

# 8 Things You Need for an Estate Plan at Any Age

Whether you're in your 20s or 60s, estate planning will give you control over financial and medical decisions.

Starting when you're 18 and changing as you progress through life, be sure to review your estate plans throughout your life.(GETTY IMAGES)

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Estate planning isn't just for [rich people](#); it's an opportunity for people of any age to control who will inherit their money and property, and to decide who can make medical and financial decisions on their behalf if they're unable to do so themselves. You need to make a lot of estate-planning decisions when you get older, but even young people just starting out should have some key documents to make their wishes known if anything happens to them. And the coronavirus pandemic is making more people realize the importance of being prepared for the unexpected at any age.

"The pandemic has heightened public awareness of how important it is to think these things through," says Bernard A. Krooks, founding partner of the law firm Littman Krooks LLP in New York City. "This gives you the ability to control who makes these decisions – not only with the documents, but also talking to the person you give the authority to about your wishes. If something happens, you can save your family a lot of heartache."

Your estate-planning needs change throughout your life – starting when you're 18 and legally an adult, then making benefits decisions at your first job, getting married and having kids, accumulating more assets through time, and preparing for the next generation to inherit your estate. And you should also have some of these legal documents if your [aging parents need more help making financial and health care decisions](#) as they get older. It's important to consider the following estate-planning moves at any age:

- Up-to-date beneficiary designations.
- Health care proxy.
- A living will.
- Durable power of attorney.
- A will.
- Guardian for your children.
- A trust for extra control.
- A plan for long-term care.

## **Up-to-Date Beneficiary Designations**

Even if you're just getting started in your career, you'll need to name a beneficiary for your 401(k) and any life insurance benefits at work. You may name your parents if you aren't married and nobody is depending on your financially, but be sure to update the beneficiary designations as your life changes – especially if you get married or divorced.

"It's not something you put in the drawer and not look at, but a lot of people forget about the beneficiary designations," says Krooks. "A lot of people will sign up for their 401(k) before they're married and they put their mother as their beneficiary and they never look at it again. Then 30 years later, they go to an estate-planning attorney and discover their mother has been their beneficiary all along."

It's easy to lose track of your beneficiary designations, especially if you have several retirement plans with former employers, but it's essential to keep them up to date. Your beneficiary designations determine who inherits those accounts or life insurance, even if your will says otherwise. Your parents could still inherit your retirement accounts after you get married if you haven't updated your beneficiary designations, or your former spouse could inherit the money if you don't update the designations after you get divorced.

You may also need to change your beneficiary designations as laws change. For example, the [SECURE Act](#) changed the rules for IRA beneficiaries starting in 2020. In the past, non-spouse beneficiaries could spread out required minimum distributions for the inherited accounts based on the IRS life expectancy tables for their age – so your children or grandchildren could have spread out their required withdrawals over 30 or 40 years or more and keep money growing in the tax-deferred accounts for decades, a strategy called a "stretch IRA." Under the new law, non-spouse beneficiaries have to withdraw all of the money from the inherited IRAs (and pay taxes on the withdrawals)

within 10 years. You may want to reconsider your beneficiary designations with these new rules in mind.

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Inventory all of your retirement plans and insurance policies and make sure your beneficiary designations are up to date every few years and especially if you have life changes – such as if you get married or divorced, if you have children or they turn 18, if you have grandkids, if you want to leave some of your accounts to charity or if any of your beneficiaries die.

## **Health Care Proxy**

This document allows someone else to make health care decisions on your behalf if you're unable to do so yourself. It can help to have a [health care proxy](#) (also called a medical power of attorney) even as young as age 18. "Once someone turns 18, they become a legal adult, and the parents don't have the right to make medical decisions for them. It's unlikely that a young person becomes incapacitated, but it happens," says Tracy A. Craig, chair of the trusts and estates practice group for Mirick O'Connell LLP in Worcester, Massachusetts. "It's pretty routine for a client to contact me and say my child is turning 18, and can you do a power of attorney and a health care proxy."

Some states are stricter than others. In Massachusetts, no one has rights to medical information or the right to make health care decisions for an adult who is incapacitated without a health care proxy or court-appointed guardian, says Harry Margolis, an estate planning and elder law attorney with Margolis & Bloom in Boston and author of "Get Your Ducks in a Row: The Baby Boomers Guide to Estate Planning." Some states do give these rights to close relatives and set the priority for who can make the decisions if you don't have a health care proxy. But if you want to be the one to decide who has these rights, it's best to have the document. Margolis also recommends that everyone age 18 and older have a HIPAA authorization form specifying who can receive information from health care providers about your health and treatment.

It's also important to update this document through time – so your spouse can make medical decisions on your behalf rather than your parents after you

get married. If you have a partner but aren't married, it's particularly important to have a health care proxy giving your partner these legal rights. And aging parents can name adult children as their health care proxy if they want them to be able to make medical decisions on their behalf if they can't do so themselves.

## **A Living Will**

A [living will](#) is a legal document that lets you specify your wishes for end-of-life treatment – for example, whether or not you want to be resuscitated or intubated or want life-sustaining treatment. "It's important to have your wishes known so you don't have a big family fight," says Craig.

In some states, a living will and a medical power of attorney can be included together as your advance directives. It's important to make the person who is your health care proxy aware of your wishes in your living will, and to update the document as your wishes change through time.

## **Durable Power of Attorney**

A durable power of attorney lets someone make financial decisions on your behalf. A power of attorney can give adult children legal authority to help their aging parents with their finances – without one, they may not be able to work with the bank, investment firms or other financial institutions or make financial decisions. But the form can also help anyone age 18 or older if they need someone else to help manage their finances in an emergency, whether their parents, spouse, siblings, partner or other trusted person.

"Every adult needs a durable power of attorney for your legal and financial decisions," says Craig. "If you become incapacitated and you don't have a durable power of attorney, nobody has the right to manage your affairs. When you have someone who doesn't have a power of attorney and something bad does happen, it's already traumatic, and when you can't do the things you need to do for that person, it makes it so much worse." Without a power of attorney, you may need to go to court to have someone appointed for conservatorship to be able to manage the finances for a relative who didn't have a power of attorney.

If you are helping aging relatives, it's important to get the power of attorney documents completed before your parents are incapacitated – such as if they

have dementia that is worsening. Also find out if their bank and other financial institutions require separate power of attorney forms.

You need to choose your power of attorney carefully because they will have authority to make decisions with your money and could open the door to fraud. "You still maintain control over your assets; you're just adding someone else who can also have control over those assets," says Krooks. "It has to be somebody you trust and will do the right thing by you." It's important to talk with the person who has this power of attorney about your financial wishes.

## **A Will**

You may not need a will when you're just starting out and your only assets are your retirement savings, which will pass to your designated beneficiary whether or not you have a will. But you should consider a will when you get any property that doesn't have a beneficiary designation.

"If you own property and want to control the disposition of that property upon your death, you need a will regardless of whether you are married or have children," says Foster Friedman, an estate-planning attorney in Alexandria, Virginia. "You should review it every three years and upon any major life changes, such as births, deaths, marriages, changes in financial situation, and moving to a new state."

Without a will, assets that don't have beneficiary designations or certain types of joint ownership are passed to your heirs based on state intestacy law, which determines [who will inherit your estate](#). These rules vary by state, but generally your surviving spouse will get the largest share, followed by your children, if you have any. But if you want any of your assets to go to an unmarried partner or other person, or if you're been remarried and have a blended family, it's important to have a will that spells out who you want to inherit the property. It can also be a good idea to have a will if you buy a house with another person or if someone else depends on you for financial support. Your will also lets you specify who will administer your estate as executor or personal representative, says Margolis.

## **Guardian for Your Children**

When you have children, it's essential to update your will to [designate who will be the guardian](#) for them if both parents die. You can also include instructions for the guardian about your wishes for raising the children, and it's important

to talk with them beforehand. "If you're going to appoint somebody as the legal guardian of your kids, you should talk with them in advance to make sure they want to do it," says Krooks.

Choosing a guardian can be a difficult decision, especially if you have several family members who could raise your children – but it's better to think about it and choose someone now rather than have the state decide or your family fight over raising your child after you die. "Things to consider: values, competence, child-rearing skills and geography," says Friedman. Would your child have to move to a different area? If you choose the grandparents, would they continue to be the best choice as they get older? "Parents need to make their best available choice and then review it periodically," says Margolis. It's also a good idea to have a trust that provides money to help the guardian raise the children.

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## A Trust for Extra Control

You may not need a trust if most of your assets pass through beneficiary designations or joint ownership. But a trust can give you more control over who receives the money and when. There are several kinds of trusts. With a revocable living trust, you control the assets while you're alive. "While you're alive, the assets in the trust are yours and you can do whatever you want with them," says Craig. "It's changeable at any time when you're alive. As you amass more assets, the trust can change over time to account for all of these things."

The trust bypasses [probate](#), which is public and can be time-consuming and expensive in some states, and then the trust determines when your heirs receive the money and any special instructions – for example, you may want to keep assets for your grown children in the trust and managed by a trustee until they reach their 30s. And it's essential to have a trust if you want to leave an inheritance to minor children. "If you have minor children, you'll need a trust, because minor children are not able legally to hold property in most states," says Krooks.

If you have children, grandchildren or other heirs with special needs who are receiving government benefits such as Supplemental Security Income, it's important to leave money to a [special needs trust](#) rather than directly to the child. "If you have beneficiaries on government assistance, you don't want to

leave assets outright," says Craig. Otherwise, the inheritance could put them over the asset cutoff and make them ineligible for the government benefits.

You can also appoint a trustee who could manage the assets if you become incapacitated, which often gives you more control over the money than you would have with a durable power of attorney.

## **A Plan for Long-Term Care**

Estate-planning attorneys also emphasize how important it is to start thinking about your wishes for long-term care if you eventually need custodial care in a [nursing home](#), [assisted living facility](#) or your own home.

"As you get older, I believe it is very important to devise a plan for your long-term care, including who, where, how and manner in which it is paid, as opposed to relying upon your agent to devise a plan when there is a crisis," says Friedman.

Part of this planning is deciding where you'd like to receive care, and letting your children or other relatives know so they don't have to worry about your wishes if they need to find care for you in an emergency. "Some of my clients are very proactive," says Friedman. "They want to be in control of their later years and how that happens. They either have very strong feelings about staying in their own home or finding the correct retirement community. When they do research and take action and set these things up, it gets a good plan in place and it takes the burden off of children and also it prevents crisis." He says that some clients are also rethinking their options after seeing how hard some nursing homes were hit by COVID. Some may want to have more money available to have care in their own home and adapt their house to age in place.

The other part of preparing is figuring out how you may [pay for the cost of care](#), whether it's through your own savings, through [long-term care insurance](#), or through planning that may help you ultimately qualify for Medicaid. All of these steps take advance planning – you won't have as many options if you wait until you need the care.

"Once people are in their later 60s and early 70s, they're thinking about how do you pay for long-term care and how does your estate plan reflect that?" says Craig.

By Kimberly Lankford

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