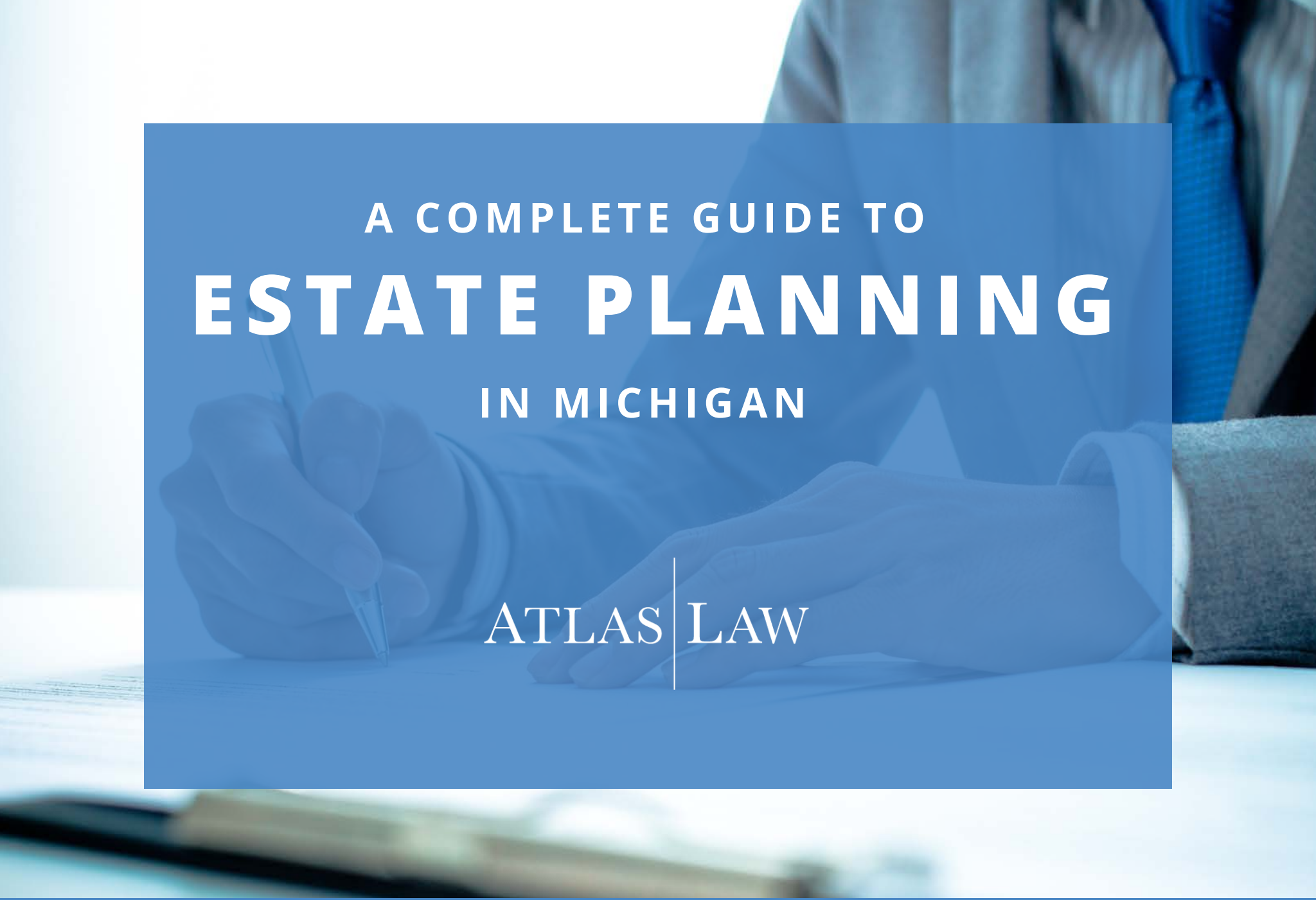

A COMPLETE GUIDE TO ESTATE PLANNING IN MICHIGAN

ATLAS | LAW

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ATLAS | LAW

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THE MODERN CONCEPT OF ESTATE PLANNING

Estate planning is a term that has changed dramatically over the years. At one time, estate planning meant having a will that would go through probate and, if a person was married, titling property jointly with their spouse.

It conjured up visions of death and of wealthy families gathered in their attorney's wood-paneled office listening to a will being read. It suggested that only the wealthy should plan so that they could avoid estate taxes.

Changes in the laws and changing views of finance, lifestyle, privacy, nontraditional families, and longevity of life have made estate planning far more interesting and, frankly, more compelling for a larger group of people than ever before. For these and many other reasons, estate planning is no longer reserved for only the wealthy.

Today, estate planning is financial, retirement, business succession, charitable, medical, disability, legacy, and gift planning.

WHAT IS AN ESTATE PLAN?

What is Estate Planning? Estate planning can be defined as a list of instructions to guide your loved ones as to how to manage your affairs if you are gone, or simply unable to manage them yourself. A properly drafted estate plan allows you to protect your property, your loved ones and yourself.

PROTECT PROPERTY

You have worked your entire life. The keepsakes and wealth you have amassed are more than just assets. It is your legacy. It is what you leave for the next generation. Having an estate plan is vital to ensure that the legacy you leave behind is preserved for the next generation.

Protecting your legacy begins with ensuring your property is left to the right people. Without a plan, your wealth may pass to someone you would not want to have your property. Such as a child's spouse. This is particularly true with blended families, and second marriages. Next, an estate plan can stop your heirs' creditors from taking your heirs' inheritance.

It can also ensure that an heir's inheritance is available to them without interfering with any state or federal benefits they may be receiving. Lastly, a properly crafted estate plan can avoid the high costs and complications associated with the probate process.

PROTECT FAMILY

It is crucial to have an estate plan if you wish to take care of your family after you pass. A plan allows you to appoint the proper person to manage your estate. Someone who is capable. A person you know and trust. Without an estate plan you cannot choose who manages your estate.

An estate plan also allows you to distribute your estate to the persons or charities you choose. You can ensure your children, spouse or other ones are properly provided for financially. You can place restrictions on your gifts or provide a financial incentives to someone for accomplishing a specified goal.

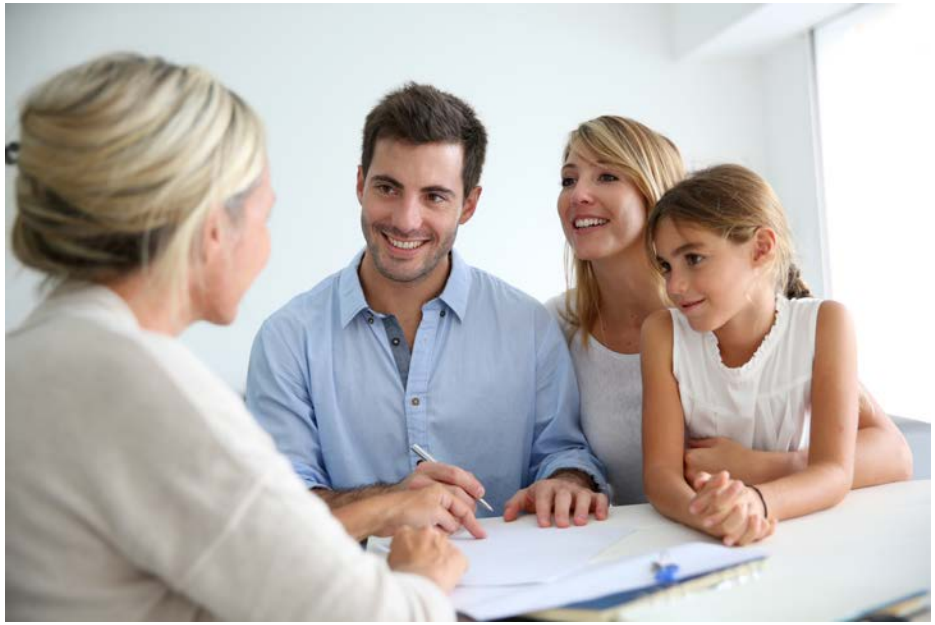
CHAPTER 1: DO YOU NEED AN ESTATE PLAN?

Without a plan, your assets may end up in the wrong hands or be spent carelessly by an heir. Lastly, an estate plan allows you to appoint someone to care for your minor children. Without such an appointment, you will not have any control over who provides for your children if you are unavailable. Rather, this decision is often left to the court.

PROTECT YOURSELF

Who will take care of you when you cannot take care of yourself? As we age, we become increasing reliant on those around us. Things such as taxes, finances, and doctors' appointments, which once seemed routine become more and more difficult to manage. Naturally, this responsibility often falls to a spouse or our children.

But what if your spouse is unable to help, or you are single or widowed? What if you do not have any children, or your children are unable to cooperate? Who will help you with your finances? Who will help you with your medical decisions? Creating an estate plan can answer all of these questions so that you are protected in your time of need.



ESTATE PLANNING CHECKLIST

Determining whether or not you need an estate plan is often the first step in the planning process. Atlas Law, has developed a checklist to help. Take a look at the list below which includes many of the most popular reasons to get an estate plan. If you answer yes to any of these questions, then it may be time to contact an estate planning attorney.

CHECKLIST: DO YOU NEED AN ESTATE PLAN?

☐ **DO YOU HAVE MINOR CHILDREN?**

If so, you need an estate plan. An estate plan allows you to appoint a guardian to care for your children's welfare if you are unable to do so yourself. You can also create a trust to provide for them financially while they are minors.

☐ **DO YOU NOT HAVE CHILDREN?**

If not, you need an estate plan. For most people, their children are their heirs. If you do not have children and have not done any estate planning, then your estate may go to some accidental heirs. Drafting an estate plan will prevent your estate from going to unintended or undesirable persons. Additionally, children are often who most people rely on to help with our medical and financial decisions as we age. Not having children creates a vacuum, of sorts, whereby there is no one available or even permitted to help you with important decisions. An estate plan allows you to appoint a financial power of attorney and medical power of attorney to help you with such decisions.

☐ **DO YOU WANT TO CONTROL YOUR MEDICAL DECISIONS IF YOU BECOME INCAPACITATED?**

If so, you should create an estate plan. As we age, some of us may become incapacitated and unable to make decisions regarding our own medical care. Preparing a living will and patient advocate will allow you to communicate your wishes regarding healthcare to your loved ones. Ensuring your wishes are known and followed.

CHECKLIST: DO YOU NEED AN ESTATE PLAN?

☐ DO YOU OWN A HOME?

If yes, you need an estate plan. Our home is often our biggest investment. Without proper planning, your home could end up in the court system should tragedy ever strike. An estate plan can prevent your biggest asset from being tied up in court. Using a revocable trust or simple lady bird deed can save your heirs thousands of dollars in legal fees and court costs.

☐ DO YOU HAVE A BUSINESS?

If so, you know the sacrifices you made to make your business succeed. Without proper planning your business could be left without a leader. Most business cannot survive the chaos that follows a lack of leadership. An estate plan allows you to appoint a decision maker to ensure your business continues to thrive if you are unavailable.

☐ DO YOU HAVE A BLENDED FAMILY? CHILDREN FROM ANOTHER RELATIONSHIP?

If so, you need an estate plan. An estate plan is particularly important if you have children from different marriages. Without an estate plan, your estate will be distributed under the default rules when you pass. These rules are called the laws of intestacy. Depending on your state, the laws of intestacy will give most—if not all—of your wealth to your new spouse. This alone may not be a bad proposition. But remember, when your new spouse passes, his or her estate including assets inherited from you, will go to your spouse's heirs—leaving your children empty handed. Preparing estate plan can prevent your children from being left in the cold. To learn more, see our chapter on estate planning for second marriages.

CHECKLIST: DO YOU NEED AN ESTATE PLAN?

☐ **DO YOU WANT TO MAKE THINGS EASIER FOR YOUR LOVED ONES WHEN YOU PASS?**

Creating an estate plan allows for an orderly and efficient transfer of your wealth to your heirs. Without an estate plan, your heirs will likely have to spend unnecessary time, money, and energy in probate court trying to claim what is rightfully theirs.

☐ **DO YOU WANT TO CONTROL WHO GETS YOUR MONEY WHEN YOU PASS—AND HOW AND WHEN THEY GET IT?**

Do you have an heir who is irresponsible with money, or who is perhaps suffering from addiction? An estate plan allows you to leave specific instructions as to how an heir will receive their inheritance. Monthly or yearly installments? Upon the completion of a goal? An estate plan provides an opportunity to put a plan in place to address your specific needs. This can be instrumental in protecting a child or other loved one from themselves.

☐ **DO YOU HAVE A CHILD OR OTHER HEIR WHO IS SPECIAL NEEDS?**

If so, you need an estate plan. Specifically, you likely need a special needs trust. A special needs trust is a tool designed to hold assets for a person who suffers from a physical or mental disability. Special needs trusts are used to pass wealth to a disabled person without interfering with his or her Supplemental Security Income (SSI), Medicaid, vocational rehabilitation, or subsidized housing. Without a special needs trust, your special needs child or heir could lose their entire inheritance.

CHECKLIST: DO YOU NEED AN ESTATE PLAN?

☐ **DO YOU WANT TO PROTECT YOUR CHILDREN'S INHERITANCE FROM BILL COLLECTORS?**

A Trust is a very powerful estate planning tool. One of the benefits of a trust is that it can contain something called a spendthrift provision. A spendthrift provision can protect your children's inheritance from unsavory creditors.

☐ **DO YOU VALUE PRIVACY?**

Without an estate plan your estate can end up in probate court. Probate court is a public forum and all records are available to the general public.

DID YOU ANSWER YES TO ANY OF THESE QUESTIONS?
IF SO, IT IS TIME TO SET UP START YOUR ESTATE PLAN

WHAT IS

YOUR ESTATE?

In simple terms, your estate is your net worth in the eyes of the law. This means your home, your bank accounts, your car, retirement accounts, and everything else of value you own.

ESTATE VS PROBATE ESTATE

Your estate is everything you own. Sometimes this is referred to as your gross estate. Your probate estate is the share of your gross estate (assets) that have to pass through probate to reach your heirs. One of the many goals of a well drafted estate plan is to prevent a probate estate. Doing so will prevent your heirs from having to go to probate court.

WHAT ARE THE GOALS OF

ESTATE PLANNING?

Estate plans are not one-size-fist-all. Your goals dramatically influence what type of estate planning documents you need. If you want to maintain control over your assets after you pass, then you likely need a trust. If you have children under the age of 18, then you need to be sure to appoint a conservator and guardian. Your estate plan should be crafted to accomplish your specific goals.

GOALS:

- Maintain Control Over Estate
- Avoid Probate
- Reduce Estate & Income Taxes
- Protect Spouse & Children
- Protect Inheritance from Creditors
- Provide for Disability Planning
- Prevent Delays Related to Estate
- Reduce Disagreements Among Heirs
- Continuity For Asset Management
- Provide for Disabled Children

WHAT IS PROBATE

AN WHY DOES IT MATTER?

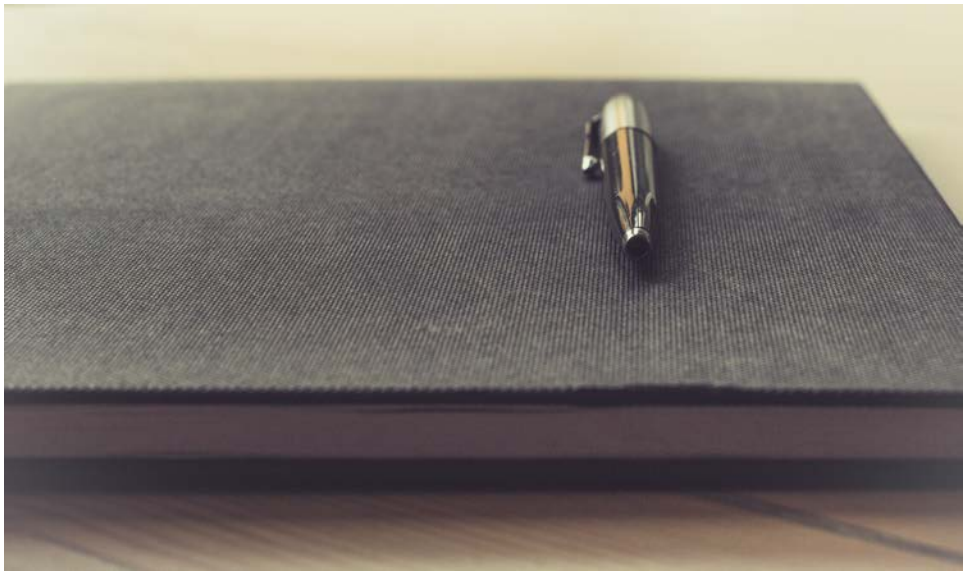
Probate or probate court is a topic that inevitably comes up in any estate planning conversation. So let's take some time to understand probate

WHAT IS PROBATE?

Probate is a court supervised process which transfers title of your assets to you heirs upon your death. Without proper estate planning your heirs may have to use your local probate court to gain access to your assets.

HOW DOES PROBATE WORK?

Generally, the personal representative's first step is to open an estate with the Michigan Probate Court. The process in Michigan is similar to those in other states. With a few exceptions, a probate begins with the appointment of a personal representative. This is the person who manages and distributes the estate. He or she is sometimes



referred to as executor. In Michigan, this can be done "informally" or "formally" depending on the facts of the case. Informal probate, as the name suggests, is much simpler. A formal probate is more complicated and requires a court hearing. A probate attorney can generally advise the best way to open the estate based on the facts of the case.

Once the estate is opened, the estate then needs to be "administered." Administering the estate means completing all of the tasks the personal representative is legally obligated to perform.

CHAPTER 4: THE ROLE OF PROBATE.

ADMINISTERING THE ESTATE

Michigan law requires a personal representative of an estate to complete various tasks before the assets are distributed to the heirs. Here are some of the most common tasks:

- Gather and manage estate assets
- Provide notice to heirs
- Provide notice to creditors
- Prepare an inventory of all estate assets
- Pay debts and expenses
- Prepare and file an accounting
- Prepare and file tax returns

Once all of the tasks above are completed the personal representative can distribute the remaining assets. Finally, the appropriate paper work can be filed to close the estate.

WHY DOES ALL OF THIS MATTER?

As you can see, probate court is not a fun place. It is costly and very time consuming. It also places a tremendous burden on loved ones who are already grieving from their loss. This is why probate court is always discussed in any meaningful conversation about estate planning. Avoiding probate court is one of the most compelling reasons to set up an estate plan.

The good news is that probate can be avoided. You can prevent your family from going to probate court by having an estate plan. A properly drafted estate plan also ensures your life's savings and assets are safe from your heirs' creditors or unsavory family members. Lastly, it allows you to arrange for someone to take care of your medical and financial affairs in the event you should ever become incapacitated.

Probate is expensive, time consuming, and cumbersome

but it is completely avoidable!

UNDERSTANDING YOUR ESTATE ESTATE PLANNING

DOCUMENTS

Estate planning largely consists of the perpetration of a series of documents designed to protect you, your property and your family. Knowing what each of these documents are and the role they play in your plan can help you better understand the estate planning process.

The following pages of this chapter provide a detailed description of the most common estate planning documents.

TYPICAL DOCUMENTS:

- Revocable Living Trust
- Last Will & Testament
- Medical Power of Attorney
- Durable Financial Power of Attorney
- Living Will
- HIPAA Release
- Lady Bird Deed

REVOCABLE LIVING TRUST

A revocable living trust is a tool used by estate planning attorneys to organize and protect your assets. A revocable living trust is sometimes referred to as a "revocable trust" or "living trust." It may also be referred to as an "inter vivos trust." All the varying names for the revocable living trust simply refer to the trust's main characteristics, i.e., it is a trust which is revocable and made while you are living.

A Trust, along with a last will and testament, is one of the two documents typically used to distribute your estate.

BENEFITS OF A REVOCABLE TRUST

Revocable living trusts are usually recommended by estate planning attorneys because they can help you avoid probate, which is notoriously expensive. However, they offer a number of advantages over other estate planning tools besides avoiding probate. Specifically, a revocable trust can help with the following:

Avoid Probate. Using a revocable trust can help prevent your heirs from having to go to probate. Probate is a court supervised process which transfers title of your assets to your heirs. Probate is time consuming, cumbersome and can cost your heirs thousands of dollars. A revocable trust is one way to avoid probate and the associated headaches.

Gifts. Revocable trusts allow you to place restrictions or conditions on gifts given to your heirs. Meaning, you can specify an age at which gifts are made, restrict the use of a home, or even require an heir to earn a college degree before receiving their inheritance. Moreover, a trust allows for alternate beneficiaries to avoid your wealth passing to an unintended person such as a child's spouse or step-children.

Disability Planning. A revocable trust has a successor trustee who can manage your affairs if you become incapacitated. The successor trustee will manage the trust assets and make distributions to you or on your behalf as needed. As such, a trust can help prevent a conservatorship proceeding.

Control. The assets of your revocable trust are subject to the terms and conditions of the trust created by you. This means that the trust assets can only be used for those purposes you specify in the Trust.

Creditor Protection for your Heirs' Debts. A revocable trust generally contains a spendthrift provision which can prevent creditors from taking your heirs' inheritance. A spendthrift provision allows your successor trustee to keep assets in trust until an heir's creditors are no longer a threat.

Tax Planning. A living trust can provide substantial tax benefits for certain estates.

Privacy. A trust offers more privacy than a simple will because it is generally not filed with the court. Therefore, it is not a public document nor a public record.

Business Planning. A revocable trust can be key in allowing you to pass your business interest to the next generation. Without proper planning, your business could end up in probate and suffer financially from lack of proper management.

SIX MORE BENEFITS OF A TRUST

1. Allow the Trustee or Trustees to manage and maintain complete control over the assets of the Trust during their life or lives.

2. Allow the settlors to easily delegate the day-to-day operation of the Trust.

3. Create a swift, flexible and efficient manner to distribute your assets after death.

4. Protect against a possible conservatorship proceedings should you become incapacitated.

5. Reduce the risk of a possible will contest or dispute, and their enormous expense.

6. Protects the details of your estate and increases your privacy as a trust, unlike a will is not a public document.

YOU MUST FUND YOUR TRUST!

Failure to properly fund a trust is without question the single most common reason a trust fails to deliver as promised.

Funding a trust is the process by which a person, or their attorney, places the desired assets into a trust. The particular way each asset is placed into the trust depends largely on the type of asset. While I am not going to delve into a step-by-step guide to funding a trust the message here is that you ordinarily must take some additional action—beyond merely executing the trust document—to properly place your assets into the trust.

Funding your trust is arguably the most important part of creating a trust. After all, the trust itself is useless unless it controls the intended assets. Your trust will only control property which has been transferred into the name of the trust.

It is also important to note that funding is an ongoing process. The case often arises where a person sets up a trust and does the initial funding, but later forgets to title a second or new home purchased later into the name of the trust. In some instances, it is a new brokerage account opened in the person name individually, rather than in the name of the Trust. In both instances, the person has now exposed that new asset and frustrated one of the main purposes of the trust—avoiding probate.

If you have a question about the funding of your trust please contact an attorney who can verify whether or not your trust is properly funded. A Trust is a remarkable estate planning tool, but like most everything else it has to be used properly.

LAST WILL & TESTAMENT

A will, or last will and testament, is a legal document which allows a person, referred to as the testator, to make decisions on how their probate estate will be managed and distributed after their death. A will has no effect until one passes away. As such, it generally does not offer any protection for your assets while you are living.

A will is usually submitted to the probate court where an estate is opened. The court then oversees the appointment of a personal representative, the payment of creditors, and the distribution of assets. Gifts made using a will are outright. Meaning, a person cannot put conditions or strings upon the gifts made in the will.

ADVANTAGES OF A LAST WILL & TESTAMENT

Revocable Trusts are generally favored over wills. However, wills may be recommended in a few limited circumstances:

I**nitial Cost**. The initial cost for a will is generally less than a trust. However, if a probate estate has to be opened to to administer the will, the costs associated with the probate generally greatly exceed the initial savings.

Desire for Simplicity. In some cases, simplicity is the most important factor for the person setting up his or her estate plan. In such cases, a will may be more appropriate. However, the desire for simplicity can create complexity for heirs.

Asset Portfolio that Allows for the Use of a Will. In some cases a persons asset portfolio may allow him or her to accomplish their goals without the need for a trust. These situations are evaluated on a case by case basis.

THE ROLE OF WEALTH IN THE WILL OR TRUST DEBATE

The decision between using a will or a trust depends more on what types of assets you have, than how much you have.

You do not need a $1,000,000 to require a trust. Similarly, just because you have a $1,000,000 dollars does not mean you need a trust.

SUMMARY

WILLS VS TRUSTS

	LAST WILL	REVOCABLE TRUST
PROBATE	A will does not avoid probate. Generally, a will requires a probate estate to be opened and administered through the court.	A trust can avoid probate if set up properly. Avoiding probate can save substantial legal fees and court costs.
GIFTS	A will allows you to make outright gifts. It does not, however, allow you to place conditions or restrictions on those gifts.	A trust allows you to place restrictions or conditions on gifts, i.e., setting an age at which gifts are made, restricting the use of a home, requiring an heir to earn a college degree. Moreover, a trust allows for alternate beneficiaries to avoid your wealth passing to an unintended person such as a child's spouse or step-children.
CREDITOR PROTECTION FOR YOUR DEBTS	Your personal representative is required to pay all valid debts owed by your estate.	Your successor trustee is required to pay all valid debts owed by your estate.

	LAST WILL	REVOCABLE TRUST
DISABILITY PLANNING	A will, alone, does not provide any protection for your estate should you become incapacitated.	A trust allows you to appoint a successor trustee to manage your affairs should you become incapacitated. Your successor trustee will manage the trust assets and make distributions to you or on your behalf as needed. As a result, your trust can help prevent a conservatorship proceeding.
CONTROL	A will only directs who is to be your personal representative and who is to receive your property. Nothing more. A will cannot be used to put additional restrictions on your heirs' gifts.	The assets of your trust are subject to the terms and conditions of your trust. This means that your assets can only be used for those purposes outlined in your trust. Should you pass or become incapacitated, your trust directs how your successor trustee is to manage your affairs and make distributions.
CREDITOR PROTECTION FOR YOUR HEIRS' DEBTS	A will requires distributions to be made to the named beneficiaries. Once the money is distributed to your heirs it may be subject to your heirs' creditors. If an heir is being sued, going through a divorce, or in bankruptcy your gift to them may be at risk.	A trust generally contains a spendthrift provision which can help prevent your heirs' inheritance from being taken by creditors. A spendthrift provision allows your successor trustee to hold assets in your trust until an heir's creditors are no longer a threat.

	LAST WILL	REVOCABLE TRUST
COSTS	A will generally costs less to set up than a trust.	A trust costs more to establish in the beginning. However, there is generally substantial cost savings in the long run. In addition, a trust can have a substantial impact on estate taxes.
PRIVACY	A will generally must be filed with the probate court where it becomes a public document. In addition, your personal representative usually must publish notice of your passing in a local newspaper.	A trust offers more privacy because it is generally not filed with the court.
TAX PLANNING	A simple will usually does not allow for tax planning.	A living trust can provide substantial tax benefits.
FLEXIBILITY	A will can be amended at any time before you die or become incapacitated.	A trust can be amended at any time before you die or become incapacitated.
MINOR CHILDREN	A will allows you to choose a guardian to provide care for your minor children. Your assets, however, will likely be tied up in a court for some time before being available for your children.	A Trust allows you to choose a guardian to provide care for your children. A trust also allows you to continue to provide financial support to your children seamlessly, without intervention by the court.

WHICH IS RIGHT FOR YOU?

LAST WILL

- Initial Cost
- Asset Profile That Would Allow You To Accomplish Goals Without A Trust
- Desire For Simplicity
- You Have A Very Simple Estate

REVOCABLE TRUST

- Desire To Avoid Probate
- Minor Children
- Asset Profile That Would Require Probate
- Desire For Disability Planning
- Sophisticated Distribution Plan For Assets
- Desire To Place Conditions On Gifts To Heirs
- Blended Families (Children From A Prior Relationships)
- Second Marriages
- Out of State Property
- Tax Planning
- Privacy Concerns
- Anticipate A Dispute
- Administration Expenses
- Desire To Make Things Easier For Heirs

LIVING WILL

Your living will is a written expression of your wishes regarding end of life care which is provided to your family and doctors. A living will takes effect after you are diagnosed by a doctor as terminally ill or permanently unconscious and the doctor determines you are unable to make or communicate decisions about your care. A living will is part of a complete estate plan. Living wills play a crucial role in fulfilling your wishes regarding your end of life care.

MEDICAL POWER OF ATTORNEY

A medical power of attorney is a type of advanced directive. In Michigan, it is called a health care surrogate. A medical power of attorney or health care surrogate is a legal document used by you to designate another person to make decisions regarding your health care, including your funeral and other arrangements. Your medical power of attorney works hand-in-hand with your other advanced directives.

WHAT ARE ADVANCED DIRECTIVES?

Advanced directives are a set of documents executed by you to allow a loved one to make medical decision for you if you are unable to do so yourself.

The term “advanced directives” generally includes a living will, a medical power of attorney or patient advocate, do-not-resuscitate order and elections regarding organ donation.

You should consider executing a financial durable power of attorney with your advanced directives. This is another crucial document.

FINANCIAL POWER OF ATTORNEY

A financial power of attorney, or more specifically, a durable financial power of attorney, is a document that you put in place now in the event of your incapacity. That is, your inability to handle your own affairs such as running a business or managing your household finances.

Incapacity can arise from a number of different causes. Sudden illness, injury, an accident, and advanced age can all lead to incapacity. Creating a durable power of attorney for finances allows you to designate someone now who can help you with your finances should you become unable to do so in the future.

A power of attorney is one of many ways to create a strong legal foundation to protect yourself and your family. To be an effective estate planning tool, however, your durable financial power of attorney must be signed while you are well. Once you lose capacity it is too late.

WHAT CAN A FINANCIAL POWER OF ATTORNEY DO?

Manage Your Assets

Sign Your Checks

Pay Your Bills

Sell Your Property

Make Deposits and Withdrawals

Manage Insurance Policies

Help With Taxes

Help With Government Benefits

Help With investments

Make Gifts

WHAT MAKES A POWER OF ATTORNEY DURABLE?

A non-durable financial power of attorney would terminate upon your incapacity—the time when you likely need it the most! Making a power of attorney "durable" simply means the document will remain in full force even though you are incapacitated, allowing your family to assist you with your finances. This is done by adding language to the document which extends the authority of your appointed agent beyond your incapacity. In an estate planning context, nearly all financial powers of attorney are durable.

WHEN DOES A FINANCIAL POWER OF ATTORNEY END OR EXPIRE?

A durable power of attorney may terminate a number of ways. First, you may revoke your power of attorney. If the power of attorney is revoked your agent loses his or her authority to act on your behalf. Second, the power of attorney may terminate on its own. In some situations an estate planning attorney may draft a power of attorney to terminate after a period of time or upon the occurrence of a specific event.

If this is the case, then the power of attorney will terminate at the specified time or event. Third, a power of attorney may be revoked by the court in situations where the agent is abusing a power of attorney. In addition, a power of attorney terminates on the death of the principal. The list above is not exhaustive, but it does cover the most common ways a power of attorney is revoked.

GENERAL VS LIMITED POWER OF ATTORNEY

A power of attorney may be general or limited. A general financial power of attorney allows your agent to do almost anything on your behalf that you could legally do yourself. Under a limited power of attorney, your agent is limited to those specific acts or transactions which you designate.

DO YOU NEED A DURABLE POWER OF ATTORNEY

A financial power of attorney is a critical part of your estate plan. Without it, your family may be unable to assist you with your financial affairs. A financial power of attorney is a simple and effective way to insure you are protected should you become incapacitated.

LADY BIRD DEEDS

A Lady Bird Deed is a simple and inexpensive tool used to pass real property, such as your home, to your heirs upon your death. A Lady Bird Deed avoids probate. Meaning, your real property passes to your named heirs automatically—without court involvement. Lady Bird Deeds are very common in Michigan and have a number of other notable benefits.

In Michigan, a Lady Bird Deed is very easy to use. You sign a deed giving your property to your chosen heirs, but in the deed you retain a life estate for yourself. In other words, you retain the right to use the property during your lifetime. You also retain the right to sell, give away, or mortgage the property. During your lifetime, you keep all rights to the property and the authority to dispose of it. Any interest you own in the property at the time of your death will pass directly to your named heirs.

BENEFITS OF A LADY BIRD DEED

Lady Bird Deed and Property Taxes.
A Lady Bird Deed will not increase your property taxes because it does not uncap your property tax. Similarly, you will not lose your homestead exemption from using a Lady Bird Deed.

Lady Bird Deed and Capital Gains Taxes.
Using a Lady Bird Deed can save your heirs thousands of dollars of capital gain tax. This is because the beneficiaries of the deed receive a step up in tax basis on the value of the real property when you pass.

Lady Bird Deeds Avoid Probate
Using a Lady Bird Deed can help prevent your heirs from having to go to probate.

Lady Bird Deed and Medicaid
A Lady Bird Deed can be an extremely effective way to pass real property to the heirs of a Medicaid recipient. It can also be a great tool to avoid Michigan's Medicaid Recovery laws.

IS PUTTING YOUR CHILDREN ON YOUR DEED OR BANK ACCOUNT A GOOD IDEA?

It is very common for parents to put their children's names on their bank accounts, deeds, and other property so that the children can assist their parents with paying bills or managing their finances. It is also quite common as a do-it-yourself estate planning technique. But is this practice really a good idea?

The short answer is simple –No. It is generally a very bad idea to put your son or daughter on your deed, bank accounts, or any other assets you own.

5 REASONS NOT TO PUT YOUR CHILD'S NAME ON YOUR PROPERTY

Putting your child's name on your deed or other property is often seen as an inexpensive way to ensure your child receives your property when you pass. It is also used as a means to give a child access to an account. But putting your child on your property or accounts can cost you much more than you think.

1. TITLE ISSUES

Adding a child's name to a deed gives him or her an ownership interest in your home. As a result, you cannot sell the home or refinance your mortgage without your child's permission. Technically speaking, your child could even sell his or her share of the property without your consent.

2. CREDITOR CLAIMS

If your son or daughter is on the title to your property, then their share of the property may be subject to his or her creditor claims. This includes claims from credit card companies, lending companies, or liability claims stemming from an accident. Your home could also be at risk if your son or daughter is required to pay criminal restitution.

3. DIVORCE CLAIMS

If your child goes through a divorce, the court is required to divide the parties' property equitably. If your son or daughter is on your property, then it is technically partially your child's property and subject to division by the court. Meaning your child's former spouse may be entitled to a share of your home or other property. Most of us think this will never happen to our children, but divorce rates are as high as 50%. Adding your son or daughter to your deed or accounts is not worth the risk.

BANKRUPTCY CLAIMS

Nearly a million people file for bankruptcy each year. If your child files bankruptcy, the bankruptcy court may be entitled to his or her share of your property. Remember, by placing their name on your home or other accounts, you are gifting them a share of the property. As a result, your child's share of your property may be sold to satisfy his or her debts.

5. INCOME TAX PROBLEMS & STEP UP IN BASIS

This one is a bit more complicated but also very important. You must first understand capital gains tax. A capital gain is the difference between your basis (purchase price) and the amount you get when you sell an asset (sale price). For example, if you purchased a home for $100,000 and sold he same house a few years later for $500,000 you would have to pay tax on your gain of $400,000 –with some exceptions.

If you add your child to your deed (or other assets) while living, he or she receives your basis (purchase price) in the home. If your child sells the house after your death, he or she will likely incur a capital gain tax for the difference between your purchase price, and the sale price. See Example 1.

Example 1: Say you bought your home in 1980 for $100,000. In 2010, you add your child to the deed of the home when the home is worth $500,000. When you added your child on to your deed, you technically made a gift of one-half the value of the property ($250,000).

Your child also receives one-half of your cost basis ($50,000). Thus, if you were to die and your child sells the home for $500,000, then your child would be liable for a capital gain tax on his or her $200,000 profit.

Sale Price $250,000
Purchase Price (Basis) $50,000
Gain $200,000

The current capital gain rate is 15% for most people but can be as high as 20%. Meaning, your child may have a tax bill of $30,000 to $40,000 on the sale of their one-half share of the home.

Conversely, your one-half share of the home is likely not subject to capital gains tax because your children will receive a step up in tax basis upon your death. Meaning, their cost basis (purchase price) for your half of the home worth $250,000 is stepped up from the original purchase price of $50,000 to $250,000, thereby eliminating the capital gain on the sale of your share of the home.

Sale Price $250,000
Purchase Price (Basis) $250,000
Gain $0.00

As illustrated above, your child is liable for a capital gain of $30,000 to $40,000 for the share you transferred to them. There is likely no tax on the share they receive from you after you pass. So why not transfer the entire home to your child when you pass? What if instead of adding your child's name to your deed, you used a revocable trust or lady-bird deed? See Example 2 below.

Example 2: Say you bought your home in 1980 for $100,000. In 2010, you created a trust which gives your home to your child upon your death. Because the house passes upon your death your child receives a step-up in tax basis on the entire value of the home. Meaning, if he or she sells the home after your death their cost basis (purchase price) is stepped up from the original purchase price $100,000 to $500,000 (the value of the home at your death), thereby eliminating the capital gain on the sale of your share of the home.

Sale Price $500,000
Purchase Price (Basis) $500,000
Gain $0.00

By not putting your son or daughter on your deed they can take advantage of a full step up in cost basis and save **$30,000** to **$40,000** in capital gains tax. They cannot receive this savings if you put them on your deed while living. Additionally, using a trust or other device to pass your home to our heirs is just as easy as putting their name on the deed, without the risks outlined above.

A BETTER ALTERNATIVE

Rather than putting your child on your property, consider some simple estate planning techniques. If you need help managing your accounts use a financial power of attorney. With a Power of attorney, your children can assist you with bills, investments, taxes, and the like, but they are not given any ownership of your property. Meaning, their creditors cannot take your property!

Another alternative is a Trust. A Trust can give added protection and oversight. Unlike a power of attorney, it also survives death allowing for the seamless transfer of control and assets from one generation to the next. Perhaps most important, using a will, Trust, or Lady Bird Deed may save your children thousands of dollars in taxes. Proper estate planning can help you prepare a solution that best fits your needs without the risk of losing your property.

SPECIFIC ESTATE PLANNING

CONCERNS

Everyone needs an estate plan. However, in some cases, estate planning is even more crucial to protect yourself, your prpoery and your family

This chapter addresses some specific circumstances that demand an estate plan

CRUCIAL ESTATE PLANNING SITUATIONS:

- Estate Planning for Second Marriages
- Estate Planning For Singles
- Estate Planning For Young Parents
- Special Needs Trusts
- Pet Trusts

ESTATE PLANNING FOR SECOND MARRIAGES

Second Marriages are on the rise. A Pew Research Survey reports that 40% of new marriages in the country are second marriages for at least one of the spouses. All told, the number of remarried Americans has risen to 42 million people. Triple that of 1960. The increased rate of divorce has obviously played a large role in the increase in second marriages. However, so has longevity. Americans are living longer leaving a larger pool of widows and widowers looking for love.

How does this impact estate planning? Many of the rules and techniques developed over the last century involving estate planning were crafted at a time when the nuclear family dominated the American landscape. As a result, the law generally assumes the goal of every household is to leave everything to the surviving spouse who will, in turn, leave everything the couple's joint children.

But what if you do not have joint children? Or what if you have separate children?

Under the default rules, most everything will go to the surviving spouse. He or she is then free to give it away as they see fit. If your spouse does not have an estate plan, then the property will ultimately go to the surviving spouse's children.

If you or your spouse are in a second marriage, or considering a second marriage, additional steps need to be taken to ensure your estate passes to your intended heirs. Otherwise, the default rules may apply resulting in your estate passing to unintended heirs.

Start by having an honest conversation with your spouse about your estate and who you want your heirs to be should something happen to you.

Start by having an honest conversation with your new spouse

ESTATE PLANNING FOR SINGLE PEOPLE

Attorneys continuously stress how important it is for their clients to have an estate plan. Usually, however, the conversation centers on married couples or people with children. Single people and people without children are generally not included in the discussion. As a result, single or childless individuals often think they do not need an estate plan. Nothing could be further from the truth. In fact, if you are single or do no have any children you are the person who needs estate planning the most.

DO SINGLE PEOPLE NEED ESTATE PLANNING

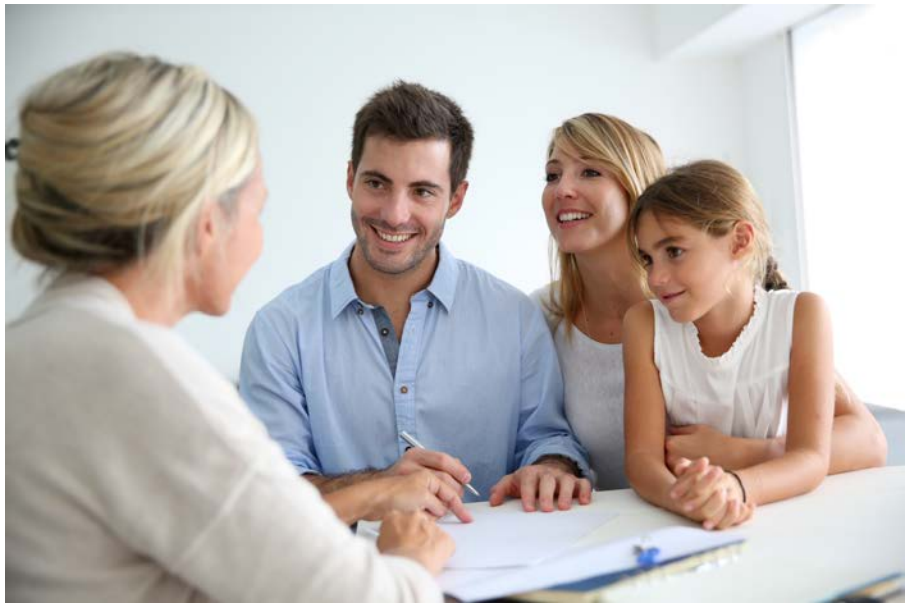
Estate planning for singles is particularly important because they do not have a spouse to rely upon should a tragedy strike. A spouse is usually the person that assists with caring for you when your ill or caring for children when you are unable to do so yourself. Without a spouse, this responsibility will likely fall upon your parents or siblings. To have a say as to who will make these decisions, you must have an estate plan that clearly outlines who will assist you with your health and finances during times of need. Perhaps more important, if you have children, you need an estate plan to specify who will care for them if you cannot. With an estate plan, you can execute a medical and durable power of attorney to appoint a specific person to assist you. You can also appoint a guardian for your children.

An estate plan is also important to specify who will receive your assets. If a single person without children were to pass away without an estate plan their assets would pass to their next-of-kin—usually their parents or siblings. If a single person with minor children were to pass away without an estate plan their assets would pass to their children, but the money would likely be tied up in probate until the children reached eighteen. To specify who is to receive your assets, or prevent your money from being tied up in court you need an estate plan.

ESTATE PLANNING FOR PARENTS WITH YOUNG CHILDREN

For young people, estate planning is not often a priority. It is generally thought of as something for grandparents and the elderly. The truth is, however, that life can be very unpredictable. This is particularly true when we have children. We expect to be around to see our children grow, graduate from school, and start a family. While you will likely be around to see these milestones, there is a small chance you may not. We never know what is in store for us or what is lying around the next corner. What if something should happen to you? Who will care for your children? How can you continue to provide for them if you are gone? Having children is a gift and when it comes to their future you should expect the best but you should be prepared if life throws you a curve.

While you may have never considered creating an estate plan before, creating a plan is the first step in planning for the unexpected. Begin by consulting with an estate planning attorney. Your attorney will review your family and financial situation and help you create an estate plan that ensures your children will receive the best care and support available.



When writing an estate plan you can also choose the following:

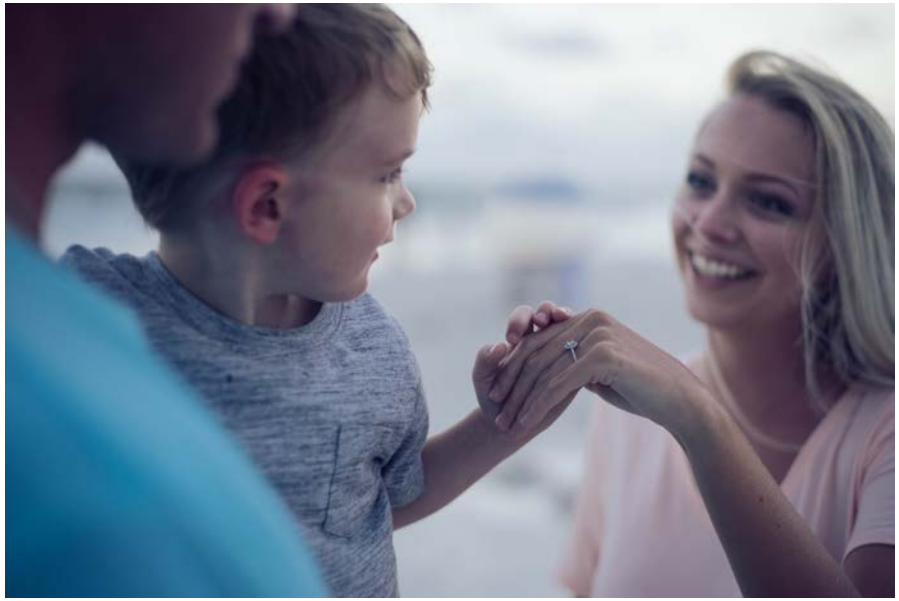
- Who will act as guardian for your children, or the person that cares form them on a daily basis?
- Who will act as conservator for your children, or manage their finances.
- How and when will your assets be managed and distributed to your children.

ESTATE PLANNING FOR HEIRS WITH A DISABILITY

Many of us have a friend or family member who is challenged by a physical, mental, or developmental disability. Caring for a loved one under these circumstances can be both challenging and rewarding. As part of your care plan, you should consider the use of a special needs trust. This is particularly true if the person is receiving, or plans on applying for, state or federal benefits such as Medicaid and Supplemental Security Income (SSI). A special needs trust provides a mechanism by which the disabled person can receive gifts and inheritances without interfering with his or her benefits.

WHAT IS A SPECIAL NEEDS TRUST?

A special needs trust is a trust specifically designed to hold assets for a person who suffers from a physical or mental disability. The trust holds property for the benefit of the disabled person who is likely unable to manage his or her own finances. Special Needs Trusts are generally used to pass wealth to a disabled person without interfering with his or her Supplemental Security Income (SSI), Medicaid, vocational rehabilitation, and subsidized housing.



There are two types of special needs trusts. “Self-Settled” Special Needs Trusts and “Third Party” Special Needs Trusts.

Self-settled special needs trusts are trusts established using funds to which the disabled person had a right to possess. Meaning, the funds used to fund the trust were his or her own property. Typically, in a self-settled scenario, the proceeds come from a settlement or lawsuit which led to the disability. The rules governing the use of self-settled special needs trusts are much more restrictive than those

of a third party special needs trust because the assets being sheltered by the trust were the disabled persons own property.

Third party special needs trust—as the name suggests—are special needs trusts which are funded with someone else's assets. Typically, a third party special needs trust is set up by the family of the disabled person. The family then gifts money to the trust, rather than the disabled person, so the gifts do not interfere with the disabled persons Supplemental Security Income (SSI), Medicaid, vocational rehabilitation, and subsidized housing. This is particularly common with an inheritance.

HOW DOES A SPECIAL NEEDS TRUST WORK?

If a person receiving means tested state or federal benefits (SSI, Medicaid, etc.) receives a large inheritance (or gift), the inheritance may render the disabled person ineligible for the benefit. Thus, the disabled person is required to spend down the inheritance or gift then reapply for the state or federal benefit. A special needs trust works by holding the assets out of the estate of the disabled person. In this type of arrangement, the trust rather than the disabled person owns the assets in question, therefore the assets in the trust are not counted as the disabled person's assets for purposes of means tested state or federal benefits.

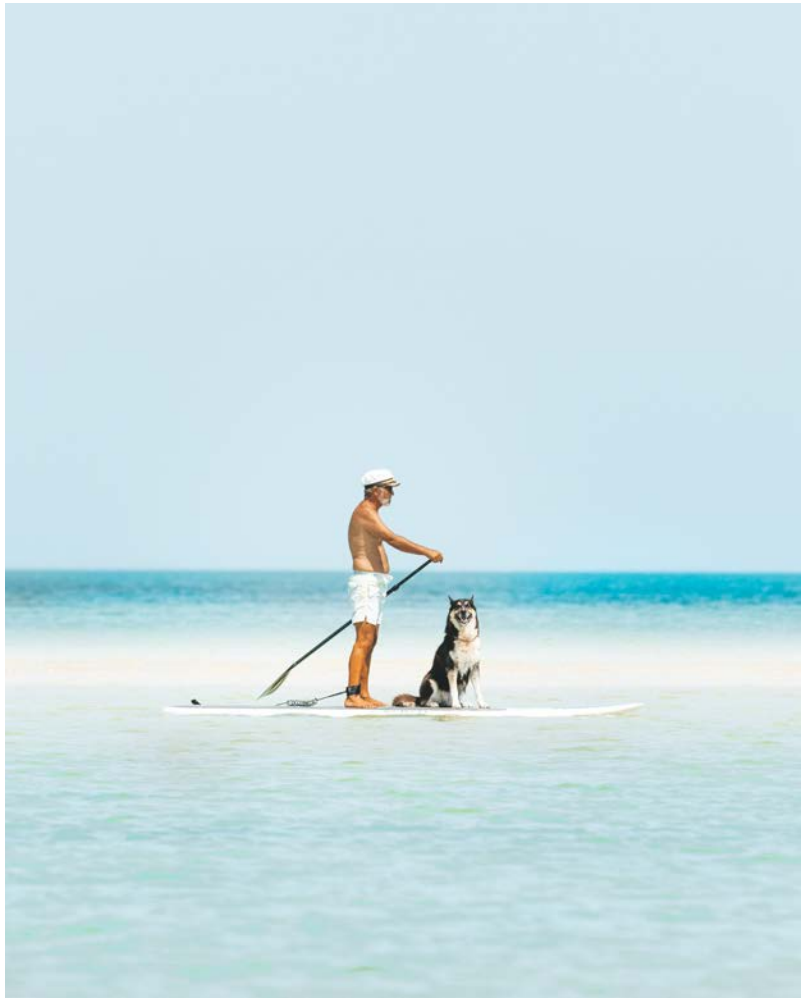
With a proper estate plan, the family of a disabled person can leave money to special needs trust. Doing so will prevent the inheritance (or gift) from interfering with state or federal benefits—and allow the disabled person to benefit from the inheritance via distributions from the special needs trust.

HOW DOES A SPECIAL NEEDS TRUST WORK?

A special needs trust is generally set up or prepared by an attorney. The trust is carefully drafted to ensure assets in the trust are not included in the disabled person's estate. Preparing a special needs trust is generally done as part of a broader estate plan. The trustee of a special needs trust cannot give money to the disabled person directly. This would constitute a gift and the money received would be counted in the means testing calculations. Meaning, the gift could affect the disabled person's benefits. Instead, the trustee can use the trust assets to purchase necessities. Typically, necessities include vehicles, a personal care attendants, vacations, home furnishings, education, medical and dental expenses, physical therapy, and even recreation.

PET TRUSTS

Our pets are our family. They provide us with companionship, affection, comfort, and countless hours of entertainment. If you have pets, you realize how essential they are to your life. It comes as no surprise then that many pet owners want to ensure their pets are cared for should they be unable to do so themselves.



WHAT IS A PET TRUST?

A pet trust is a tool used to ensure that your pets or other animals are cared for if you are unable to care for them yourself. Rather than simply hoping your pet is cared for properly, you can ensure your pet lives a happy life and is cared for in a manner of your choosing by using a pet trust. Pet trusts are specifically authorized under Michigan law. They are generally set up by an estate planning attorney in conjunction with a last will and testament or living trust as part of your estate plan.

WHY USE A PET TRUST?

In the past, it was common practice for those with pets to simply give their pet to a family member and hope the pet was cared for appropriately. On occasion, some would even provide a specific amount

of cash or other assets to help with the care of the pet. The trouble with this model is there is no way to control how the pet will be cared for. You are simply hoping your pet's caregiver follows through with your wishes. To resolve this issue, lawyers have developed the pet trust.

WHAT TYPES OF ANIMALS ARE COVERED?

Under Michigan law, pet trusts may be used to provide care for domestic animals or pet animals. This includes dogs, cats, birds, horses, and more.

CHOOSE A TRUSTEE & CAREGIVER.

A pet trust is relatively simple. First you select a trustee. The trustee is the person who will manage the funds in the trust for the benefit of your pet. Next, you select a caregiver. This is the person who will provide the day-to-day care for your pet. Including, food, shelter, medication and more. Often times the trustee and caregiver are the same person, but they can be different persons.

Within the trust you provide your trustee and caregiver with a list of instructions as to how they should care for your pet. You can outline your pet's nutritional and boarding requirements, exercise needs, veterinarian visits and more. You can even direct what is to be done with your pet when he or she passes.

PROVIDE MONEY TO THE TRUST.

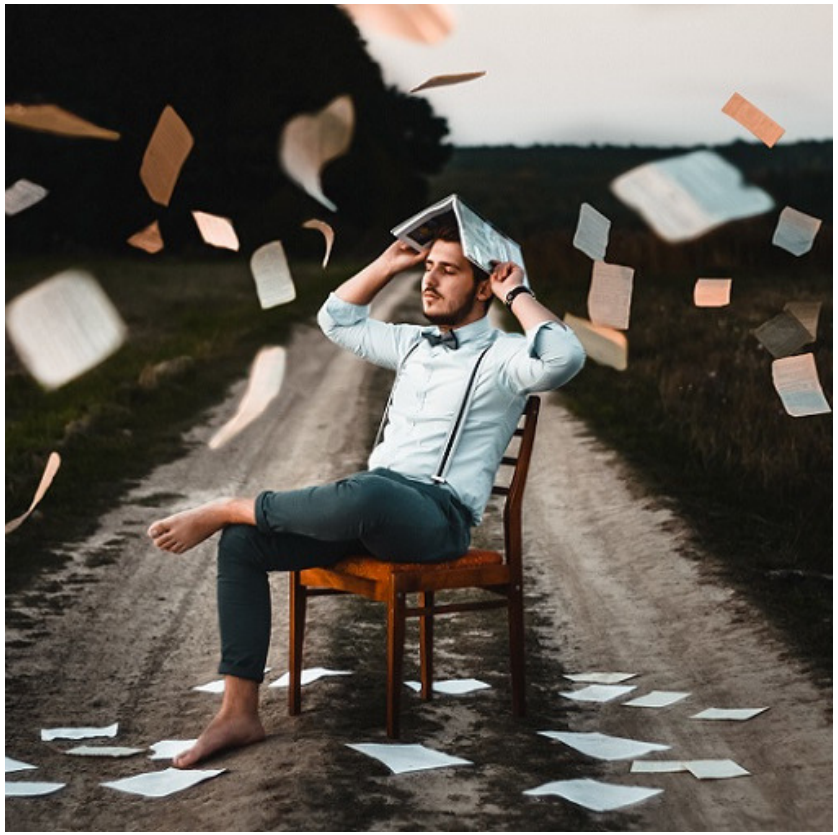
You must give the trust a reasonably amount of funds to ensure your trustee and caregiver have the means necessary to provide for your pet as directed. Money should be set aside to pay for food, shelter, medicine, veterinarians, caregiver compensation and other service providers. Provide enough money to cover all of your pet's needs for its lifetime. Be careful, however, the court may reduce the amount of property transferred to the trust if it determines the amount substantially exceeds what is required for the care of the animal.

WHAT IF THERE IS MONEY LEFT IN THE PET TRUST?

Under Michigan law, the pet trust will remain in existence until all of your pets pass. You can provide a contingent beneficiary for any money left over. For example, you can direct that all remaining funds go to a child, family member, or a charity of your choosing.

WHEN SHOULD YOU UPDATE

YOUR WILL OR TRUST?



By creating an estate plan, you have already taken the first step to protect yourself and your family. It is crucial, however, to ensure that your estate plan is kept up to date and functions properly.

Take a look at the list of important events in this chapter to see if it is time to revise your will or trust.

CHAPTER 8: WHEN SHOULD YOU UPDATE YOUR WILL OR TRUST?

Recent Good Fortune. Did you make a fortune in the market, sell your home or make some other good investment? Sell a business? Receive an inheritance from a loved one? If so, you may need to alter your estate plan to account for your recent good fortune.

Change in Family Relationships. Has there been any additions or subtractions from the family? A marriage, divorce, or breakup may require changes to your estate plan. This includes updating retirement accounts, life insurance policies, jointly titled bank accounts, brokerage accounts and real estate documents.

Becoming a Parent or Grandparent. Becoming a parent or grandparent provides many estate planning opportunities. For new parents, be sure to put a plan in place to provide for your minor children if you cannot. Naming a guardian is the first step. For new grandparents, make sure your estate plan covers the new addition to the family.

Loss of a Loved One. Losing a spouse or other loved one is devastating. When the pain subsidies, it is important to remember that the loss of a loved one, particularly a spouse, can have a dramatic effect on your estate plan. You may also need to update your trustee, executor, beneficiary, or guardian.

Incapacity of a Spouse or Loved One. Our attorney provides thoughtful and sensitive counsel to persons dealing with mental health issues and disorders, developmental disabilities, and the elderly. If you or a loved one are dealing with one of these issues you may want to update your estate plan before it is too late.

Change of Address. Have you bought or sold a house. If so, your estate plan needs updated to reflect this change. Have you moved out of state? Be sure to see how this impacts your plan.

Financial Setback. Have you experienced any financial woes? If so, there may be an opportunity to reduce your gift transfer tax or simplify your estate plan.

A Foreseeable Need for a Nursing Home. The need for nursing home care has a significant impact on your assets and signals an urgent need for changes to your estate plan. Time is of the essence if you wish to qualify for Veterans Benefits or Medicaid.

Your Children Have Grown Up. Was your estate plan written when your children were young? If so, your estate plan likely needs updated. Your children are older and so are you. Your circumstances have changed. Time to revisit your plan as you look to retirement.

Regular Checkups. It is never a bad idea to have your plan reviewed. Do you have questions or concerns regarding your estate plan? We are happy to meet with you and answer your questions.

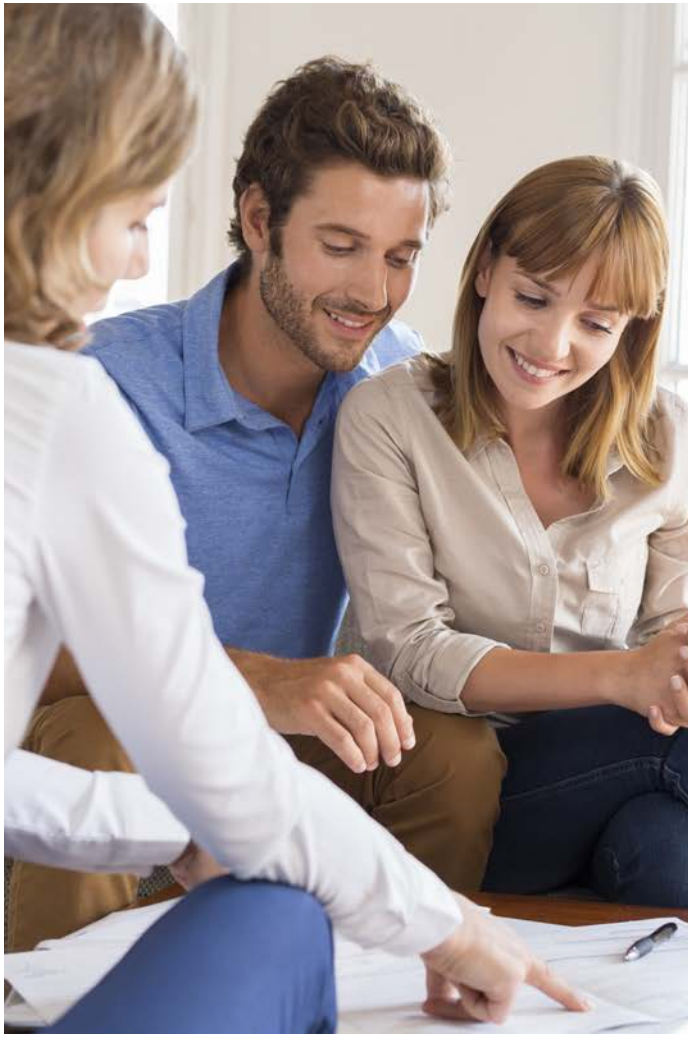
Desired Changes. Do you want to change your estate plan? Has your choice of executor, guardian, trustee, or beneficiaries changed? Now is the time to update your plan.

Did you answer yes to any of these questions?

If so, it is time to update your estate plan

HOW TO GET STARTED ON YOUR

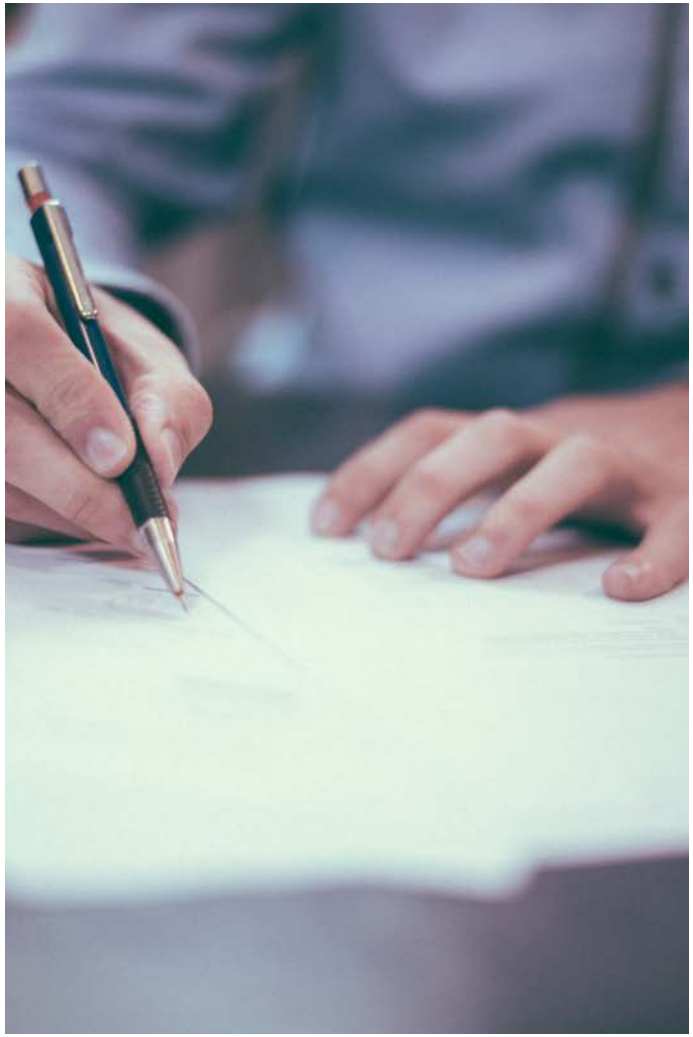
ESTATE PLAN



MAKE IT A

PRIORITY

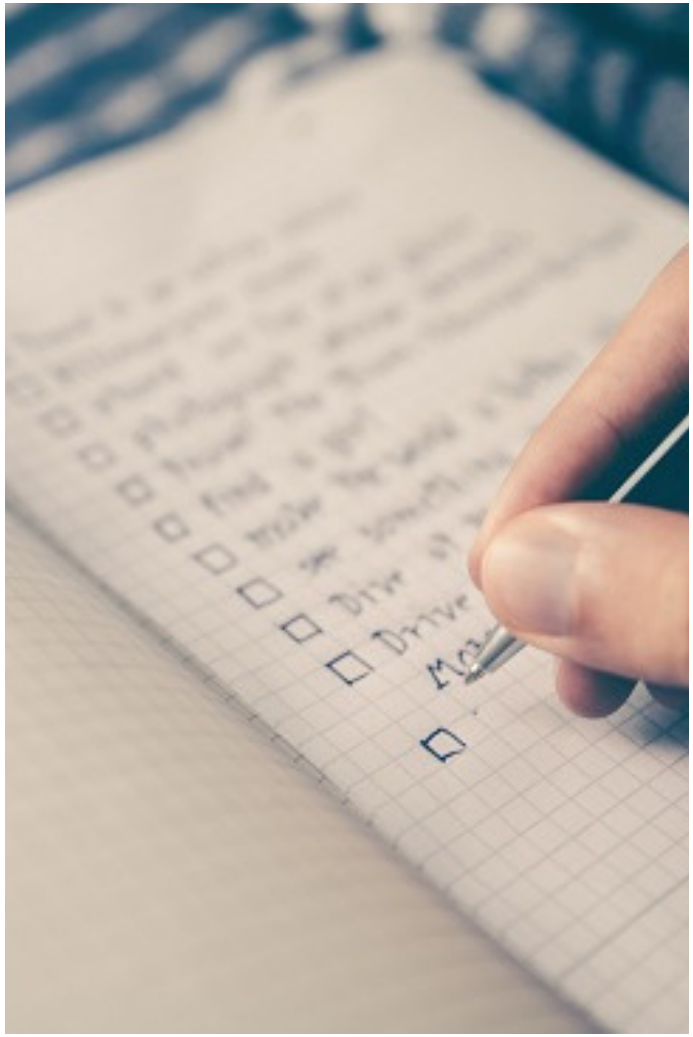
Getting started on your estate plan is easy. The first step is to make it a priority. Life is busy. But an estate plan is the foundation that will protect you and your family in times of trouble. Do not procrastinate too long, or it may become too late. Set a deadline to start and stick to it.



EDUCATE

YOURSELF

Knowing your options is key to an estate plan. Give us a call! Our attorney will take the time to explain the process and explore your options. Want some information now? Our website is a great resource to learn more about estate planning, including wills, trusts, living wills, powers of attorney, and guardianships for your minor children.



START THINKING ABOUT

YOUR WISHES

Next, start thinking about these questions: Who do you want to inherit from you? Your spouse or children? Siblings? A charitable organization? Who will manage the distribution of your estate when you are gone? Who will help you with your financial or medical decisions as you age?

Your attorney can assist with all of these questions, but you should be ready to discuss these topics.

GET
ORGANIZED

For your first appointment, it is alright to speak in generalities about your assets so you can get some idea of your options. As the process moves forward, however, your attorney will need an accurate snapshot of your assets and liabilities. So start gathering important information such as your banking and investment account statements, life insurance policies, information about real property you own and other items of value such as collections, antiques, artwork, and jewelry.

CONTACT AN

ATTORNEY

Lastly, call an attorney. While creating an estate plan is easy, the underlying rules governing estates, trusts, and taxes are very complex. Preparing an estate plan is not a DIY project. Get help from a professional. An experienced estate planning attorney can ensure you have a hand-crafted estate plan tailored to your specific needs. More importantly, a qualified attorney can help identify issues that may not be spotted by the untrained eye.

Give us a call and we will be happy to get your estate plan started!.

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