because a living trust is revocable, you can change its terms at any time, or even unwind it completely, as long as you are alive and legally competent.

For income-tax purposes, the existence of the living trust is completely ignored as long as you are alive. As far as the IRS is concerned, you still personally own the assets in the trust. So you continue to report on your Form 1040 the income generated by the trust's assets and any deductions related to those assets (such as mortgage interest on your home).

For state-law purposes, however, the living trust is not ignored. Done properly it avoids probate.

## Wills and Living Trusts Are Not Cure-Alls

The benefits of a will or living trust are obvious. However, you won't get the expected advantages without minding the details.

* If you are married, you and your spouse should have separate, but compatible, wills or living trusts. That's because you never know who will die first.

* Your will or living trust will not deliver the expected advantages unless you make it compatible with your beneficiary designations and the manner in which your assets are legally owned. For example, when you fill out forms to designate beneficiaries for your life insurance policies, retirement accounts, and brokerage firm accounts, the named beneficiaries will automatically receive the money upon your death without having to go through probate; ditto for bank accounts if you name a payable-on-death beneficiary. It makes no difference if your will or living trust document specifies to the contrary. So keep your beneficiary designations current to make sure the money goes where you intend it to go.

* When you co-own real estate jointly with right of survivorship, the other co-owner(s) will automatically inherit your share. It makes no difference if your will or living trust document says otherwise.

* If you set up a living trust, you must transfer legal ownership of the assets for which you wish to avoid probate to the trust in order for it to perform its probate-avoidance magic. Many people fail to follow through by actually transferring ownership, and the probate-avoidance advantage is lost.

## Your Plan Is a Moving Target

Things change. You may acquire new assets, win the lottery, lose relatives to death, disown relatives, take them back, and gain children or grandchildren. Any of these events could require changes in your estate plan. In addition, the federal estate tax rules have been wildly unpredictable in recent years, and that trend may continue. For all these reasons, you should review your estate plan at least annually and update it as needed. Now is a good time to review your plan or to set one up if you don't have one.