

# Estate Planning Basics

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# What is Estate Planning

- Estate Planning enables you to make vital personal decisions about the management and distribution of your assets, as well as your health and personal care. An effective plan allows you to accomplish distribution goals and ensure your personal care while providing peace of mind and direction to your loved ones.

# What Makes Up My Estate

Assets which could include:

- Real Estate
- Personal Property
- Cash/Bank Accounts
- Investment Accounts
- Retirement Plans/Funds
- Life Insurance
- Interest in a business

# Components of a Good Estate Plan

- Ensures that heirs receive what you intended them to receive
- Protects your privacy
- Manages assets in the event of disability or incapacity
- Preserves the value of your assets
- Reduces unnecessary taxes or expenses

# Basic Estate Planning Must-Haves

## A. WILLS

a) Single individuals. You particularly require a Will because you have no spouse (and perhaps no children) to leave your estate to. If you have children, they may still be minors and require a guardian. If you have no spouse and no children, your estate will, according to NYS law, be distributed to your parents, if living, or to your siblings, if any.

# Married Individuals

b) Married individuals. You require a Will because if you die intestate (with no Will) your estate will be distributed, under NYS law, to your spouse AND your children. You may also have minor children who require a guardian if something should happen to both you and your spouse simultaneously.

# Second Marriages

c) Second Marriage Individuals. You may want to leave your spouse should you predecease him/her your assets but only for his/her lifetime. Upon your spouse's death, you may wish for your assets to be distributed to your children, and not his/hers as well.

# Trusts

## B. Trusts

You may wish to set up a trust in order to control distribution of assets upon your death without the Court's involvement. Perhaps you have a complicated family tree or relatives that are difficult to locate. On the other hand, you may wish to exclude a child from inheriting and prohibit him/her from contesting your Will.

# Trusts

There are many reasons for setting up a Trust. There are also different Trusts, such as, for example:

Basic Revocable Trusts

Basic Irrevocable Trusts

Gun Trusts

Special Needs Trusts

# Relatives with Disabilities & Planning

Should you have a spouse or child that suffers from a disability and is receiving SSI or other government and/or state benefits, leaving him/her as a beneficiary in your Will or otherwise may jeopardize that individual's benefits.

# Specific Assets & Planning

NY Penal Law 265.20(1)(f):

- An executor or administrator may possess a weapon for a period not over 15 days.
- If not lawfully disposed of within 15 days the weapon is to be delivered to an appropriate official or superintendent of state police.
- Such officer shall hold it until receipt of written instructions to deliver to the proper person who is licensed or otherwise may lawfully possess same.
- If no request recv'd w/ 1 yr, the official shall dispose of the weapon.

# Probate vs. Non-Probate

Probate Assets are those that ‘flow’ through your Will and are subject to the provisions under your Will. These are assets held in your name alone.

Non-probate assets are those that do not ‘flow’ through your Will. They either have a joint owner designation or beneficiary designation, such as, for example, retirement benefits, IRAs, etc.

# Beneficiary Designations

While naming a beneficiary for an asset is helpful because 1) that asset will not need to be subject to the Courts and 2) the beneficiary will receive his/her benefit sooner after your death, it is critical to remember to a) make a designation and b) periodically update the same. Often after a divorce or other major life change, updating beneficiary designations is forgotten and this can lead to the wrong person profiting from your assets.

# Contingent Beneficiary

Keep in mind that Contingent Beneficiary designations are just as important and also require periodic updating. It's critical to have a back-up beneficiary to your IRA or other retirement plan.

# Federal and NYS Estate Tax Exemptions

2018 Federal Estate Tax Exemption:

\$5,600,000

2018 NYS Estate Tax Exemption:

\$5,250,000

# Power of Attorney

## C. Power of Attorney and Statutory Gift Rider

These two documents allow you to appoint an agent to act on your behalf, while you are living, in the event that you cannot act on your own. This document terminates upon your death.

# Health Care Proxy

## D. Health Care Proxy and Living Will

In NYS, an agent under a Power of Attorney may have almost any right that the principal grants, except the right to make health care and life sustaining decisions. A Health Care Proxy and Living Will is required to appoint an agent who can have these powers/rights.

# New York State Retirement System

- **Divorce**

If you are divorced or become divorced during your retirement, your retirement benefit may be considered a marital asset and subject to equitable distribution. Equitable distribution is the division of marital assets between spouses after the marriage has ended. This division must be stated in the form of a Domestic Relations Order (DRO).

# Beneficiaries

It is especially important to review your beneficiary designations to ensure your benefits will be distributed according to your wishes in the event of divorce.

For more information on how your benefits may be affected by divorce, consult your attorney, contact the State's Matrimonial Bureau, or read the guide to domestic relations orders on the Retirement System's website.

See <http://www.osc.state.ny.us/retire/members/divorce/>

# New York State Retirement System

- **Power of Attorney**

A properly executed Power of Attorney will allow a person you designate to act on your behalf, even if you become disabled. Your designee will be able to:

# Power of Attorney

- Cash your retirement checks;
- Change your address of record;
- Change the account or bank in which you deposit your checks;
- Change your death benefit beneficiary;
- Change your retirement benefit beneficiary for certain options

# Power of Attorney

- Effective July 7, 2008, a former spouse's rights to serve as a retiree's personal representative, executor, guardian, power of attorney or other fiduciary role is revoked when a divorce, annulment or judicial separation becomes final.

You may revoke your POA at any time by sending a written statement to the Retirement System.

# Retirement Payment Options

- <https://nysosc9.osc.state.ny.us/product/benprooj.nsf/BenProgFlashPage>

Shows annual allowance you would receive

- Single Life Allowance
- Joint Allowance Full or Half
- 5 Year Certain or 10 Year Certain
- Pop-Up Joint Allowance Full or Half

# Additional Information

For more detailed information visit  
[www.osc.state.us/retire](http://www.osc.state.us/retire)

# FAQ

1. I don't have very much and a simple estate. Can't my family just handle the distribution upon my death without a Will?
2. Is it possible to wait too long to complete my estate planning?
3. Does my Will need to be updated?