

Estate Planning



Informational Note: The following information is general in nature and should not be relied on for legal decision making. Every situation is unique and you should consult an attorney or qualified professional for the preparation of any document that affects your estate.

When you evaluated your net worth on page 22, were you surprised at the considerable wealth you have accumulated over the years? This wealth constitutes your estate and, in addition to having monetary value, parts of it have great sentimental value to you. What will become of your estate, both your money and valued possessions, if you become ill or die? Estate planning is essential for everyone, not just for the very rich. You, too, can take advantage of the many tax benefits associated with a well-planned estate. Effective estate planning involves actions that should be taken now and reviewed regularly.

Will

The foundation of your estate plan should be a carefully drafted will (your last will and testament). A will is an instrument that disposes of your probate property at your death and names the person or persons who will administer your estate. You may think you don't need a will because everything you own will automatically pass to your spouse. However, without a will, the personal property within your estate that is not covered by beneficiary designation or joint ownership arrangement will be distributed according to the laws of the state in which you reside, and the results may not be what you would have wanted. Under New York State law, a spouse with no children inherits all of the estate, and other relatives do not inherit any assets. However, when a spouse and children or their descendants survive, the spouse inherits \$50,000 plus one-half of the residue, while the children and their descendants share one-half of the residue, equally divided.

You may want to draft your own will using a “do-it-yourself kit” without the services of an attorney. Be careful; there are certain formalities that must be satisfied to render a will valid. Requirements vary by state, so it's important to know the laws where you live. If your situation is complex and you have sizeable assets, to be sure you achieve the distribution you want, it makes sense to consult an attorney who specializes in wills.

You should discuss the cost of your attorney's services at your first meeting. Generally, the fee will be based on an hourly rate and your estate's complexity. Don't be reluctant to discuss fees. And to avoid any surprises, do this early on in your attorney/client relationship. Review your will periodically and whenever significant changes occur in your life (e.g., you get married or divorced; have children; gain wealth; face new tax laws).

Trust

A trust can be useful as an estate planning tool. You can name a bank, an attorney, financial advisor, or other person (including yourself) as trustee, who then manages the trust property for you and/or your beneficiaries. Although trusts are primarily established to benefit family members and other beneficiaries, tax issues and the desire to protect assets from the cost of long-term nursing home care may also be considerations.

The two major types of trusts are inter vivos trusts and testamentary trusts. An inter vivos trust is created while you are living and can be either revocable or irrevocable. A testamentary trust is created by a will and takes effect after death. It is generally irrevocable once death has occurred.

A number of enterprises advertise so-called “living trusts,” which can be purchased in ready-made format. Advocates of living trusts claim various benefits as a result of avoiding probate. However, you should be aware that there are potential adverse consequences which can far outweigh the intended benefits if you are not careful to observe certain essential formalities in dealing with your assets after creating such a trust. A pre-packaged living trust is not a substitute for a careful, thoughtful estate plan.

If you believe a trust might be desirable, it is best not to attempt to set it up yourself. An attorney can, first of all, help you determine whether a trust is advisable given your objectives. If it is, the attorney can tailor the trust to meet your needs and conform to your overall estate plan.

Durable Power of Attorney

Another legal tool that may become useful with increasing age is the durable power of attorney. A durable power of attorney enables someone to take charge of your affairs and property, should you become disabled or incompetent. Because of the control vested by the durable power of attorney in the person named to act on your behalf, only a trusted person should be named. Although a durable power of attorney is revocable before incompetency, banks or other third parties without notice of such revocation are generally entitled to rely on their good faith belief as to the power's continued validity. In any event, a durable power of attorney ends with your death unless revoked earlier. A durable power of attorney may make it possible to avoid the expense and formality of a court-ordered guardianship should you subsequently become incompetent. A guardianship, however, affords stricter accountability and more stringent controls on the guardian acting in his or her own self interest. The use of a durable power of attorney is a personal decision which should be based upon your particular needs and objectives. The power of attorney form is complex and is best completed with the aid of an attorney.

A NYSTRS member wishing to execute a power of attorney granting another person the authority to make decisions regarding his/her current and future Retirement System benefits must take one of the following actions:

- ◆ Complete and submit a New York Public Employee Retirement System Special Durable Power of Attorney, available upon request by calling (800) 782-0289 or from the System's website at NYSTRS.org. This non-statutory form is for use by all members of New York State retirement systems and is specifically limited to retirement benefit transactions.

OR

- ◆ Complete and submit a short form power of attorney and a Statutory Major Gift Rider (SMGR). Both forms must be executed simultaneously and submitted in order for an agent to have the power to make gifts and other transfers, including the authority to change or designate beneficiaries on retirement benefit plans.

Living Will and Health Care Proxy

Two documents allow you to implement your wishes concerning your medical treatment if you are not able to do so yourself — a living will and a health care proxy. A **living will** allows you to express your feelings about withholding or withdrawing life-sustaining treatment that prolongs the process of dying. You can state your objection to unwanted medical measures in advance or state your desire to have all available life-sustaining treatment administered. The living will should express your general wishes, but it also can be as specific as you want, such as your wishes concerning cardiac resuscitation, mechanical respiration and artificial nutrition and hydration (feeding). Although New York does not have a specific statute recognizing living wills (as do most states), the courts have upheld the rights of individuals who have declared their objections to life-sustaining treatment. There must be “clear and convincing” proof that a person made this statement while still competent, and a living will satisfies this “clear and convincing” proof requirement.

Under the Public Health Law in New York, you can appoint someone you trust (a family member or close friend, for example) as a **health care proxy** agent, to decide about your health care treatment in the event you can no longer decide for yourself. It can be general and apply to all medical decisions or spell out specific instructions. When your attending physician makes the determination that you are no longer able to make decisions yourself, your agent can then make decisions in accordance with your best interests. You should discuss your health care wishes with your family, your agent, your attorney and your physician and give each a copy of your health care proxy. Keep copies for yourself also. Review and update your designation periodically.

Long-Term Care Insurance

Today, many of us are concerned about protecting our assets—or those of our parents or older relatives—from the spiraling cost of long-term health care not covered by traditional health insurance or Medicare. The longer you live, the greater the chance that you will need long-term care, either at home or in a nursing home. In fact, two out of five people age 65 can expect to spend some time in a nursing home because of a catastrophic illness. The average stay is 2½ years, with one in four staying more than three years. There are several ways to pay for long-term care: private pay, Medicaid, or long-term care insurance.

Private Pay:

The cost for long-term care depends on where you live, and on what kind and how much care you use. In New York State, the annual cost can be in the six-figure range. Most people cannot afford to pay this cost without depleting their lifetime savings. Although Medicare provides protection against acute care costs such as hospital and physician's charges, it was never meant to pay for long-term needs. Today, almost half the cost of long-term care is funded by Medicaid — the Federal/State insurance program that provides health care for low-income people with few assets and takes over when people are unable to pay their nursing home bills.

Medicaid:

Each state establishes its own criteria to qualify for Medicaid assistance. In most cases, you can keep a minimum amount of assets, plus your home and personal possessions. A spouse remaining at home may also keep a certain amount of assets and monthly income. When you've spent down your assets paying for long-term care, Medicaid pays the balance. Over the years, many people have attempted to take steps to become Medicaid eligible, without spending all of their own funds, by transferring their assets to relatives or by setting up trusts. However, laws governing these strategies have become more restrictive in recent years. For example, any asset transfers you've made in the five years prior to applying for Medicaid will be considered in determining whether you meet the income and asset test for qualifying for Medicaid.

Long-Term Care Insurance:

An alternative to qualifying for Medicaid is buying long-term care insurance that can help protect you from the high cost of care. While some policies cover only nursing home stays, others are more comprehensive, paying benefits for home care and adult day care. Policies offer various options for the benefit amount they pay each day and over your lifetime, the length of the waiting period and the type of inflation protection provided.

In New York State, a **Partnership for Long-Term Care** program — funded in part by a grant from the Robert Wood Johnson Foundation — is designed so residents of the State will be able to afford their own care without the need of becoming impoverished and totally dependent on Medicaid. Several insurance companies offer these partnership policies, which combine private insurance and Medicaid. You can call the New York State Partnership for Long-Term Care at **(866) 950-7526** for more information about the partnership policies and also visit the Partnership's website at nyspltc.health.ny.gov.

Each policy will cover you for a minimum of:

- ◆ three years in a nursing home, or
- ◆ six years of home care, where two days of home care equal one nursing home day, or
- ◆ any combination of the two.

When these benefits are exhausted, you will then be eligible for Medicaid extended coverage without having to spend down your assets. You are, however, required to contribute your income toward the cost of your care in accordance with regular Medicaid rules.

If you decide that long-term care insurance is a good idea for you or your spouse, then you must decide when you should buy it. As with all insurance, the older you are, the more you pay, and your health will be a factor in the cost and availability of coverage.

Long-Term Care Policy Checklist

1. Financial agency ratings:

A. M. Best Company _____
 Fitch Ratings _____
 Moody's Investors Service _____
 Standard & Poor's Insurance Rating Services _____

2. Is the policy approved under the New York State Partnership for Long-Term Care?

Yes No

3. Does the policy cover the following levels of care and the places where care is provided?

Nursing home care:	Skilled nursing care	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Personal (custodial) care	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Home Care:	Skilled nursing care	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Personal (custodial) care	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Adult day care		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Assisted living facilities		<input type="checkbox"/> Yes	<input type="checkbox"/> No

4. Does the policy pay benefits for respite care? Yes No

If yes: _____ days/year

5. How much will the policy pay for the following benefits:

Home care \$_____/day
 Adult day care \$_____/day
 Assisted living facilities \$_____/day
 Nursing home care \$_____/day
 Respite care \$_____/day

6. Does the policy pay benefits for "alternate care days" in a hospital? Yes No

7. How long will the policy pay benefits? 3 years
 5 years
 Unlimited
 Other _____

8. How long is the elimination or waiting period?

Nursing home care: _____ days
 Calendar days Yes No
 Service days Yes No
 Home care: _____ days
 Calendar days Yes No
 Service days Yes No

9. Does the policy offer "inflation" protection? Yes No

