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# State-Specific Estate Planning Toolkit

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## Triage Health Estate Planning Toolkit

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## What is Estate Planning?

Estate planning is a process that involves thinking about your wishes related to your health and finances, and then documenting those wishes to ensure that they will be carried out.

Most people think that you only need to plan your estate if you have a lot of money or property. But really, the estate planning resources in this toolkit are useful for every adult over the age of 18. Although it can be difficult to think about your mortality, creating an estate plan allows you to express your deeply held values and personal preferences. Thinking about these decisions and preparing in advance can provide you with the peace of mind that your loved ones will know your wishes.

This toolkit includes information about estate planning in general, information about estate planning documents in your state, and your state's estate planning forms.

The details about estate planning laws in your state may change frequently. The most up-to-date information about these topics and many others can be found at [TriageHealth.org/State-Laws](https://www.triagehealth.org/state-laws).

## Part I: Understanding Estate Planning

Estate planning can mean different things to different people. Perhaps the broadest definition is that it is the process to create a plan to ensure your wishes about the distribution of your property, your health care, and caring for your loved ones are carried out if you are unable to make these decisions for yourself or when you die.

An estate plan can have different parts and benefits, including a will, a trust, a power of attorney for financial affairs, and an advance directive for health care.

An estate plan can:

- Include directions for what you want to happen to your property after your death
- Allow you the opportunity to express deeply held values and personal preferences
- Protect loved ones from having to make challenging decisions when they are grieving a loss
- Have financial benefits, including to:
  - Reduce taxes beneficiaries may have to pay
  - Help to avoid the time and costs associated with the transfer of the property after death (e.g., probate)
- Give loved ones peace of mind that they understand your wishes and that there are no loose ends
- Give directions about how your legal and financial affairs should be managed during your lifetime, if for any reason you are not able to do so yourself
- Ensure that your health care wishes are respected if you are not able to communicate your wishes



It is a myth that only wealthy or older individuals need an estate plan. Every adult can benefit from having even the most basic plan in place, especially since estate planning doesn't just involve your property, but also includes decisions about your medical care, who will care for your children, and many practical issues.

Some people think that they do not have enough money or property to need a will or a more in-depth estate plan, while others think that they can't afford to hire an attorney, so there is no way they could create an estate plan. And, it's common for people to not want to face their mortality, especially when dealing with a health crisis, so they don't think about the benefits of having an estate plan.

Less than half of all Americans have a will; barely 40% have an advance directive; and just over 50% have retirement income or have planned for emergency expenses.

Creating an estate plan allows people the opportunity to express deeply held values and personal preferences. Planning in advance can provide you with the peace of mind that loved ones will be aware of and carry out your wishes. An estate plan is an important part of preparing for the future, regardless of how much money you have.

Estate planning can feel daunting, emotional, and difficult. But, when you are coping with a chronic or serious medical condition, you may find great comfort in exercising some control at a time when much feels out of your control. Open dialogue with your loved ones and health care team about the realities of your health care and what is most appropriate for you is critical. You are not alone in this process. There are many resources out there to help individuals and families establish a comprehensive and cohesive estate plan.

For an overview of estate planning, you can watch our animated video series on estate planning:

- **Planning Ahead ~ Documenting Your Wishes:** [TriageHealth.org/Video-DocumentingWishes](https://TriageHealth.org/Video-DocumentingWishes)
- **Planning Ahead ~ Financial and Medical Decision-Making:** [TriageHealth.org/Video-FinancialAndMedicalDecisions](https://TriageHealth.org/Video-FinancialAndMedicalDecisions)
- **Planning Ahead ~ Practical Things to Think About:** [TriageHealth.org/Video-PracticalMatters](https://TriageHealth.org/Video-PracticalMatters)



## **Getting Started**

There are different types of estate planning and medical decision-making documents that might be useful to you. To figure out which documents you need and to start the estate planning process, consider these big picture questions:

- What do I own?
- How do I own it?
- What do I want to happen to what I own when I die?
- Are there people who I am legally responsible for?
- Are there people who I want to take care of?
- Who would I want to make medical and financial decisions for me if I am not able to make them?

### **Defining Your Estate**

- Make a list of all property
- Determine property's value (financial & sentimental)
- How is the property owned?

It is important to remember that estate planning laws are often very specific to each state, so you want to make sure that you are looking at the rules and options in your state. Part II of this toolkit provides state-specific information. Part III includes some of the documents for your state.

## Terms to Know

The field of estate planning has its own language. Here are some common estate planning terms to know:

- **Testator:** the person who has created a will
- **Grantor:** the person who conveys ownership of property (e.g., the person writing a will).
- **Decedent:** a person who has died; generally used to describe the person who has written the will after he or she has died
- **Assets:** everything a person owns (e.g., property, accounts, insurance policies, etc.)
- **Bequest:** the property or money that is given in a will
- **Beneficiary:** a person who receives a benefit from a will, trust, or insurance policy
- **Executor:** the person named in a will to carry out the terms of the will and to administer the decedent's estate; this person can also be known as a personal representative
- **Intestacy:** when someone dies without a will
- **Probate:** the court process that occurs after someone dies to deal with the distribution of property
- **Administrator:** a person, or company, appointed by a court to manage an estate if no executor has been appointed or if the named executor or personal representative is unable or unwilling to serve
- **Trustee:** a person who is designated to administer and oversee a trust



## What is Included in Your Estate

One of the first steps in the estate planning process is to figure out what you own and what should be included in your estate plan.

An “estate” includes all of the property an individual owns at the time of death. An estate could include a wide range of things. For example, in addition to a home and other real estate, an individual’s estate may include cars, furniture, jewelry, collections (e.g., baseball cards), and artwork. Bank accounts, stocks, bonds, securities, pensions, Social Security benefits, and life insurance policies are also part of an individual’s estate. Even debts or other payments owed to an individual, like a tax refund or an inheritance, are included in his or her estate.

Digital “assets” or property like online accounts, electronic devices (e.g., a computer or phone), files and photos on the devices, e-mail accounts, social media accounts, blogs, and intellectual property (e.g., a book manuscript) are also considered part of an individual’s estate. Read the section about digital assets, for more information on this topic.

An individual’s debts are also part of the estate. Once individuals determine what they owe, they need to figure out if their family members would be responsible for paying their debts after they die. For example, adult children are generally not responsible for the unpaid medical bills of their parents.

Once an individual has determined what he or she owns, it may also be useful to determine its value. Some items, like a car, may have a set value based on the model and age of the car. Some values, like those for real property, may fluctuate based on the market. Other items, like keepsakes, photos, or family heirlooms, may not have a large monetary value at all, but have a huge sentimental value.

Gathering this information can help you devise a plan for how you want to distribute your property. See the next section for help with this process.

## **Checklist: Getting Organized**

Whether you are trying to organize your finances, or you are starting to make estate planning decisions, it is important that you compile the information contained in this checklist, in addition to any other information that you feel is important. Some potential places to store these records include a fireproof safe in your home, a bank safe deposit box, or electronically in an online drive. One benefit to keeping a copy of these records online, is that they are accessible from anywhere, which can be useful if you are traveling or if there is a natural disaster.

Wherever you decide to store these records, it is crucial that someone you trust knows where they are located and has access. For example, if you have named a friend your financial power of attorney, your friend needs to have access to your bank accounts, etc. If you have named your sister the executor of your will, then your sister needs to be able to access a copy of the will.

- Personal & Family Records
  - Social Security card, drivers' license or state ID, passport, & military discharge papers (DD-214)
  - Birth certificates for yourself, spouse, and children
  - Marriage license and/or proof of divorce, if applicable
  - Contact information for your current employer and/or supervisor
  - Health, dental, vision, personal property, and/or homeowner's or renter's insurance with contact information of insurance agent(s)
  - Usernames and passwords for computers, tablets, phones, online accounts, music sharing sites, etc.
  - List of close relatives, friends, neighbors, etc. with their contact information
  - Instructions or other messages for surviving spouse or children
- Financial Accounts & Property Records (For information about finances, visit [TriageHealth.org/Navigating-Finances](https://www.triagehealth.org/navigating-finances))
  - Account information for checking, savings, credit cards, loans, stocks, bonds, other securities, other assets, and accounts receivable, etc.
  - Safe-deposit box bank information, key, and box number
  - Proof of car (and/or motorcycle, boat, etc.) ownership, registration, and insurance
  - Real estate deeds, title policies, mortgages, record of payments, tax receipts, receipts for improvements, etc.
  - Income tax returns for last three years, and contact information for tax preparer
  - Receipts and appraisals for any personal property of substantial value (e.g., furniture, silver, art, jewelry, etc.
  - Any business ownership and financial records (e.g., for sole proprietors or partnerships)
- Estate Planning Documents
  - Will, trust, financial power of attorney, and advance health care directive, with contact info of attorney if applicable
  - Other estate planning and medical decision-making documents
  - Account information for retirement or pension plans (e.g., IRA, 401k, 403b, etc.)
  - Life insurance policies
  - Funeral or memorial instructions

## **Ways to Own Property**

These are the three most common ways to own property:

- **Individual ownership.** This is property that an individual owns outright, to which no one else has a legal claim. For example, if Mark buys a car and only his name is on the title, he owns that car individually. Therefore, he can make decisions about who will own that car upon his death.
- **Joint ownership.** There are two different ways that one can own property jointly:
  - **Joint tenancy with right of survivorship.** With this type of ownership, all of the owners hold an equal right to the property and do not need the other owners' permission to access or use that property. For example, if Mark and Angela own a bank account in joint tenancy with right of survivorship, each one could spend money from that account without the other's permission. If Mark were to die, Angela would automatically become the sole owner of the entire account without having to go through probate. Many married couples own their homes as joint tenants with right of survivorship, so their home would not go through probate.
  - **Tenancy in common.** With this type of joint ownership, each individual "tenant in common" owns a specific percentage of the property. Each individual is only free to withdraw/mortgage/sell his or her own portion of that property. When a tenant in common dies, his or her share of the property would pass to his or her beneficiaries. It would not pass to the surviving tenants in common. For example, Angela and Mark own an apartment building with four units as tenants in common, with each of them owning 50 percent of the building. When Mark dies, ownership of two of the units would transfer to his niece, who is named in his will. Now Angela and Mark's niece own the apartment building as tenants in common.
- **By contract.** In some types of property like life insurance, retirement accounts, and living trusts, ownership is determined by the contract itself. With these types of property, the owner has full control over the property while alive, but after death, the property transfers to a beneficiary of the owner's choice. For example, Mark has a retirement account and Angela is the sole beneficiary listed. While he is alive, Mark has the full right to withdraw or add funds to that account as he sees fit. Upon his death, the balance of the account will go directly to Angela. Generally, all Angela will need to do is provide a death certificate to access the funds without going through probate.

Ownership Type	Included in Will?	Probate Required?	% of Ownership
Individual Ownership	Yes	Yes	100%
Joint Tenancy with Right of Survivorship	No	No	100%
Tenancy in Common	Yes	Yes	Established when property is acquired
By Contract	No	No	100%

Once you have more information about what you own and how you own it, you can better determine how to move forward with an estate plan.

For property that you own individually or as a tenant in common, it is up to you to plan for what happens to that property when you die. The two main estate planning tools to make and document decisions about your property are a will and a trust.

### **Wills**

A will is a legal document that provides instructions for what you would like to have happen to your property upon your death. A will is also the place where parents can name a guardian for minor children as well as provide other directions (e.g., wishes for a funeral).

### ***Requirements for Wills***

#### **Steps to Create a Will**

- Assess property and values
- Double check state's requirements
- Decide on the type of will and if you need to hire an attorney
- Identify an executor
- Identify a guardian for minor children
- Identify witnesses and/or notary
- Keep will in secure but accessible location, known by the executor
- Periodically review will to ensure it matches current property and wishes

Each state has different rules about how to create a valid will. At a minimum, most states require that a will be in writing, that the person writing the will be of “sound mind,” that the person sign the will, and that the signature be witnessed by an uninterested party (a person not included in the will). Some states may require two witnesses, that the witnesses are physically present when the person signs the will, or that they will be notarized.

Some states allow for a will to be “self-proving.” To make a will self-proving, the person writing the will and witnesses sign an affidavit in front of a notary that proves the identity of the person writing the will and that all parties had knowledge of the will. A self-proving will expedite probate because the court can accept the will without contacting the witnesses who signed it.

Very few states allow for oral, or nuncupative, wills. Generally, oral wills are allowed in very limited and unusual circumstances (e.g., statements made on one’s deathbed).

To see your state’s requirements for creating a valid will, see Part II of this toolkit.

### ***Holographic Wills***

The following states allow for holographic wills (e.g., handwritten without witnesses): Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kentucky, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina (if found after death in a place intended for safekeeping), North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. However, most estate planning experts do not recommend relying on holographic wills because it is more difficult to prove that they are valid in probate court.

To see your state’s requirements for creating a valid will, see Part II of this toolkit.

### ***Statutory Wills***

A limited number of states have what is referred to as a statutory will. These are wills that are created by a state legislature in a law and provided to individuals to fill in the blanks with the specifics of their estate and their wishes. The benefits of a statutory will are that they are generally free to complete, and individuals can complete them on their own (i.e., they do not need to hire an attorney). The downsides of a statutory will are that they cannot be customized and are, therefore, best for very simple estates. The only states that provide statutory wills are California, Maine, Michigan, New Mexico, and Wisconsin.

To see your state’s requirements for creating a valid will, see Part II of this toolkit. If your state has a statutory will, see Part III of this toolkit for the statutory will form.

### ***Will Forms***

There are also several do-it-yourself options available for people who either have a relatively simple estate or cannot afford an attorney. There are online services, books, and computer software that you can buy, with costs typically up to \$200. If you are searching online for a will form, you should make sure that it is the right form for your state. Even if you decide to complete a will form, you want to consider having an attorney review it, to make sure it was completed correctly.

### ***What to Include in a Will***

A will should include almost all of the property you own. The few exceptions include property you have already chosen a beneficiary for (e.g., a life insurance policy or retirement account) or property owned jointly with right of survivorship.

A will should also designate what should happen to any property you acquired after creating the will. You can easily do this through a clause in a will called a “residuary clause,” which allows for any property owned when you pass away to be given to specific people, entities, or organizations.



During the process of planning your estate, you should consider who you are responsible for (e.g., minor children, adult children with developmental disabilities, aging parents, pets) and how to care for them if you are no longer able to do so. If you have minor children you may want to name one or more people to act as their legal guardians if you pass away. You should also consider who you would want to manage any financial assets for those children.

You must choose an “executor” to serve as your personal representative who will execute your will. You can choose a family, friend, or anyone else you trust. A will can also include instructions about other topics, such as funeral or memorial plans.

Preparing a will can help your loved ones avoid long and expensive proceedings in probate court and allows you to minimize taxes on the property left to others.

### ***How to Change or Revoke a Will***

It is important to remember that wills can be revoked (cancelled) or changed at any time as long as the testator is of sound mind.

Regularly reviewing and updating your will in order to make necessary changes is an important part of estate planning.

A codicil is a legal document that amends, rather than replaces, a previous will, and can be used for minor changes. Minor changes might include adding or removing a particular gift (like a car an individual no longer owns) or updating the legal name of a beneficiary who has gotten married. Codicils must be executed in the same way that wills must be executed in your state. For example, if a state requires that a will be signed by two witnesses, the codicil must also be signed by two witnesses.

On the other hand, revoking a current will and making a new one should be considered for major changes, such as completely removing a beneficiary or adding a new child as a beneficiary.

Generally, if you create a new will, it is wise to destroy all old wills, to avoid any confusion or doubt about which version is the valid will.

### ***Where to Keep a Will***

Once a will is created, it should be kept in a safe, but accessible location. The executor or someone else you trust should be made aware of the location of the will and have access to it. For example, it can cause a problem for an executor if the only copy of your will is in a safe deposit box that only you can access. Read the section on how to store and share your estate planning documents for more information.

### ***How a Will is Implemented (the Probate Process)***

When an individual dies, the estate must be probated. Probate describes the court’s process of supervising the gathering and distributing of the property you leave behind.

Each state has a slightly different probate process; however, there are generally three kinds of probate: informal, unsupervised formal, and supervised formal.

- **Informal.** This probate is done only through paperwork and going to court is not required. Generally, the executor files with the court to ask for informal administration from the probate court. If there is no will naming an executor, the application is usually filed by a family member of the person who passed away. If the application is approved, then the executor is responsible for:
  - Sending formal notices informing heirs, beneficiaries, and creditors
  - Publishing a notice to creditors in a local newspaper
  - Preparing an inventory and appraisal of the person’s estate

- Paying all debts and taxes
- Distributing the remaining property to heirs and beneficiaries, based on law
- **Unsupervised formal probate.** In certain situations, a slightly more traditional court proceeding is needed. For example, when:
  - There is no will and the court must determine who the beneficiaries should be, based on law
  - The deceased person has more debts than assets
  - Inheritors or creditors need the court to resolve a disagreement
  - The executor feels it is needed to avoid criticism or suspicion during the estate’s administration
  - Minor children inherit substantial property and need help protecting their interests
- **Supervised formal probate.** Generally, this process is very similar to the unsupervised version of probate, except that here a judge has the authority to order the executor to take specific steps to ensure that the estate is properly transferred to its rightful beneficiaries.

If someone has a will, the estate must first pay the decedent’s debts, funeral expenses, and estate administration expenses. Then, any remaining property is distributed according to the terms of the individual’s will. The executor named in the will distributes the property. The executor must be approved by the probate court before the executor has the authority to handle the affairs of the estate and property distribution.

***What if You Don’t Have a Will***

If you die without a will, your property will be distributed according to your state’s “intestacy” law. The intestacy law is a ranking system of family members who inherit from your estate. Each state has a different set of intestacy rules. Once the estate has paid all of your debts, funeral expenses, and estate administration expenses, then the probate court follows the state’s intestacy statute to determine how any remaining property will be distributed.

This table offers an example of intestacy succession in Indiana:

If you die with:	Here is what happens:
children but no spouse	children inherit everything
a spouse but no children or parents	spouse inherits everything
a spouse and children from you and that spouse	spouse inherits 1/2 of your intestate property children inherit 1/2 of your intestate property
a spouse and at least one child from a previous spouse	spouse inherits 1/2 of your intestate personal property and 1/4 of the fair market value of your real estate, minus the value of any liens or encumbrances on that real estate children inherit everything else
a spouse and parents	spouse inherits 3/4 of your intestate property parents inherit 1/4 of your intestate property
parents but no spouse or children	parents inherit everything
siblings but no spouse, children, or parents	siblings inherit everything

If you have homes in more than one state, you may wonder which state’s law applies. The law that will apply is the state where you lived at time of death.

The probate court will appoint an administrator to manage affairs of the estate. Family members may petition to serve as administrator, or the probate court may appoint a public administrator. Since state intestacy laws only recognize immediate relatives as beneficiaries, close friends or charities you want to include in your will likely will not receive anything. If no relatives are found, any remaining property is held by the state government in escrow, until someone comes forward to claim the property.

Intestacy often means that your wishes will not be fulfilled, which is why it is important to create your estate plan.

### **Non-probate Transfers of Property**

You may decide to use a non-probate transfer to transfer ownership of your property outside of the probate process, to speed up the distribution of your assets. There are several different types of non-probate transfers, and the tool used will depend on the type of asset being transferred.

- Payable-on-death accounts can be used to transfer money immediately upon death. This is commonly used for bank accounts. The beneficiary must present the grantor’s death certificate to the bank. The bank then transfers legal ownership and full control of the money to the beneficiary.
- Transfer-on-death registrations can be used to transfer securities (e.g., stocks) to a beneficiary upon the death of the owner without having to go through probate. Beneficiaries of the securities must reregister the securities in their names once they have possession by sending a copy of the death certificate and an application for reregistration to the security issuer.
- Transfer on Death (TOD) Deeds are a way to transfer real property (e.g., a home) outside of probate, but maintain a life estate (i.e., control over the property while you are still alive). Meaning you can sell, mortgage, change, or transfer to home as you wish. Once you pass away, the property automatically transfers to the person you name in the deed, without going through probate. To create the TOD deed, you must take a completed and notarized form to your local Office of Recorder of Deeds. The form typically needs to include:
  - The names and addresses of all owners of the property.
  - The legal description of the property to be transferred. Note: the mailing address of the property is often not enough to be a legal description. Typically, you will need to include either a “Lot and Block” or “Meets and Bounds” description ([DeedClaim.com/Legal-Description](https://www.DeedClaim.com/Legal-Description)).
  - The person or people that will own the property after you die.
  - A statement that the property will transfer at your death.
  - Your signature making the transfer and the date.

If you change your mind, or the person you named passes away before you, you can revoke the deed or create and record a new one to supersede the old one and transfer the property to someone else.

A Lady Bird deed, also known as an “enhanced life estate deed” is a specific type of TOD deed. A Lady Bird deed is only explicitly allowed in three states (Florida, Michigan, and Texas). To create a TOD Deed, you don’t actually have to live in the state to title property with a TOD Deed - the *property* just needs to be in a state that allows their use. As of 2021, the District of Columbia and these states allow some form of transfer on death deeds:

- Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

## ***Advantages and Disadvantages of TOD Deeds***

Advantages include:

- They are inexpensive to establish, unlike trusts (see the next section)
- They allow you to maintain complete control over the property while you are alive
- They avoid the time and expense involved with the probate process
- They may help you access Medicaid coverage for long-term care. If you have a TOD deed in place and have to leave your home for care on a permanent basis (e.g., nursing home or hospice), typically, the property is no longer considered your primary residence and the value will not be counted against you for Medicaid eligibility. In some circumstances, this also protects the property from being sold, after your death, to repay the cost of Medicaid benefits that you received (Medicaid Estate Recovery).

Disadvantages include:

- There is little flexibility for beneficiaries
- There could be tax implication for beneficiaries
- It could be difficult for beneficiary to purchase title insurance for first 18 months of ownership, which makes it challenging to sell the property
- It doesn't protect property from your creditors upon your death



## **Other Non-probate Transfers**

Other types of non-probate transfers include life insurance policies, deferred compensation plans, and pension plans. In these instances, the owner of the policy or account picks a beneficiary. When the owner dies, the beneficiary usually only needs to present a death certificate to gain access to the funds.

## **Trusts**

A trust is another tool for estate planning. Unlike a will, which is a document that expresses your wishes for what will happen to your property after you die, a trust is a legal entity that will actually own the property. The person placing the property into the trust is the *grantor*. The person the grantor chooses to oversee the property in the trust is known as the *trustee*. The person who receives the benefit of the property in the trust is known as the *beneficiary*. Property that can be held in a trust includes land, buildings, bank accounts, stocks, artwork, cars, jewelry, and other personal property.

To set up a trust, you list the purposes of the trust and makes the trust property available to the trustee. When property is put into a trust, legal ownership is transferred from you to the trust itself. The trustee then has a legal responsibility to handle the property within the trust the way you have specified in the written trust agreement.

Some of the benefits of establishing a trust include:

- **Control.** Trusts allow you to include specific terms providing more control as to when and to whom distributions may be made. For example, Alice's son only receives his portion of the trust if he has obtained a college degree by the age of 26.
- **Protection.** Trusts allow you to provide for people who may not be skilled at money management. For example, Bill's daughter Pat has a gambling problem. Bill can establish a trust where Pat will only receive her living expenses each month, rather than a lump sum when Bill dies.
- **Privacy and probate savings.** Some people prefer to establish a trust to avoid probate, both to reduce potential court fees and taxes, but also because they prefer to keep their financial matters private and probate is a matter of public record.

## ***Types of Trusts***

People set up trusts for a variety of reasons and there are different types of trusts depending on your needs. The most common types of trusts are:

- **Living trust.** This trust is also referred to as an *inter vivos* trust. It is created while you are still alive and is generally revocable until you die. The most common way to create these trusts is for you to appoint yourself as trustee and as long as you remain mentally competent, you can change or dissolve the trust at any time, for any reason. Typically, a living trust becomes irrevocable when you die.
- **Irrevocable trust.** Unlike a living trust, an irrevocable trust cannot be changed or revoked once created by you. These trusts may provide some tax benefits and protection from legal action or creditors. However, you should not create this type of trust lightly since you will no longer have full control over the property once you create the trust, even if you name yourself a trustee.
- **Testamentary trust.** These trusts are established, in a will, to provide for people who need help managing their assets. These types of trusts do not go into effect until the grantor dies. Testamentary trusts can be especially useful to parents who have young children and want to provide for future education, health care, or general support. They may also be helpful in meeting ongoing expenses for dependent adults with special needs, while safeguarding their government benefits (e.g., Medicaid).
- **Special needs trust.** Sometimes referred to as supplemental needs trusts, these trusts allow individuals with a disability to hold an unlimited amount of assets in a trust for their benefit. The advantage of these trusts is that assets included in the trust are not considered “countable assets” for certain government benefits that are based on income and resource levels (e.g., Supplemental Security Income or Medicaid). A special needs trust may supplement care the government provides. For example, the trust may pay for hours of home health care in addition to those paid for by Medicaid. There are specific requirements that must be met in order to establish a valid special needs trust:
  - The beneficiary must be younger than 65 at the time the trust is established
  - The trust is irrevocable
  - The trustee has sole and absolute discretion over the use of the trust funds for the sole benefit of the recipient of government benefits (i.e., the trustee cannot be required to pay the beneficiary directly from the trust)
  - The trust includes a provision that states that any funds remaining in the trust at the death of the beneficiary are available to reimburse the state for any Medicaid costs the beneficiary received

## ***Benefits of Trusts***

Tax savings can be a benefit to establishing a trust. For example, you might make annual tax-free gifts to trusts, in an amount allowed by law, to children or grandchildren. This practice reduces the taxable estate and can save on probate taxes. As a result, more of your assets will pass to your beneficiaries.

Unlike a simple will, establishing a trust can be complicated and has serious implications because the grantor is giving up ownership of the property held in the trust. So, it may be a good idea to consider hiring an estate planning attorney to make sure that the trust is set up correctly. See the section on finding estate planning legal assistance.

## ***Where to Keep a Trust***

Once you establish a trust, it is important to let your loved ones know it exists, and where to find it. Many people opt to keep their trusts with the attorney who drafted the trust. In that case, at a minimum, the trustee should be given the contact information for the attorney.

## **Power of Attorney for Financial Affairs**

A power of attorney for financial affairs is a legal document where you name a trusted adult (the agent) who is authorized to make financial decisions on your behalf.

There are two types of powers of attorney for financial affairs: durable and springing. A durable power of attorney for financial affairs goes into effect as soon as the document is signed, whereas a springing power of attorney for financial affairs goes into effect if, and only if, you become incapacitated. If no specific end date is expressed, the power of attorney for financial affairs will end upon your death, or when you revoke the power. Some of the duties that you can grant an agent may include depositing or withdrawing funds from a bank account, or handling your personal matters, such as receiving mail, making travel arrangements, or dealing with a health insurance company.

A power of attorney for financial affairs can be very useful in situations where a chronic or serious medical condition diagnosis or side effects of treatment might lead to temporary or permanent incapacitation. By having a power of attorney for financial affairs in place, the need for a court-appointed guardian to make financial decisions for you is eliminated.

It is important to remember that this document will likely grant a large amount of your decision-making power to an agent. Therefore, you must be careful to create clearly defined conditions for your power of attorney for financial affairs.

To guard against misuse of the power, you should choose your agent or agents with great care. Often when people think about who to choose as their agent, they only think about family members. However, if you are having a hard time finding a trusted family member to act as an agent, it may be useful to think outside of the family to a trusted friend or business partner. As a precautionary measure, you should be sure to include any desired restrictions in the document itself.

### ***What if You Don't Have a Power of Attorney for Financial Affairs?***

If you do not have a power of attorney for financial affairs and become incapacitated, it may fall to a court to appoint a representative to oversee your financial affairs. Many states have laws that outline the priority of family members to act as surrogates (e.g., first an individual's spouse, then an adult child, then a parent, etc.).

A guardianship is a legal relationship that is established and monitored by a state court where someone (the guardian) is appointed to act in your best interest if you are incapacitated.

There are two main types of guardianships: guardian of the person and guardian of the estate. Note that terms and rules will differ slightly state to state. For information about guardianships of the person, read the section on making medical decisions.

A guardian of the estate, also known as a conservator of the estate, is responsible for decisions about your property and financial affairs. A guardian of the estate may take actions on your behalf, such as:

- Paying bills on your behalf
- Selling property
- Investing money
- Selling assets
- Initiating legal proceedings

Courts do not create guardianships until making a judgment about your capabilities. First, the court must find some limitation that affects your decision making. Then, the incapacity or incompetency must be determined to be so severe that it affects the ability to manage affairs or make decisions that a court-appointed guardian is necessary.

Voluntary guardianships are very rare. Most attorneys would recommend that if someone feels he or she may become incapacitated in the future, that the individual establish advance health care directives or a power of attorney for financial affairs, rather than rely on the guardianship process.

Sensitive details about your situation become a matter of public record, leading to a considerable loss of privacy and independence. Also, as with most court proceedings, there can be significant costs and delay in establishing the guardianship. These are all reasons why it is important to plan ahead and document your wishes.

### ***Where to Keep a Power of Attorney for Financial Affairs***

Just like with wills and trusts, it is important that the appropriate people have knowledge of, and access to, any relevant documents. For example, it is critical that the person who you appoint as your power of attorney for financial affairs knows that the document is kept in a safe deposit box and is also a signatory on the box.

### **Other Financial Tools**

One simple way to make sure that your finances are taken care of, if you are unable to make your own financial decisions is to set up direct deposit and automatic payments. For example, if you are in the hospital, this will ensure that your paychecks are still deposited into your bank account and your bills are being paid. This option doesn't cover every situation, though. You may need additional help managing your finances. In that case, you can choose someone whom you trust to add to your financial accounts as an authorized signer. This person is not an owner of the account but could be authorized to sign checks. You could also choose to add someone as a joint account owner. A joint account owner can engage in any business on the account, including signing checks. It also creates the presumption that in the event of your death, the surviving joint account owner will become the owner of the account.

### **Social Security Survivors' Benefits**

It may be useful for an individual to consider if loved ones would be eligible for Social Security survivors' benefits in the context of the overall estate plan. When an individual dies, his or her spouse or dependents may be entitled to receive Social Security benefits based on earnings throughout the individual's work history. The individuals eligible for survivors' benefits are:

- Widows and widowers:
  1. If they are 60 or older
  2. If they are 50 or older and have a disability
  3. If they are under 50 and take care of the individual's child who is under 16 or has a disability
- Divorced widows and widowers:
  1. If they are 60 or older and the marriage lasted at least ten years
  2. If they are 50, have a disability, and the marriage lasted at least ten years
  3. If they are under 50 and they take care of the individual's child who is under 16 or has a disability
- Unmarried children:
  1. If they are under 18 (or up to age 19 if attending elementary or secondary school full time)
  2. If they are over 18 and they have a disability that began before they were 22
  3. Under certain circumstances, benefits can also be paid to stepchildren, grandchildren, step grandchildren, or adopted children
- Dependent parents:
  1. If they are 62 or older and received at least half of their financial support from the individual



For more information or to apply for survivors' benefits, the surviving relative should notify the Social Security Administration of the individual's death by calling (800) 772-1213 or visiting a local Social Security office: [secure.ssa.gov/ICON/main.jsp](https://secure.ssa.gov/ICON/main.jsp).

## **Advance Health Care Directives**

There may come a time when you are unable to make your own medical decisions. However, there are tools that you can use to ensure that your wishes are honored with respect to your medical care.

Advance health care directives emerged toward the end of the 20th century when concern grew about the power of new medical technologies to keep individuals with serious medical conditions alive. More generally, apprehension developed that medical decisions might be made without regard to the wishes and welfare of incapacitated individuals or their families.

Highly publicized court cases prompted many to consider leaving written instructions about treatment preferences where an individual might become unable to make medical decisions. Despite these court cases, which showed the need for advance end-of-life care planning, only about a third of U.S. adults have plans, according to a recent study. In an effort to increase access, in January 2016, Medicare began reimbursing physicians for counseling patients about advance care planning.

The federal and state laws that allow for advance health care directives are based on established principles regarding an individual's medical decision-making rights. The right of an individual to determine his or her own medical treatment comes in part from the idea of informed consent—that is, when an individual decides to follow a certain medical approach with a physician, after an open dialogue and being presented with relevant facts about a treatment.

However, an individual's right to make his or her own health care decisions is not unconditional. Instead, the right of medical self-determination must be balanced against three important governmental interests. First, preserving the lives of its citizens is a matter of great public concern for the government. For example, the government has an interest in preventing suicide. There is also a governmental interest in safeguarding the integrity of the medical profession. Finally, the government has a significant interest in protecting innocent third parties. For instance, the government wants to guard minors against emotional and financial injuries that might result when a competent adult decides against lifesaving or life-prolonging treatment. When any of these governmental interests are sufficiently harmed, the competent adult might not be permitted to exercise the right of self-determination by refusing treatment.

Occasionally, governmental interests and medical self-determination conflict. When there is conflict, governmental interests will typically not be able to prevent a competent adult from making health care decisions, even if refusal of life-sustaining treatment is involved. But, if the individual is incompetent and has not expressed his or her health care preferences, a court may need to weigh the government's interests against an individual's rights.

To avoid a court from weighing in, there are steps individuals can take to plan ahead in the event they become incapacitated and are not able to make medical decisions for themselves. While laws vary from state to state, every state and the District of Columbia allows for some kind of advance health care directive.

### ***What is an Advance Health Care Directive***

Generally speaking, an advance health care directive is a legal document you can use to provide written instructions, or state your preferences, about your medical care in case you become unable to communicate your wishes. However, an advance health care directive might be called a different name in your state.

Advance directives are commonly seen as a method of directing the withholding or withdrawal of medical treatment at a future time when treatment may not be useful (e.g., stopping chemotherapy once doctors have determined it has become ineffective). But, they can also be used to ensure the start or continuation of treatment at a future time when you may not be able to communicate your consent (e.g., starting artificial hydration).



## ***Parts of an Advance Health Care Directive***

Terms vary from state to state, but advance health care directives have two main options:

- First, an advance directive document may give health care instructions for future medical care, but does not appoint another person (e.g., agent, surrogate, or proxy) to carry out those instructions. These instructions are sometimes called a living will.
- Second, an advance directive document chooses another person (e.g., proxy, surrogate, or agent) to make health care decisions for you, if you become unable to do so. This is sometimes called a power of attorney for health care or a health care proxy.

In some states, you can use one or both options for advance health care directives. It is important that you use the type of directive for your state. Part II of this toolkit provides state-specific information. Part III includes some of the documents for your state.

### ***Living Will/Health Care Instructions***

A living will allows you to express your wishes about medical care, but typically does not name an agent.

Generally, a living will is commonly used for more narrow circumstances, such as life-prolonging procedures (not routine care) for someone unable to make his or her own health care decisions. However, it is important to remember that not all states recognize standalone living wills as valid documents. Part II of this toolkit provides state-specific information. Part III includes some of the documents for your state.

### ***Power of Attorney for Health Care***

The power of attorney for health care is known by a variety of names that differ from state to state. Generally, this document is where you name an agent or proxy to make medical decisions for you if you are unable to express your wishes in the future.

Some states allow for a broadly written power of attorney for health care that gives the named agent power to make any and all health care decisions for you. For example, the agent may consent to or refuse any aggressive medical procedures. Other powers that the agent may have include hiring or firing medical personnel, decisions about sharing medical records, or approving blood transfusions.

Even in states that allow for this very broad power of attorney for health care, you still have the ability to limit your agent's power and can include specific instructions or preferences about your health care.

You can name an agent and an alternate agent in case the first agent cannot be reached. But, it is never recommended to appoint co-agents. Having two people with equal decision-making power could lead to great conflict and confusion, undermining the reason people choose to create advance directives.

Some states have restricted the power of an agent. For example, in New York, an agent cannot make decisions about artificial nutrition or hydration unless the individual's wishes about artificial hydration or nutrition are specifically communicated in the document or the individual has stated that the agent is aware of his or her wishes.

### ***Where to Find an Advance Health Care Directive Form***

Members of your health care team may be able to provide you with and help you complete these forms.

Although states have their own laws about advance directives, you can use the American Bar Association's multistate advance directive form in all states except Indiana, Ohio, Texas, Vermont, and Wisconsin. For the form in your state, see Part III.

## **Other Medical Decision-Making Tools**

Depending on your state, there may be other tools you can use for medical decision making. Part II of this toolkit provides state-specific information. Part III includes some of the documents for your state.

For example, The Five Wishes advance directive is a step-by-step, standardized form to help individuals express their preferences for end-of-life care. In addition to conveying the seriously ill person’s desires about medical treatment, the Five Wishes document allows for the appointment of an agent. A Five Wishes form meets the legal requirements for advance directives in some states, if completed according to the document’s instructions. In states where a Five Wishes document is not accepted as a legal advance directive, it may still be a helpful tool for individuals who are thinking about their end-of-life choices. More information about Five Wishes can be found at: [AgingWithDignity.org/Five-Wishes](https://www.AgingWithDignity.org/Five-Wishes).

## **Do Not Resuscitate (DNR) Orders**

A DNR order is a document written by a physician that tells medical professionals not to resuscitate an individual who goes into cardiac or respiratory distress. A DNR is used only when someone decides that is what they want, and they should work with their health care team to complete the form. A DNR order may allow natural death for someone whose heart is not beating or who is not breathing. For this reason, the order is sometimes called an “allow natural death” order.

Traditionally, the DNR order is placed in a patient’s chart during a hospital stay. But some states now allow for a special DNR order or a do not attempt resuscitation (DNAR) order for use outside of the hospital. See Part II of this toolkit for state-specific information.

To be sure that a DNR or DNAR is followed, it is important for medical professionals to know that one exists. Copies should be placed in an individual’s medical file and perhaps even carried on the individual’s person or posted in a prominent location where the individual is likely to be (e.g., on the nightstand in his or her bedroom or on the fridge in the kitchen).

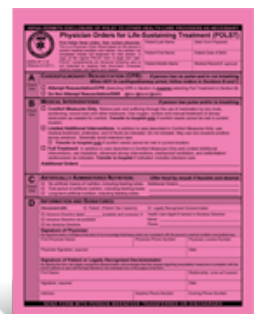
All patients, especially if you have a high risk of cardiopulmonary arrest, should express, in advance, their preferences regarding the extent of treatment if cardiopulmonary arrest occurs. During discussions about patients’ preferences, physicians might include a description of cardiopulmonary resuscitation (CPR) or other resuscitation procedures. DNR and DNAR orders are very limited types of advance directives and do not cover any other kinds of life-prolonging medical treatment.

Both in hospital and out of hospital, you should review your DNR regularly, and ask your doctor to do so too. Thee states below restrict out-of-hospital DNRs. Part II of this toolkit provides state-specific information on DNR orders. Part III includes some of the documents for your state.

<b>Does not allow out-of-hospital DNRs</b>	<b>Precludes withholding treatment</b>	<b>Requires detailed forms for out-of-hospital DNRs</b>	<b>Requires a specific bracelet or necklace</b>
Minnesota, Mississippi, North Dakota	Arkansas	Indiana, Michigan, Oklahoma, Pennsylvania, Texas	District of Columbia, Rhode Island

## **POLST and MOLST Forms**

A physician order for life-sustaining treatment (POLST) and a medical order for life-sustaining treatment (MOLST) are medical orders completed by a seriously ill person and signed by a physician. POLST and MOLST forms include directions about using CPR to revive a person who has stopped breathing or whose heart has stopped beating. In addition, these forms may include instructions about other types of treatment, including antibiotics, artificial nutrition, hydration, mechanical ventilation, emergency transport, and placement in the intensive care unit of a hospital.



To prepare a valid POLST or MOLST, individuals with a life expectancy of less than one year may be required to consult with a physician or other healthcare professional. These orders are usually recorded on brightly colored papers that travel with the patient. In the few states that recognize POLST and MOLST forms, they are designed to indicate what health care treatments emergency personnel and other medical professionals may use. As with a DNR, to ensure that a POLST/MOLST form is honored, copies are placed in an individual's medical file and may even be carried with the individual or posted in a prominent location where the individual is likely to be (e.g., on the nightstand in the bedroom or on a fridge in the kitchen). For more information about POLST or MOLST in your state, see Part II of this toolkit.

### **HIPAA Forms**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects the privacy of your health insurance. HIPAA does allow your protected health information to be shared with your personal representative who has authority to make health care decisions for you (i.e., your health care agent or proxy). To guarantee your agent's access to information, a HIPAA authorization form must be signed and dated by you. Also, it must identify the information to be disclosed, the purpose of the disclosure, the recipients of the information, and an expiration date. This means that any advance health care directives should be clear about the scope of your agent's authority to receive protected health care information.

There are some other key reasons why it can be helpful to have a HIPAA authorization form. For example, if you have children over the age of 18, they may want you to be involved in their medical care or have access to their medical information. Once your child turns 18, you no longer have the authority to make medical or financial decisions on their behalf. Your child could sign a HIPAA form to give you access to your medical information and communicate with your health care team. Also, if you are in a relationship with another person who is not your spouse, and you would like that person to have access to your medical information, you should have a HIPAA form. Or, perhaps you would like your best friend to be able to communicate with your health care team. In that case, your HIPAA form should give that person that ability. Part III of this toolkit includes a sample HIPAA authorization form.

### **Hospital Visitation Directives**

Most hospitals are required by federal law to have written rules that give patients the right to choose their own visitors. However, in a crisis, or a moment when you are not able to communicate your decisions, it can be helpful to document your wishes about who you would like to visit you in a hospital. You can do that by creating a Hospital Visitation Directive. This document tells your health care providers to allow your chosen visitors to visit you. It can be a separate document or part of another document, like an advance health care directive. You can also use this document to exclude certain individuals if that is your choice.

### **Complying with Advance Directives**

Generally, health care providers have a duty to honor clearly written advance health care directives that comply with state law. In addition, where the directive names an agent to make health care choices, health care providers have a duty to follow the agent's decisions.

But, there are a few instances when health care professionals can refuse to comply with an advance directive:

- For example, a directive does not need to be honored when it goes against the conscience of the health care professional or the policies of an institution providing medical treatment.
- If a directive contains choices that do not reflect standard medical practices, the health care provider may not have an obligation to honor it.
- A directive may not be followed if a woman is pregnant, as the interests of the fetus must also be considered.



These exceptions allow health care providers to refuse to administer treatment according to an advance directive in limited circumstances (e.g., withholding artificial hydration from a pregnant woman), but the providers may still not be able to administer treatment in direct conflict with a valid directive (e.g., providing a blood transfusion). Instead, the provider might transfer the patient to another health care provider who will follow the advance directive.

The Patient Self-Determination Act (PSDA) requires that hospitals, nursing homes, and other health care providers participating in Medicare and Medicaid inform patients about advance health care directives that comply with state law (Note: The PSDA only applies to institutions, not including individual physicians). Once admitted to these facilities, you have to be told about your right to accept or reject medical care, and to make or submit advance directives.

Also, health care facilities are allowed to provide advance directive forms. Importantly, these facilities are prohibited from discriminatory treatment of patients based on whether or not they have advance directives. The PSDA also requires that health care facilities receiving Medicare and Medicaid funding educate staff and community members about advance directives.

### ***What if You Don't Have Medical Decision-Making Documents?***

If you do not have advance directives or other medical decision-making documents and become incapacitated, it may fall to a court to appoint a representative to oversee your medical and financial affairs. Many states have statutes that outline the priority of family members to act as surrogates (e.g., first the individual's spouse, then an adult child, then a parent).

A guardianship is a legal relationship that is established and monitored by a state court where someone (the guardian) is appointed to act in the best interest of an incapacitated individual (the ward).

There are two main types of guardianships: guardian of the person and guardian of the estate. Note that terms and rules will differ slightly state to state. For information about guardianships of the estate, read the section on making financial decisions.

A guardian of the person may take actions and make decisions about a ward's care and well-being, such as:

- Discuss treatment options with a ward's health care team
- Make medical decisions to withhold or administer treatment
- Place a ward in hospice care if appropriate

Courts do not create guardianships until making a judgment about your capabilities. First, the court must find some limitation that affects your decision making. Then, the incapacity or incompetency must be determined to be so severe that it affects the ability to manage affairs or make decisions that a court-appointed guardian is necessary.

An individual who is deemed to be incompetent presents an exception to standard informed consent requirements. Incompetency for the purposes of medical decision making arises from factors such as an unawareness of different options for meeting health care needs; an inability to express preferences about those alternatives; and a failure to understand the risks and benefits of choosing whether or not to undergo treatment. Even where the individual is unable to meet competency standards, though, there is still a right of self-determination in making health care decisions. But, the right to determine one's own medical treatment is exercised on behalf of the incompetent individual by a surrogate decision maker. And, to protect the rights of incompetent individuals whose health care decisions are made by surrogates, the state may require safeguards be put in place.

Voluntary guardianships are very rare. Most attorneys would recommend that if someone feels he or she may become incapacitated in the future, that the individual establish advance health care directives or a power of attorney for financial affairs, rather than rely on the guardianship process.

Sensitive details about your situation become a matter of public record, leading to a considerable loss of privacy and independence. Also, as with most court proceedings, there can be significant costs and delay in establishing the guardianship. These are all reasons why it is important to plan ahead and document your wishes.

### ***Where to Keep Medical Decision-Making Documents***

Just like with wills and trusts, it is important that the appropriate people have knowledge of, and access to, any relevant medical decision-making documents. See the section on how to store and share estate planning documents.

### **Hospice and Palliative Care**

Palliative care, also called supportive care, is care designed to provide relief from the symptoms and stress of a serious illness, but not to cure the illness itself. Palliative care is often discussed in the context of a chronic or serious medical condition.

For example, you might be receiving chemotherapy to treat colon cancer, but your doctor also prescribes medication to deal with nausea and pain. The medication for the nausea and pain would be considered palliative. Many people incorrectly believe that if you are receiving palliative care, you will not receive treatment for a chronic or serious medical condition. The goal of palliative care is to improve the quality of life for the person coping with a chronic or serious medical condition. Typically, insurance coverage for palliative care is handled similarly to coverage for any other prescription drug or specialist (e.g., a referral to an oncologist).

Hospice care is sometimes referred to as end-of-life care and “focuses on caring, not curing.” The overarching philosophy of hospice is to provide compassionate care for people in the last phases of incurable disease. Typically, hospice care is received at an individual’s home or hospice residences, nursing homes, assisted living facilities, and veterans’ facilities.

Hospice care is typically covered by insurance for individuals with a terminal chronic or serious medical condition. Hospice care costs are covered by Medicare (through the Medicare Hospice Benefit), Medicaid (in most states), and the Veterans Administration. Many private insurance companies also provide some coverage for hospice care; however, the coverage will vary by policy.

If you have wishes about palliative and hospice care, you should be sure to include them in your advance health care directives. For more information about palliative and hospice care, visit the National Hospice and Palliative Care Organization: [NHPCO.org/about/hospice-care](https://www.nhpc.org/about/hospice-care).

### **Death with Dignity Laws**

Discussing end-of-life choices can be difficult, especially when you are facing a life-threatening medical condition. Because the law is often racing to catch up with science and technology, states are beginning to pass laws that give people more options when it comes to end-of-life care. These laws are often referred to as “death with dignity” laws.

These laws are also referred to as physician-assisted dying or aid-in-dying laws, which allow certain terminally ill individuals to voluntarily and legally request and receive a prescription medication from their physician to hasten their death in a peaceful, humane, and dignified way. By adding a voluntary option to the continuum of end-of-life care, these laws can give you dignity, control, and peace of mind during your final days with family and loved ones.

One of the most important points made by advocates for death with dignity laws is that those who assist individuals in these limited circumstances, and those who take the drugs to aid in their own death, are not considered engaging in suicide, homicide, or assisted suicide. This distinction is particularly important to ensure that participating individuals do not face criminal charges and that individuals who chose to end their lives within these parameters will still be eligible for insurance benefits (i.e., life insurance).

- Doctors are NOT required to prescribe the life-ending medications – they can decline
- If your doctor declines, you can look for a new physician who is supportive of your choice

[Deathwithdignity.org](https://deathwithdignity.org) has information on how to find a doctor who participates.

As of August 2021, these states have Death with Dignity laws:

- California (End of Life Option Act; approved in 2015, in effect from 2016)
- Colorado (End of Life Options Act; 2016)
- District of Columbia (D.C. Death with Dignity Act; 2016/2017)
- Hawaii (Our Care, Our Choice Act; 2018/2019)
- Maine (Maine Death with Dignity Act; 2019)
- New Jersey (Aid in Dying for the Terminally Ill Act; 2019)
- New Mexico (Elizabeth Whitefield End-of-Life Options Act; in effect from June 18, 2021)
- Oregon (Oregon Death with Dignity Act; 1994/1997)
- Vermont (Patient Choice and Control at the End of Life Act; 2013)
- Washington (Washington Death with Dignity Act; 2008)
- Montana does *not* currently have a statute safeguarding physician-assisted death. In 2009, Montana's Supreme Court ruled nothing in the state law prohibited a physician from honoring a terminally ill, mentally competent patient's request by prescribing medication to hasten the patient's death. Since the ruling, several bills have been introduced to codify or ban the practice, none of which have passed.

This is still an evolving area of law. A number of states are considering death with dignity laws. For up-to-date information on death with dignity laws, visit [TriageHealth.org/State-Laws](https://TriageHealth.org/State-Laws). Part II of this toolkit provides state-specific information.

### **How to Store and Share Estate Planning Documents**

Once an estate plan is completed, it is critical for people involved to know of the plan's existence and to have access. Saving documents outside of the home can also be useful if an individual is traveling and experiences a medical emergency, or in the event of disaster (e.g., fire, earthquake, flood). One option is to save electronic copies of the documents on an online drive or cloud storage. There are free services that can be accessed from any computer (e.g., [Google Drive](https://GoogleDrive.com), [iCloud](https://iCloud.com), [Dropbox](https://Dropbox.com)) and paid options (e.g., [Everplans](https://Everplans.com), [Master Lock Vault](https://MasterLockVault.com)).

If those options seem too complicated, another option may be for individuals to simply e-mail the documents to themselves. Anyone can sign up for a free e-mail address from providers like Gmail, Yahoo, or Microsoft. These e-mail accounts can be accessed on any computer or mobile device around the world that has Internet access. Individuals may also consider giving the passwords to those accounts to their agents for easy access.

If individuals choose to keep these documents in a safe deposit box, they should be sure that the executor of their estate also has access to the box. If the documents are kept in a home safe, individuals should ensure that their executor or a loved one has the code or key. An estate plan that cannot be found or accessed is effectively the same thing as not having a plan.

A few states have registries where individuals can store their estate plans. Visit [TriageHealth.org/State-Laws](https://TriageHealth.org/State-Laws) to view a chart of state registries and the documents that can be stored.

## **Legal Assistance for Estate Planning**

Creating a will or a trust can feel daunting and if you have an especially complicated estate you may want to consider hiring an estate planning attorney.



Other reasons you may consider hiring an attorney include:

- Having an estate so large there are significant tax implications
- Complex plans for inheritance
- Complicated family structure
- Co-owning a small business and have questions as to the rights of surviving owners
- Making arrangements for the long-term care of a beneficiary (e.g., an incapacitated adult child)
- If you think someone will contest the will due to fraud, undue influence, or your capacity

When an attorney helps create a will, you will typically be billed for services either on a flat fee or an hourly basis. The price would be determined by factors like the size of your estate or the complexity of your wishes.

For information about finding legal assistance, read our Quick Guide to Legal Assistance:

[TriageHealth.org/Quick-Guides/LegalAssistance](https://www.triagehealth.org/Quick-Guides/LegalAssistance).

FreeWill is an online tool that helps you complete state-specific estate planning forms for free:

[FreeWill.com/our-products](https://www.freewill.com/our-products).

## **Other Practical Estate Planning Topics**

### ***Digital Assets***

In this day and age, when so much of an individual's life may take place in the electronic space, it can be useful to think about how they want to handle their digital assets and how to include them in their estate plan.

Digital "assets" or property like online accounts, electronic devices (e.g., a computer or phone), files and photos on the devices, e-mail accounts, social media accounts, blogs, and intellectual property (e.g., a book manuscript) are also considered part of an individual's estate.

The process of creating a digital estate plan is similar to that of creating a will. Individuals should start by collecting information about what they own. That may include:

- Information or data that is stored electronically (e.g., in the cloud, on a thumb drive)
- Online accounts, such as e-mail, digital voicemail, social media, shopping, photo and video sharing, music, video gaming, online storage, rewards, and so on
- Domain names, blogs, and websites owned
- Intellectual property (e.g., copyrighted materials, trademarks)

In creating a list or catalog of digital assets, individuals should also document the login and password information for each account. There are password managing services with a master password that can be shared, or the information can simply be written down in a safe place, accessible to the executor of the estate. Executors should also be made aware of an individual's wishes about how each asset should be handled.

### ***Digital Afterlife***

When thinking specifically about dealing with social media after one's death, each platform has a different process. For example, Facebook and Instagram gives users the option to elect whether they would like their accounts to be memorialized or permanently deleted when they die.

Memorialized accounts will allow a user's friends to continue posting, and all of the existing content remains. Facebook also allows users to name a "legacy contact" who is authorized to manage the account after the user dies. Upon the user's death, the legacy contact should complete the online form and



submit a death certificate. Twitter and LinkedIn require that the user's agent notify the platform of the death and request that the account be deactivated.

It is important to go through each platform's terms of service to determine the proper procedure for dealing with the account. Agents should not automatically log on to another user's account to delete it, as that may be a legal violation.

Various e-mail platforms have procedures to deal with an individual's accounts after death. For example, Gmail, Outlook, and Yahoo have strict procedures to allow the authorized representative of the deceased person to access the content of an e-mail account. Gmail also gives users the option to set an "inactive account manager," wherein after a set amount of inactivity an account is either shared or deleted.

Another significant area of personal property that can live in a digital account is music (e.g., iTunes). Apple specifically states that there is no right of survivorship for an AppleID, and upon a user's death, the account, and all content within, will be deleted. So, if music is being stored in an iTunes account, individuals may want to make sure to have an electronic backup that they can share with their beneficiaries.

It may seem inconsequential to think about social media, music, and shopping accounts in the big picture of estate planning. However, these accounts can be valuable and planning ahead can simplify the process for loved ones and ensure that all assets are accounted for and protected.

### ***Funeral, Burial, and Memorial Planning***

A sometimes-overlooked aspect of estate planning includes making funeral and/or burial arrangements in advance. By planning ahead, individuals can help avoid putting loved ones in the position of making these additional decisions during a difficult time of loss. Some questions an individual can start with are:

- Where and how do I want to be laid to rest (burial, cremation, burial at sea, etc.)?
- Are there cultural and religious customs that I would like to abide by?
- Do my loved ones have any preferences that I want to take into consideration?
- Do I want a memorial service, a wake, or some other type of celebration of my life?
- Do I need to buy funeral insurance to help pay for these expenses in the future?

Funeral arrangements can be expensive, so an individual should also consider how to cover these costs. There are three main cost categories in funeral planning: costs related to the funeral home, the cemetery, and the grave marker. These costs can range from \$3,000 to \$15,000 and can vary greatly depending on where individuals live and what they choose. Some of the most common expenses include:

- Cemetery:
  - Grave site (plot)
  - Open/close fee for digging and placing the casket in the grave
  - Fee to place the grave marker
- Funeral home:
  - Funeral director's basic services fee
  - Embalming and body preparation
  - Casket
  - Funeral ceremony and viewing
  - Other items (e.g., hearse or other transportation, death certificates, obituary, memorial services, flowers, music, prayer cards, motorcycle officers to escort a funeral procession between a memorial and burial site, and other custom features)
- Grave marker (also called a headstone). The price of a headstone is generally calculated by weight, so the larger the headstone, the more expensive it will be. Features such as an engraved photo or image will be an additional cost. If the headstone is purchased from a retailer other than cemetery, there may be an additional shipping fee.



Some individuals may also consider cremation. Cremation can be less expensive, with a median cost of \$6,970 plus the cost of an urn, which starts at \$50. Some funeral homes and cemeteries will not accept credit cards or payment plans but require payment in cash and up front. Some funeral homes and cemeteries will allow individuals to set up a payment plan, if they chose to preplan a funeral. There are several options to purchase funeral or “final expense” insurance ([Insurance.com/life-insurance/coverage/is-funeral-insurance-for-you.aspx](https://www.insurance.com/life-insurance/coverage/is-funeral-insurance-for-you.aspx)) to cover the cost of expenses.

Some states have a Funeral Designation Form that allows individuals to specify their funeral arrangements, any funeral insurance policies, and to choose an agent to handle their funeral arrangements and/or burial. In some states, like New York, an individual can prepare a document naming an agent to handle funeral and burial arrangements. A person can provide the agent with instructions about his or her funeral and burial wishes as well as inform loved ones about a prepaid funeral arrangement or a burial plot. In other states, individuals can add their funeral and burial wishes to their wills.

Part II of this toolkit provides state-specific information. Part III includes some of the documents for your state.

Tools exist to help individuals preplan and document their wishes around funeral planning. For more information, visit [TriageHealth.org/Estate-Planning](https://www.triagehealth.org/estate-planning).

### ***Legacy Planning***

Another idea that may appeal to individuals coping with a chronic or serious medical condition is legacy planning. This is a way to communicate with loved ones throughout their lives. For example, individuals can leave videos, cards, letters, and presents for milestones in the lives of their loved ones, such as birthdays, graduations, and weddings. [MyWonderfulLife.com](https://www.mywonderfullife.com) is a practical resource on funeral and legacy planning.

### ***Other Practical Issues***

There are other practical things to consider when planning ahead. For example:



- If you are married and your spouse is not named on any of your joint financial accounts, consider adding them to the accounts. If you are the only person named on a joint credit card, then your spouse can no longer use the card when you die.
  - If you are married and are the sole person on a car title, consider adding your spouse to the title.
  - If you are married and pass away, your spouse will be responsible for filing a joint tax return for that tax year, so it is important that your spouse have access to any information needed to file the return.
- If you own a business, you will need to think about what will happen to the business when you die.
  - You should also consider who you would like to be notified when you die, beyond agencies such as the Social Security Administration, the Department of Motor Vehicles, Registrar of Voters, and U.S. Post Office. For example, are you a member of any service organizations or alumni groups?
  - If you have recurring payments or orders set up (e.g., recurring prescriptions filled or grocery deliveries) you should also consider how those services will be stopped.

GoodTrust is a useful resource to help think through and manage these practical steps when you are planning ahead, or when dealing with a death of a loved one. For more information visit: <https://mygoodtrust.com>. For people interested in purchasing a subscription to GoodTrust, we have a 30% off discount code: TRIAGE30.

**For more information about estate planning, visit [TriageHealth.org/Estate-Planning](https://www.triagehealth.org/estate-planning).**