Common Questions

**General Estate Planning Questions**

**What is estate planning?**Estate planning is the process of anticipating and arranging for the transfer of your assets (to your beneficiaries) in the event of your death. Estate planning typically attempts to avoid probate, maximize the value of the estate, and reduce taxes and other expenses. Traditional estate planning documents include wills, trusts, guardian nominations (for minor children), powers of attorney, specific final instructions, business succession instructions, and more.

**What happens if I die without an estate plan?**If you pass away without an estate plan in place, Florida law will dictate how your property is distributed. You will have given up your right to determine how you want your assets divided, who you want to inherit them, when you want children to have control of their inheritance, and even who will receive custody of minor children. Your loved ones will have to go through this very public, very long, very expensive process at the same time they are grieving your death.

*If you want your family to know your love, get your estate planning handled. It’s not just for the rich. In fact, it has less to do with money and more to do with what really matters.*

**If I become disabled, who deals with my finances?**If you become disabled and lose the capacity to deal with your finances yourself, someone will have to establish a conservatorship over your finances. Doing so is expensive. If you have prepared a living trust or a financial power of attorney, a conservatorship is not needed and the person you have designated will handle your finances.

**Can’t my spouse just take over my financial matters?**Your spouse is able to manage joint accounts only. He or she cannot sign on your behalf for financial accounts under your name alone unless you have prepared a living trust or a financial power of attorney naming your spouse as the person who will handle your personal financial matters.

**What is probate?**Probate is a court process used to transfer assets (not held in a trust) of a deceased person to their heirs. After your death someone will have to petition the court to open probate so your assets can be transferred. If you have a will, the probate court will generally distribute assets in accordance with your wishes. If you do not have a will, the court will decide how to distribute your assets.

**Why do I want to avoid probate?**All assets passing through probate court become a matter of public record, and as such, vulnerable to creditors, predators, and opportunists. The court system in Florida is underfunded and overburdened and the probate process can take years to get through. Also, probate is very expensive, ultimately diminishing the overall value of your estate by a substantial margin. The probate process is generally the last thing family members want to endure after losing a loved one. Probate makes a hard time that much harder.

**How do I avoid probate?**Avoiding probate is not hard to do. By creating and transferring assets into a revocable living trust there will be no need for probate at your death. In fact, probate is really only for people with little to no assets or for those who failed to plan during their lifetime.

**What are the advantages of a trust?**Putting your assets in a trust avoids the probate process once you pass away. This saves your loved ones the time, money, and hassles associated with probate. A trust can also be kept confidential which allows families to keep their privacy in the process. Another advantage is that a trust can eliminate federal estate taxes. Finally, a trust can provide asset protection from your beneficiaries’ creditors.

**What are the documents included in an estate plan?**In Florida, a traditional estate plan will include a last will & testament along with a living will, health care power of attorney, durable (financial) power of attorney, and a revocable living trust. There are many more documents that may be appropriate for your individual family situation such as a [Kids Protection Plan](https://garlettlaw.com/index.php/our-services/kids-protection-planning/), legacy plan, ethical will, and more.

**Do I need to work with an attorney on my estate plan?** Depending on the type of estate plan documents you draft, you may not have to work directly with an attorney. That said, it is highly recommended that you do so to avoid the common mistakes, pitfalls, and omissions non-attorney drafted estate plans often contain. A personal relationship with your estate attorney gives you peace of mind knowing your legal documents will work exactly as you want them to after your pass and that your attorney will be there for your family in their time of need.

**Do my debts go away after a death?** No. Your creditors, and even the creditors of your beneficiaries, may go after your estate’s assets and property – including family heirlooms and inheritance. And a will won’t protect your assets from creditors. There are specific types of trusts, however, that protect your assets from creditors, and even the creditors of your beneficiaries. Your family trust attorney will be able to explain these types of trusts and their benefits to you.

**Frequently Asked Questions About WILLS**



**Should I make a will?** If you have assets and/or children, it is highly recommended that you have a will at a minimum. A will won’t keep you out of probate, but it will give the judge instructions on how you want your assets distributed after your passing. Without a will, a stranger (the judge) who does not love or even know your family will be making major decisions for them.

**Can I change an existing will?** Absolutely, yes. You can always modify your will. In fact, as your life situation goes through changes (births, marriages, asset growth, etc.), it is a good idea to change your will, too.

**How do I appoint a guardian for my children?**All minor children should have long-term guardians appointed in a will. But there is much more that needs to be done to fully protect your kids. Our [Kids Protection Plan](https://garlettlaw.com/index.php/our-services/kids-protection-planning/) gives you the peace of mind knowing that not only are long-term guardians appointed, but also short-term guardians (so your children will never be in the arms of strangers, even for a moment), children’s powers of attorney, guardian instructions, etc.

**Frequently Asked Questions About TRUSTS**

**What is a trust?** A trust is a relationship whereby assets are held by one party and managed for the benefit of another. These assets may accumulate interests and are not a matter of public record; thereby maintaining privacy regarding the assets. Trusts have been around since the Roman era and have three parties associated with them: the trustor (the person putting assets into the trust), the trustee (the person managing the assets in the trust), and the beneficiary (the person benefiting from the assets in the trust). There may be multiple trustors, trustees, and/or beneficiaries.

**Can I change an existing trust?**If it’s a revocable trust, absolutely, yes. You can always modify a revocable living trust. In fact, as your life situation goes through changes (births, marriages, asset growth, etc.), it is a must to change your trust, too.

**Can anyone be appointed as a trustee?** Yes. Most of the time, you as the trustor will serve as a trustee for the trust until the event of your passing, at which time someone else will take over. Usually, this duty is given to a family member or a spouse, friend, child, or attorney.

**How can I ensure that the assets get to the beneficiaries?**After a passing, the trustee has a fiduciary duty to distribute the property from the trust to the beneficiary. Generally, the trustee has been appointed beforehand and is made aware they are responsible for this duty.

**Do I need a trust?** Not necessarily. Unlike wills, which are recommended for every adult, trusts are not always necessary. A trust is generally recommended, however, if you have assets that would have to pass through probate at your death.

**Do I need an attorney?** It is highly recommended that you work with an attorney to avoid the common mistakes, pitfalls, and omissions non-attorney drafted trusts often contain. A personal relationship with your family trust attorney gives you peace of mind knowing your trust will work exactly as you want it to after your passing, and that your attorney will be there for your family during their time of need.