

Estate, Wills and Trusts: How to Organize Your Finances for the Aging Process

1. What does a senior citizen need to do to get their financial affairs in order (will, trust, power of attorney, financial planning)?
 - a. No matter your net worth, it's important to have at least a basic estate plan in place. Discussing your estate plan with your heirs may prevent confusion and disputes.
 - b. What are the must haves?
 - i. A will
 1. What is a will? A will is a legal document that sets out your wishes regarding the distribution of your property and assets and the care of any minor children.
 2. Why do I need it? Without a will, you will have no say in what happens to your property.
 3. Can I make changes to my will? Yes, you can make changes to your will at any time.
 - ii. A living will
 1. What is a living will? A living will is a legal document that a person uses to make known his or her wishes regarding life prolonging medical treatments.
 2. Why do I need one? You need a living will for health care decisions. If you are unconscious or incapacitated, your living will may provide instructions for doctors and loved ones about what course of treatment they should provide.
 - iii. Trusts
 1. What is a trust? A trust agreement is a document that spells out the rules that you want followed for property held in trust for your beneficiaries. Common objectives for trusts are to reduce the estate tax liability, to protect property in your estate, and to avoid probate.¹
 2. Do I need trusts? They may be a good idea if you have substantial assets. Trusts can be a good way to avoid the delays and costs of probate court – which can be between 5% and 7% of your estate.
 3. What do I need to set up a trust?
 - a. **Objective of the trust.** You use different types of trusts to achieve a variety of specific estate-planning objectives. You can use some trusts for a single objective, while others help you achieve more than one.
 - b. **Specific kind of trust.** There are many kinds of trusts. When you're setting up a trust, you need to decide what type you want and make sure that you follow all the rules for that particular type in order

¹ Estate Planning for Dummies

to make sure that it's proper and legal, and most importantly, that it will accomplish your goals.

- c. **Property.** After you place property in a trust, that property is known as a *trust property*.
 - d. **Beneficiary.** This person (or persons) benefit from the trust in some way, usually the person or institution will eventually receive some or all of the property that was placed into trust.
 - e. **Trustee.** The person in charge of the trust. The trustee needs to understand the rules for the type of trust he or she is managing to make sure everything in the trust stays in working order.
- iv. Power of attorney
 1. What is power of attorney? Someone with power of attorney has the authority to act for another person in legal or financial matters.
 2. Why do I need power of attorney? You need it to designate a personal representative in case something happens to you, or you can't or don't want to make these decisions yourself.
 3. If you do not assign power of attorney, the court will step in and assign one if you become incapacitated. This process can be expensive and may cost your family over \$1000.²
 - v. A letter of instruction.
 1. What is a letter of instruction? It is a written plan for distributing personal property to charity or heirs. It's less formal than a will but has the same kind of idea – it lets you make it clear where you want your belongings to end up.
 2. Why do I need one? A letter of instruction can help to reduce confusion and conflict among family members and heirs.
- c. To maximize what you will leave your heirs, it is important to make every attempt to minimize and pay federal and state income, inheritance or estate taxes.
 - i. A good first step is to inventory what you own. It might be a good idea to make a list as you go. You can decide what to keep, what things can be thrown away, and also decide what to assign to your heirs.
 - ii. All assets are included in your estate. When you include you home, investments and retirement saving, the value of your estate may be surprising.
 - d. Have the right people to help you create your essential documents. Whoever you choose will be entrusted with your personal financial information so it is very important to take the time to find one who you can trust and who can meet your needs. Remember, this is not a decision

² Money.cnn.com

that should be made on the spot. Take some time to think about it and talk it over with a friend or family member who can help you decide what and who is right for you.

i. Executor

1. What is an executor? An executor is the person who helps carry out the instructions of your will. Some duties an executor might have are;
 - a. **Find the deceased person's assets and manage them until they are distributed to inheritors.** This may involve deciding whether to sell real estate or securities owned by the deceased person.
 - b. **Figure out who inherits property.** If the deceased person left a will, the executor will read it to determine who gets what. If there's no will, the person in charge (the administrator) will have to look at state law to find out who the deceased person's heirs are.
 - c. **File the will (if any) in the local probate court.** Generally, law requires this, even if no probate proceeding is necessary.
 - d. **Handle day-to-day details.** This may include terminating leases and credit cards, notifying banks and government agencies -- such as Social Security, the post office, and Medicare.
 - e. **Pay taxes.** A final income tax return must be filed, covering the period from the beginning of the tax year to the date of death.
2. What happens if I don't have one? If no executor is named, one will be appointed -- usually a bank or an attorney.
3. Who should be my executor? Anyone you trust can be your executor. As you can probably tell from the duties listed above, being chosen as someone's executor is an honor, but it is also incredibly time consuming. Unless you choose a close friend or relative who will do it out of the goodness of their heart, expect to pay them for their services.
4. The law does not require the person you choose as your executor to have any legal or financial experience, but it is very important you choose someone with honesty and integrity. This is called a "fiduciary duty" -- the duty to act with scrupulous good faith and honesty on behalf of someone else.

ii. Financial planner.

1. Why do I need a financial planner? Some people may not need one. However, having someone you trust look over your finances and help you prepare a detailed, personal

plan and provide you with information and advice can help alleviate stress.

2. Many banks have no-charge financial advisors. An investment advisor can go over your finances and talk about future goals.
 3. If your bank does not provide this, you can look to AARP for help. AARP provides free financial advice to its members.
 4. Libraries, community and senior centers also often provide these services free of charge.
 5. Remember – many of these advisors make commission off of the investments they sell you. However, the better you do, the better they do so it is in their best interest to give sound advice.
- iii. Estate planning attorney.
1. Why do I need an estate-planning attorney? Again, not everyone does but, if you have a larger estate, hiring an estate planning attorney, ideally with elder law experience to help with will, trusts, and POA documents may be a great idea and will generally make things easier on you and you family/heirs. Also, tax laws and codes change all the time and may be difficult to understand for people outside the legal profession. For this reason, you may want someone to help you with your financial planning.
 2. There are three types of power of attorney:
 - a. Conventional, which gives POA for a specific period of time. (eg. 60 days)
 - b. Durable, which gives power of attorney for life.
 - c. Springing, which is triggered by a specific event. (eg. Incapacitation)
 3. Often for no extra cost, POA docs can be drawn with limits, such as a third party to monitor the person with POA, a written report of financial transactions, or even joint POA, which would be split between two or more people.
- e. It is very important to review and fine-tune your plans – things change.
- i. You may want to take a look at your estate plan if: You (re)marry, have another child or grandchild, move...
 - ii. Even if there are no big changes, it may be a good idea to take a look at your financial plan once a year. You can think of a financial plan as a car – it needs periodic maintenance to keep it running smoothly.
 - iii. Remember – tax codes and laws are changing all the time. It is a good idea to make sure your financial plan is in accordance with new codes and laws.
 - iv. When you make new documents, be sure to destroy the old ones.

- v. If you update your documents, make sure they comply with legal requirements. If they do not, the documents may be declared invalid.