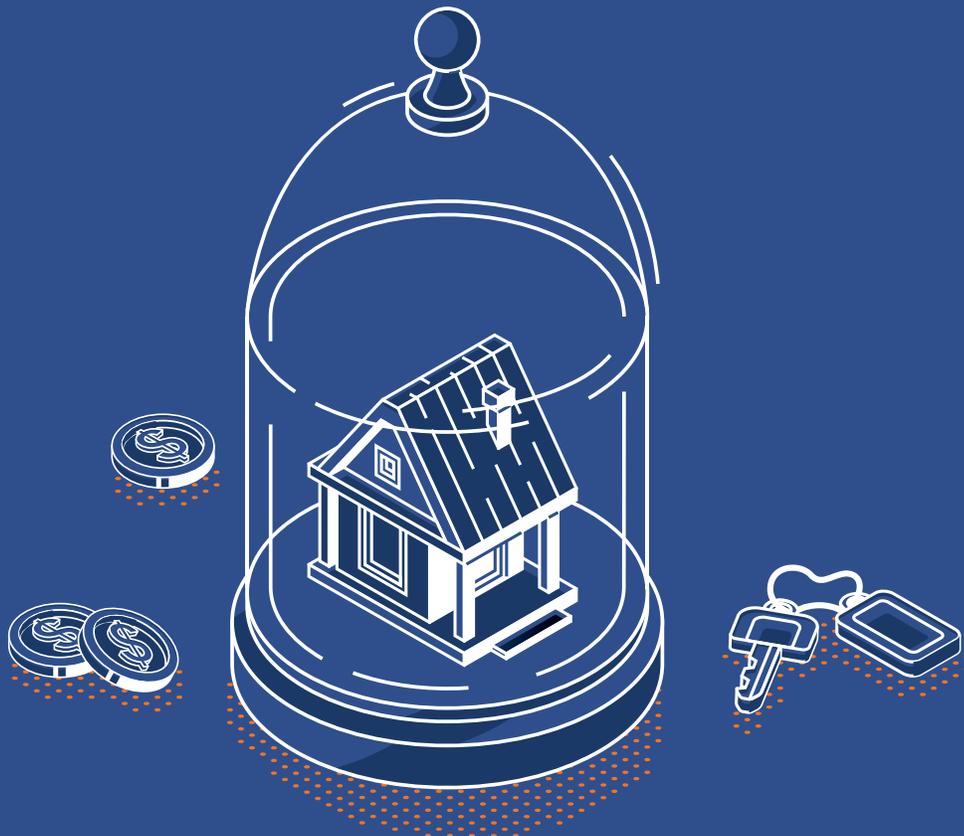


PREVENTING FAMILY FEUDS

8 End-of-Life Care and
Estate Planning Risks to Avoid



Understanding the Risks of Not Having an Estate Plan

“In this world, nothing is certain except death and taxes.”

– *Benjamin Franklin*

Being forced to confront our mortality and consider the future of those left behind isn't easy, so it's understandable that most Americans feel conflicted about end-of-life planning. Yet, it's a crucial aspect of sound financial management and the long-term security of our loved ones.

Surprisingly, 71% of Americans say that having a well-thought-out estate plan would make them feel like a good spouse or parent but only 32% of individuals have one or more estate planning documents according to the latest Estate Planning and Wills Study conducted by Caring.com and YouGov.com.

Why such a huge disparity?

Unfortunately, far too many people are under the impression that estate planning is for the ultra-rich who have substantial assets or complex financial challenges. In fact, an Estate Planning Awareness Survey commissioned by WealthCounsel reveals that 49% of individuals don't believe their assets are worth enough to worry about estate planning.

Another study shows 29% of people think they don't have enough assets to leave to anyone. This is simply not true.

The reality is that everyone can benefit from having a Will and other estate planning documents—including individuals with modest assets and a relatively straightforward estate. For one, it can mitigate the unintended consequences of not making your final wishes known and legally enforced.

It's a lesson my own family learned the hard way—a lesson that led to the expansion of my practice area into estate planning law.

Why I wrote this guide and the compelling reason you need to read it...

As a family law attorney, I help people navigate some of the hardest moments of their lives: divorce, custody, property and debt division, and more. Little did I know that some of the hardest moments of my life would include losing my parents within four months of each other.

Although we knew what my parents' wishes were after they passed away, neither of them planned their end-of-life-care or signed something as simple as a HIPAA release or living Will (also known as an advance healthcare directive). As a result, we never knew what their final healthcare wishes were for the time preceding their deaths.

My mom, suffering from terminal brain cancer, was forced to pass away on someone else's terms. She lay on her deathbed for 12 days without food, hydration, or pain medication. Since there was nothing in writing regarding her last wishes, my sister was able to prevent me from participating in my mother's end-of-life decision-making process, talking to her physicians, or securing her pain medication.

To this day, a rift exists in my family because of that.

My hope with this guide is to protect you and your family from experiencing the same agony, to ensure you understand the emotionally painful and costly consequences of failing to plan for your end-of-life care and estate, and to help you make certain you are prepared for the worst.

With that in mind, let's take a look at eight risks of failing to create an estate plan including a Will, Powers of Attorney, and advanced healthcare directive.

1

The Strain and Expense of Probate Court

Perhaps one of the biggest issues that arises after a person's death is the probate process. This is the legal process for settling an estate. It's incredibly cumbersome and usually involves notifying potential heirs, liquidating assets, paying off debts, and filing final tax returns just to mention a few things.

Based on the complexity of the estate, probate can take months to finalize and often generates substantial legal and administrative costs. In fact, Financial Samurai reports that the probate process for a modest estate can take anywhere from 6 months to 2 years. In addition, the total cost of probate fees generally ranges from 3-8% of your assets and can include attorney's fees, personal representative fees, accounting fees, appraisal and business valuation fees, bond fees, and other miscellaneous expenses.

Plus, the probate process is a public process. All of your assets are listed in court documents that are readily available to the general public.

For loved ones going through the grief of your loss, probate can be stressful. Factor in potential disputes over estate assets, as well as financial problems arising from the lengthy wait to receive inheritances, and you have a recipe for disaster.

While only a trust can help you avoid probate altogether and preserve family privacy, a properly drafted, up-to-date will can help prevent your estate from being contested and minimize the excessive court costs stemming from associated complications. It also simplifies the probate process and makes it easier for your personal representative to track everything,

2

No Control Over Asset Distribution

Dying without a Will in Alaska means your estate would be considered “intestate”. Your local probate court would then have the power to make all decisions regarding how your assets are to be distributed to your loved ones under the state’s intestate succession laws. This affects everyone from full blood relatives, half relatives, and spouses to adopted children, stepchildren, foster children, and posthumous relatives (i.e. children born after your death).

In addition, Alaska has a survivorship period. This means a person must outlive you by 120 hours. For example, if you and your sibling are in a car wreck and your sibling dies a few hours after you, your sibling’s estate would not receive any of your property.

What if you don’t have family?

Although it’s rare, if an individual dies without legal heirs, the property escheats, or finds its way, into the State’s coffers. And it’s probably safe to say, no one wants that to happen.

The reality is that intestate succession laws have no regard for the emotional relationships you have with your parents, spouse, children, members of your extended family, or even friends you might want to include as beneficiaries of your estate. If you have a fiancé or live-in partner, they could be left out entirely.

As far as the law is concerned, your assets must be distributed according to the state’s predetermined formula. While your closest family members are likely to inherit something, you will not have any say over who gets what or how much they receive. It’s also important to keep in mind that a long-lost relative you barely know could receive the lion’s share of your estate over a friend you know well and care for deeply.

A simple estate plan or Will provides a directive to the courts and your family about your final wishes. It’s the only way to ensure you have full control over who gets what, right down to that last dime or precious family heirloom.

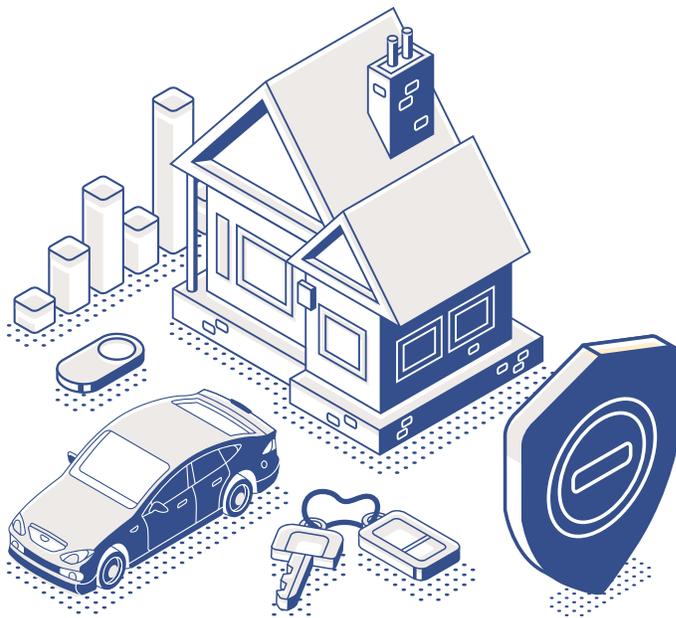
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Assets Falling Into the Wrong Hands

Speaking of asset distribution, a Will also safeguards your estate from any number of people making a claim against your assets. This includes estranged relatives, former spouses, a civil partner, anyone you have financially maintained until your death, and more.

Although we would like to believe these kinds of disputes only happen to the rich and famous, the truth is it can happen to anyone. While your preferred heirs might be able to fight off these claims in court, the battle can be lengthy, expensive, and frustrating. In many cases, it also ties up the distribution of your assets until a decision is made—time that your loved ones can't necessarily afford.

You might not realize this, but one other aspect of estate planning to consider is that it allows you to expressly disinherit someone who might otherwise benefit from your passing. You cannot disinherit someone if you do not have a Will. For example, if you have a spouse or child that you want to disinherit, you can specifically mention their existence and your intent to disinherit them without providing a reason. Although they can potentially claim allowances and exceptions under certain circumstances, this provision in your Will can help keep your estate out of the hands of someone you did not intend to inherit it.



4

The Loss of Inheritances and the Destruction of Your Legacy

Unfortunately, your heirs can fall prey to predators out for personal gain, creditors waiting for a massive paycheck, and their own poor financial decision-making skills. This is especially true of minors or young adults who aren't mature enough to manage their inheritance, and heirs with drug, alcohol, mental health issues, and other substance abuse problems. Divorce of one of your heirs could leave your estate open to claims by their former spouse.

The lack of a Will makes your assets vulnerable, especially when beneficiaries receive lump sum payments from your estate. In instances where an addiction exists, it could make the problem worse. Generally, no one wants their sons or daughters to take a large, lump sum gift and buy a new truck with the proceeds. Likewise, no one wants a son-in-law or daughter-in-law to get access to your legacy.

Protecting your legacy and estate until your beneficiaries are ready to handle the money is your responsibility. Proper planning can help protect your heirs from exploitation while ensuring their inheritances last a lifetime.

5

No Control Over Who Can Make Financial and Medical Decisions on Your Behalf

Estate planning isn't just about what happens after you pass away. It also encompasses situations where you might be incapacitated and require someone else to make important medical and financial decisions for you. Those decisions might include medical procedures you would never have wanted to keep you alive in an end-of-life situation, as well as financial decisions you would never have made on your own. While you are incapacitated, your bills and mortgage still need to get paid and someone has to do it for you.

Would you want someone you don't know or trust to have this kind of authority?

I didn't think so. Without Powers of Attorney and Advanced Healthcare Directives, the court will be forced to appoint a guardian over you, it may be someone you want or it may not, the point is that you will have no say in the matter. Without direction from you, your guardian will then do what they want instead of what you want.

A good estate plan will contain medical directives that indicate what your wishes are in the event you can no longer communicate your own decisions. It also prevents someone from petitioning the court to gain control of your medical care and assets.

But those aren't the only reasons to plan for this type of situation. More often than not, your spouse, children, or family members will have to make tough choices for you. This can be intensely stressful and burdensome if they don't know what you want. It can also lead to family disputes that end up in court.

Estate planning tools like a Power of Attorney or Living Will provides both your family and your healthcare providers with instructions and lets your financial affairs to be dealt with in the manner you want. You'll get the level of medical care you want while ensuring your estate remains intact for your heirs.

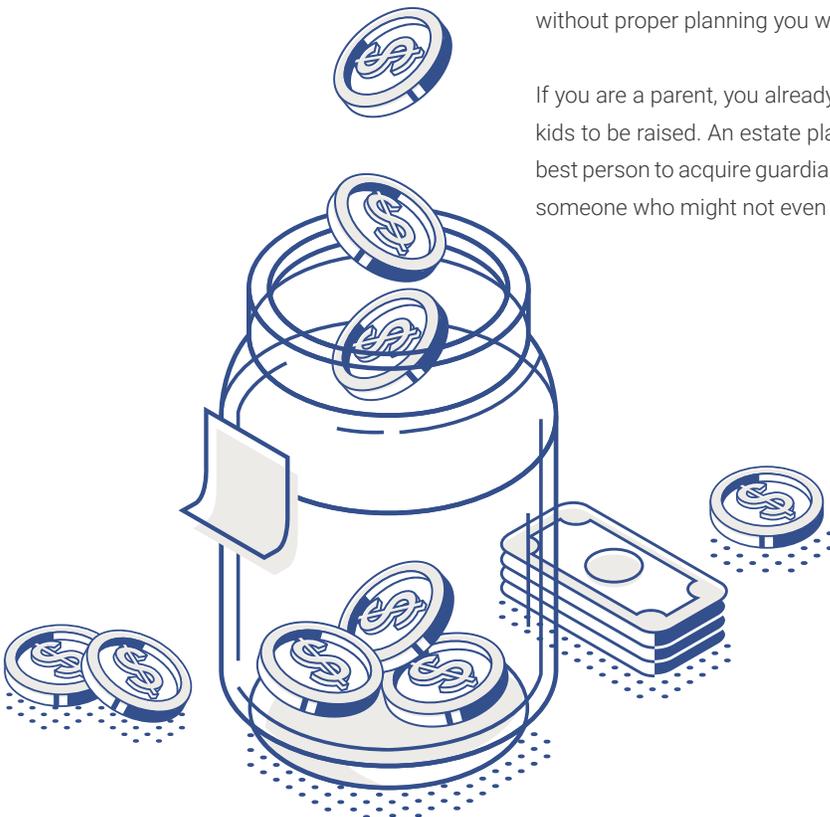
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No Control Over Who Takes Care of Your Minor Children

In the tragic event that your minor children are orphaned, what happens to them? Will the family fight over taking care of the children? Just as important, will the family fight about what happens to the money that is left to the children?

Besides deciding on the guardianship of surviving children under the age of 18, it is important to consider the management of any money and assets they might inherit from you. Without a plan, the court will decide who gains custody of your kids. Unfortunately, this could be someone you don't trust or someone with whom you have differing beliefs and values you don't want instilled in your children. Again, without proper planning you will have no say in this matter.

If you are a parent, you already know there's a particular way in which you want your kids to be raised. An estate plan allows you to make an informed decision about the best person to acquire guardianship, rather than letting the courts appoint someone—someone who might not even be a family member.



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Burdening Loved Ones and the Start of Ugly Family Feuds

35% of Americans say they have experienced or know someone who has experienced family conflict as the result of not having a comprehensive will or estate plan.

(Source: The Wealth Advisor)

As I mentioned earlier, failing to plan for your end-of-life care or estate can put a tremendous burden on those you care about the most. They're not only faced with losing you, but they now have to make potentially life-changing decisions in a short period of time. This type of pressure-cooker situation often leads to infighting and hurt feelings that can cause rifts that last a lifetime. I know this is true because it happened to me.

Don't fool yourself: even the closest of families can find themselves, in times of high stress, in explosive disagreements. Other than a difference in opinion over the right course of medical care, arguments generally surface over items that have a high monetary value or great sentimental value.

An estate plan is the best way to give everyone peace of mind, make your decisions clear, and keep family feuds to game shows. It also keeps the State of Alaska from having to interfere in your affairs.



Failing to Consider Things That Form Part of an Estate Plan

When most people think about their estate, the obvious comes to mind: vehicles, property, jewelry, etc. However, there are a number of not-so-obvious items that also impact an estate.

Special needs: Although parents engage in estate planning to make sure their children are taken care of, some make the mistake of neglecting to protect the inheritances of their special needs children or loved ones with disabilities. A special needs trust eliminates this risk by providing funding for that individual's care for their lifetime, which generally includes the purchase of goods, services, and medical care while still qualifying for public benefits.

Pets: For many people, their fur babies are just as important as humans. It's shocking then that more than 600,000 pets are euthanized each year because arrangements weren't made for their care. A pet trust solves this problem by establishing care and custody arrangements in advance.

Charity: Gifts and donations are a great way to leave a legacy, but there's also a good chance certain tax exemptions may apply. The upside is that this increases the value of the gift the charity receives.

Business interests: What happens to a person's business or interest in a business depends on a number of factors, such as the form of ownership. Even so, an estate plan should specifically include arrangements for the business and its beneficiaries.

Digital assets: Estate plans aren't just for tangible assets. They're also for digital items such as ebooks, audio, video, digital images, websites, applications, and stock photos. Digital assets are especially important to include in an estate or trust because they pose obstacles you won't find with traditional property, including passwords, encryption, data privacy laws, and more.

Miscellaneous items: From storage units to collectibles, an estate plan can help capture any belongings that might have slipped your mind.

Final Thoughts

Ultimately, estate planning minimizes risk. It protects your loved ones, and end-of-life wishes while ensuring your legacy lives on long after you're gone.

Be sure to ask your attorney about estate planning and your options. You'll want to—at the very least—cover Wills, Living Wills, Trusts, Powers of Attorney, Healthcare and Medicaid planning, end-of-life planning, and asset protection and long-term care costs.

Although it might be tempting to “DIY” your estate plan, this approach leads to additional risk. Besides not using the correct documents for Alaskan laws, some institutes (e.g. banks) might refuse to accept your Power of Attorney. Online Wills and Trusts provide cookie-cutter solutions for the most basic of all situations and are generally not suitable for most people. In addition, you might give too much Power of Attorney away or fail to exclude certain people from inheriting. Do not forget that there are tax consequences to dying.

If you already have an estate plan or Will, it's crucial to keep it updated. Marriage, the birth of a child, divorce, the death of a beneficiary, relocation, and any other significant changes in your family, health, and financial situation should all trigger you to get your current documents reviewed.

The most important thing: get an estate plan in place. Learn from my lesson. It's a hard one you don't want to go through.

**Ready to make smart moves
and get the ball rolling on
an estate plan?**

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