

of attorney, living trusts and living wills, such forms may not be valid in your state or may not meet your specific needs. Completing such forms properly can be difficult, and you cannot correct your mistakes when you are dead or disabled.

The Role of the Elder Law Attorney

Elder Law attorneys who specialize in estate planning are trained and experienced with wills, trusts, powers of attorney, advance directives or living wills and the intricacies of estate and inheritance taxes. They may recommend accounting services, financial planners or insurance purchases, but they do not earn their fees by selling such products. As a result, you are more likely to get thorough and unbiased advice from a qualified Elder Law attorney.

Many Elder Law attorneys have developed special expertise in estate and disability planning and have obtained the specialized knowledge and experience to provide clients with a complete plan for caring for yourself or a loved one, transfer of assets and the carrying out of a client's wishes. In addition, Elder Law attorneys are sensitive to the special needs of elderly clients and their families. Be certain to assure yourself that the attorney you choose has such experience and training.

Attorneys will ask clients for a great deal of information and will request original documents such as deeds, account statements and insurance policies. It is the attorney's role to assure that all of the elements of the estate plan are properly handled and reviewing names on titles, beneficiary designations and other similar information is part of thorough planning. All of the information provided to an attorney is, of course, confidential and may not be disclosed to others without your permission.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder and Special Needs Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

NAELA members help clients realize their goals through quality legal work on issues affecting older adults, people with disabilities, and their loved ones. NAELA educates and advocates regarding these kinds of issues on a state and national basis.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder or Special Needs Law attorney.

If you are seeking general information, you can also visit NAELA's website at www.NAELA.org.

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Estate Planning and Probate



National Academy of
Elder Law Attorneys, Inc.

*Leading the Way in
Special Needs and Elder LawSM*

The Law and Aging Series

The Issues

Estate planning means much more than preparing a Last Will and Testament or tax planning for the disposition of your assets upon your death. Estate planning is the process of accumulating and disposing of an estate to maximize the goals of the estate owner. The goals of estate planning typically include making sure the greatest amount of the estate passes to intended beneficiaries, often including minimizing the amount of taxes due. Estate planning must also provide for administration and protection of assets during lifetime and for decision making in the event of a disabling illness.

Any complete estate plan should contain:

1. A Last Will and Testament
2. A durable health care power of attorney naming an agent (and an alternate agent) responsible for medical decision-making
3. A living will or other advance directive giving instructions concerning the type of care one wishes to receive (or avoid) in the event of a terminal illness or persistent vegetative state, and
4. A durable financial power of attorney naming an agent (and an alternate) responsible for asset and financial management if one is unable to do such things for oneself.

Estate planning may also include the creation of trusts.

Estate planning is an opportunity to make wishes known about your health care and asset distribution and to determine what person(s) will be responsible for carrying out those directives. You are able to state your preferences concerning the type of care you receive, what types of medical care you do not wish to receive and who you wish to act as your agent in carrying out those wishes. Should you fail to do such planning, then there may be confusion as to what your wishes might have been and who you would have preferred to act as your decision-maker. In fact, without such information, your wishes may never be known. If you do not leave

a Last Will and Testament or trust, your assets will be distributed according to the laws of intestate (no will) succession in your state. There are laws in each state governing the rights of surviving spouses, heirs and next of kin in the absence of a Last Will and Testament.

Probate

Probate laws, practice and costs vary from state to state. A qualified Elder Law attorney will be able to advise you as to the probate laws, practices and costs in your state.

What You Need To Know

In preparing an estate plan, it is essential that **all** of your assets are considered. You should do a complete inventory of all that you own before contacting your estate planner.

Your estate consists not only of your home, your car and your bank accounts. Your estate also includes the value of life insurance policies, annuities contracts, investments that you may own (including those held in joint tenancy with other persons), your IRAs and other retirement accounts, and any other assets over which you can exercise control.

It is extremely helpful for you to have a centralized and secured record of all of your financial accounts, insurance policies, credit, debit cards, or loan accounts, safe deposit box, and account IDs and passwords.

You will need to make decisions about what to include in your estate plan. First, you will need to list any specific gifts you want to make to family or non-family members and/or to charities. You should determine who will inherit your property upon your death. You must also be certain that your spouse or heirs are capable of managing financial affairs after you. If capacity or vulnerability is an issue, you may want to name a trustee

to handle financial affairs for him or her. You must designate an Executor or Personal Representative to administer your estate, as well as an alternate for this role. Special arrangements may be needed if there are particular family issues, such as children from a previous marriage of either spouse.

Once these decisions are made and your inventory is completed, your attorney will be able to advise you as to the best technique to use in planning your estate.

In the event of a disability, you should decide who will be your decision-makers with respect to your finances and your health care options. Finally, you should give thought to the difficult questions of what type of care you would want or not want in the event of terminal illness. If you have special desires concerning disposition of your remains, such as burial in a certain place or possible cremation, these should be brought up during your planning conference as well.

These are complicated and personal issues. The advice of a qualified Elder Law attorney is essential to protect your financial health and welfare and to insure that your health care wishes are known and carried out.

Where To Go For Help

Some insurance vendors call themselves estate planners as do some accountants and some financial planners. Often, these individuals will be selling some type of product or service. Use caution in attending free seminars about living trusts or other arrangements since such programs often will sell you documents that you do not need or advocate a plan that does not actually provide the type of benefits claimed. Be careful to note that this area of the law is constantly changing and books or materials on the internet are not always up to date. While there are pre-printed forms readily available for wills, powers