

Estate Planning for the Young Professional

By Jamie A. Rosen and Kristen M. Walsh

After landing their first job, every young professional, especially if starting a family, must engage in estate planning. While the decision to execute estate planning documents can be stressful and overwhelming, it is essential for the personal and financial well-being of a young professional. This article introduces estate planning to the young professional by discussing some basic planning tools and explores the potential consequences of being without an estate plan under New York law.



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when you are unable to make them yourself.¹ This document is often accompanied by a living will.

Your agent can make all healthcare decisions, including the decision to remove or provide life-sustaining treatment. Your agent will also follow your instructions regarding organ donation.² Some practitioners include language granting the agent access to medical records, otherwise protected under state and federal privacy laws.³

Your agent should also be granted the authority to speak to and receive confidential health information from your medical or mental health providers so that they can make informed medical decisions on your behalf.



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A living will is a document that provides your agent specific instructions about health care decisions. This document clearly states your wishes concerning end-of-life medical treatment, pain management, or organ donation. A living will is crucial when in an unconscious or terminal state and unable to voice your medical care wishes.⁴

What Is Estate Planning?

Estate planning is the process of arranging your affairs so that your wishes are followed in the event of your death or incapacity. This includes the appointment of individuals you trust to act on your behalf in legal, financial, and health care matters while you are living, and to manage and dispose of your assets upon your death.

Why Execute These Documents Now?

Estate planning is not just for wealthy people, married couples, those who have children, or the elderly. Young professionals are funding retirement plans, buying life insurance, purchasing homes, and creating families. As life is full of uncertainty, these assets and people should be protected with careful estate planning. The COVID-19 pandemic has underscored this need to plan ahead.

By executing a few relatively simple legal documents, you can relieve your loved ones of decision-making burdens during moments of crisis. You can help reduce confusion or disagreement about the health care choices made on your behalf. You can prevent a situation in which you are incapacitated and no one has the legal authority to manage your financial affairs. Finally, you can ensure your last wishes are followed and your loved ones are provided for upon your death.

Health Care Proxy and Living Will

A health care proxy is a legal document that appoints another individual to make health care decisions for you

Power of Attorney

A power of attorney is a state-governed legal document that allows an individual to designate an agent to manage financial affairs and make related financial decisions.⁵ Your agent must act at your direction or in your best interests, typically stepping into this role only if you are incapacitated or otherwise unable to handle your own affairs (e.g., if you are in a serious accident or are extremely ill). Common choices as agent include a family member, a close friend whom you trust, or even a private fiduciary.

Your agent can be granted broad authority to manage your financial and legal affairs. The agent can also be authorized to gift or transfer assets, which is useful in continued estate planning.⁶ If you find yourself in a situation where you are unable (or even unavailable) to pay your own bills or otherwise manage your financial affairs, your agent can step in on your behalf under the power of attorney.

Without a power of attorney, your loved ones could be forced to initiate a court proceeding for guardianship if you become incapacitated and unable to manage

your personal and financial affairs. The guardianship process can be expensive, time consuming, and is often adversarial.

Last Will and Testament

A last will and testament, often simply referred to as a will, is a document created during your lifetime that controls the disposition of assets upon your death. A will allows you to leave your property and belongings to whomever you wish. A will can include trusts for minor children and trusts that safeguard estate funds from creditors, estate taxes, or interference with a beneficiary's government benefits. A will also enables you to appoint the fiduciaries of your choice, including the executor, guardian for minor children, and trustee. Your will is customized for your personal circumstances and objectives. Without a will, you rely on the default provisions of New York law to dispose of your estate.

The appointment of an executor is one of the most important decisions you will make when creating a will. Your executor will be responsible for probating your will,⁷ collecting your assets, paying estate debts and expenses, and disposing of your assets in accordance with the terms of your will. The executor is also responsible for filing your final income tax return and any required estate or fiduciary tax return.

If you have young children, you will want to appoint a guardian to care for them in the event of your untimely death. A guardian has the legal authority and responsibility to care for minor children and provide living arrangements, health care, and education. A guardian may be named by the parents or legal guardian of a child in a will.⁸

Establishing a trust for young children is advisable as they cannot manage their own funds. You may also want to keep assets for grown children in a trust until they reach a certain age, or for life. If you choose to include a trust, you will need to name a trustee to manage trust assets.

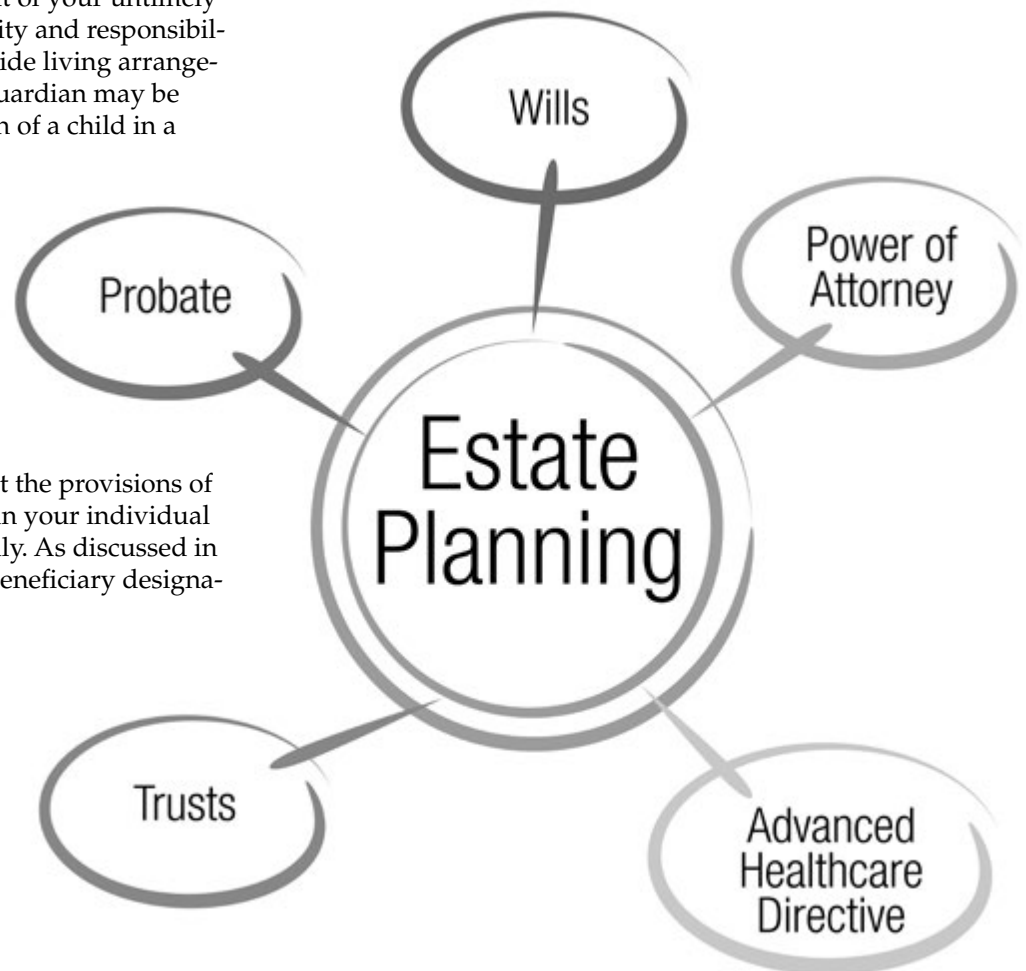
It is important to keep in mind that the provisions of your will apply only to property held in your individual name which does not pass automatically. As discussed in further detail below, asset titling and beneficiary designations should be carefully reviewed.

If you do not have a will, your residuary estate⁹ will pass pursuant to New York's law of intestacy.¹⁰ For example, if you are not married, your estate would pass to your parents or, if they are not living, to your siblings. If you are married with children, your spouse would receive only \$50,000 plus 50% of your residuary estate, with the balance passing to your children. This outcome is often troubling, particularly if your children are young.

Finally, without a will, the Surrogate's Court will appoint an administrator to manage and settle your estate and a guardian of the person and/or property of a minor child.¹¹ The individuals appointed by the Surrogate's Court may not be the same people you would have chosen to place in these important roles had you created a will.

Beneficiary Designations

For many assets, you can designate a beneficiary by simply completing a form with the respective financial institution. Doing so allows the asset to pass automatically to the designated beneficiary (or contingent beneficiary) upon your death. A will cannot override a beneficiary designation.¹² Therefore, the designation of beneficiaries is an essential consideration for your estate plan. If you own a retirement plan, IRA, or life insurance policy, you have likely already designated a beneficiary. It is important to review and update your designations every few



years in accordance with your overall plan. Overlooking your beneficiary designations can cause significant financial consequences.

Conclusion

For many reasons, estate planning can greatly benefit young professionals who are focused on building their careers, creating families, and growing assets. Consult with your personal attorney who will assist you in formulating a plan that will protect you, your loved ones, and your legacy.

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Endnotes

1. " Capacity to make health care decisions' means the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision." N.Y. Pub. Health Law § 2980.

2. It is important to note, however, that in New York, there are certain aspects of a person's care that may never be delegated to an agent, such as involuntary psychiatric treatment or the involuntary administration of psychiatric medication.
3. See, e.g., N.Y. Mental Hyg. Law § 33.13 and Mental Hyg. Law § 33.16, providing for the protection under New York law of clinical records or clinical information of mental health patients. See also, 45 C.F.R. § 160, §164. The HIPAA Privacy Rule provides the first comprehensive Federal protection for the privacy of health and mental health information.
4. Examples of end-of-life care decisions to address in your Living Will include, but are not limited to, CPR, mechanical ventilation, tube feeding, dialysis, antibiotics or other medications, palliative (comfort) care, and organ/tissue donation.
5. N.Y. Gen. Oblig. Law § 5-1501.
6. However, New York limits this authority to protect the principal from abuse. In New York, an agent cannot gift or transfer assets of more than \$500 per year, unless the Power of Attorney is accompanied by a duly executed gift rider, giving the agent broader power to make gifts.
7. The procedural requirements for probate can be found in New York Surrogate's Court Procedure Act (SCPA), Article 14.
8. The will must be admitted to probate and letters of guardianship issued by the court for the appointment to take effect. N.Y. Surr. Ct. Proc. Act Law 1711(2). In addition, a guardian may be appointed in a duly acknowledged and recorded deed containing the appointment of a guardian. *Id.*
9. The "residuary estate" of an intestate estate consists of the assets remaining after payment of debts, administration expenses, and funeral expenses. N.Y. Est. Powers & Trusts Law § 4-1.1.
10. EPTL 4-1.1(a).
11. SCPA 1701.
12. EPTL 13-3.2(a).

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