



WILLS, TRUSTS,
ESTATE PLANNING
ELDER LAW

THE ESTATE PLANNING PLAYBOOK

Protect What Matters Most
Through Every Stage of Life

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321-729-0087



Coordinator@ElderLawCenterBrevard.com
ElderLawCenterBrevard.com



321 Sixth Avenue
Indialantic, FL 32903

8085 Spyglass Hill Road,
Viera, FL 32940

LIVE ON YOUR OWN TERMS

Four Must-Have Documents for YOUR Health and Financial Protection

Planning for the unexpected is crucial, especially when it comes to your health and finances. Medical emergencies like accidents, strokes, Alzheimer's, or dementia can happen at any time, leaving you unable to make decisions. Without proper planning, an incapacitated person may end up in a guardianship court proceeding, where decisions about their health and finances are made by a judge, possibly without considering the individual's personal preferences. This process is not only demeaning but can also be very costly, with ongoing legal fees for the duration of the incapacity.

Fortunately, you can avoid guardianship and retain control over your future by preparing essential estate planning documents known as advance directives. These documents allow you to designate trusted individuals to make decisions on your behalf if you're unable to do so. Here are four must-have legal tools that will protect your health, finances, and independence:

1. Durable Power of Attorney (DPOA)

A **Durable Power of Attorney** is a legal document that gives someone the authority to manage their financial and property affairs. Unlike a general power of attorney, a DPOA remains valid even if you become incapacitated. You can decide how much authority your agent will have, but the document must be properly drafted and signed according to strict Florida law. It needs to have very extensive powers listed and must be initialed in multiple places for it to be effective. Beware of internet forms and documents from attorneys who don't practice in this type of specialty.



Florida law requires very specific language for DPOAs executed after October 1, 2011. If your document was signed before this date or lacks the necessary provisions, it may not be honored by financial institutions, which could lead to a costly guardianship process.

2. Health Care Surrogate Designation

A **Health Care Surrogate Designation** allows you to appoint someone to make medical decisions on your behalf if you're unable to communicate your wishes. This individual, known as a surrogate, will consult with your healthcare providers and make informed decisions as if they were you.

It's important to include language in the document that waives HIPAA (Health Insurance Portability and Accountability Act) restrictions, allowing your surrogate to access your medical information. Without this designation, a court may appoint a guardian to make healthcare decisions for you, adding unnecessary legal fees and stress for your family.



3. Living Will

A **Living Will** is a legal document that outlines your preferences for end-of-life care. If you're diagnosed with a terminal condition, are in an end-stage condition, or enter a persistent vegetative state, the Living Will may specify that no extraordinary or artificial measures should be used to prolong your life. This document ensures that your wishes regarding life support are honored.

Florida law allows Living Wills to include "end-stage" and "persistent vegetative state" conditions, giving you more control over situations where quality of life is severely diminished, even if death is not imminent. This document is crucial in ensuring that your loved ones don't have to make difficult decisions about life support in emotionally charged moments.

4. Pre-Need Guardian Declaration

A **Pre-Need Guardian Declaration** allows you to nominate someone to be your guardian if a court determines that guardianship is necessary. While this document doesn't guarantee that the person

you choose will be appointed, it carries significant weight in the court's decision. It is particularly important if you foresee potential family conflicts regarding guardianship.

Avoiding Guardianship with Proper Planning

Guardianships can be avoided with thorough estate planning, including a well-executed Durable Power of Attorney, Health Care Surrogate Designation, and Living Will. These documents give trusted individuals the authority to manage your affairs without court involvement. Additionally, if you establish a Living Trust, your assets can be managed by a successor trustee without the need for court intervention in the event of incapacity.

Conclusion

Incapacity can strike at any time, regardless of age or current health. Advanced Directives allow you to retain control over your future by designating trusted individuals to make decisions on your behalf. Proper planning can prevent the need for costly and demeaning guardianship proceedings, saving your family time, money, and heartache. Take action now to ensure your wishes are carried out if you are unable to make decisions for yourself.

JAY LENO'S LEGACY OF LOVE

How He's Protecting His Family Through Estate Planning

When beloved TV host and comedy icon, Jay Leno, learned that Mavis, his wife of forty years, was battling Alzheimer's disease, he stepped up as both her protector and her guardian. But providing for Mavis wasn't as easily accomplished as most people think "it should be."



Realizing that Mavis, 77, might outlive him, Jay decided to set up a living trust to ensure that his wife would have "managed assets" to provide her with future care if he were to pass away first. This trust would also allow their remaining wealth to be passed on to the people they love and the causes they support. To create the trust however, Jay needed to go to court and initiate guardianship proceedings.

A source familiar with the details noted, "if the Judge did not grant Jay's request, then upon his wife's death, probate proceedings would be triggered to determine who receives her share of their assets and likely to cost the Leno family hundreds of thousands of dollars in unnecessary legal fees."



So how does a celebrity or anyone find themselves needing to petition the court for permission to act on behalf of their spouse? It's because they failed to plan for incapacity and death while they and their spouse were alive and well. A comprehensive estate plan is going to provide for planning during life and at death. It is critically important to plan for incapacity, so you aren't facing the additional burden and expense of a court-supervised guardianship for years to come.



The Leno court approved trust also included a detailed plan for his estate, ensuring that assets are distributed according to his wishes. Jay's estate planning didn't stop with his family—he also made provisions for his beloved car collection, a centerpiece of his personal passion for automobiles. Upon his passing, much of his estate, including the Leno Collection of cars and motorcycles, are transferred to the J.D.M. Foundation, which he launched in 1988 to support various charitable causes. We know this because of the public nature of court supervised guardianship proceedings.



Jay's story is a powerful example of the importance of maintaining and updating estate planning documents. His decision to amend his trust not only provided for his loved ones but also protects his legacy. Through his living trust, Jay ensures that the transition of his assets happens smoothly and according to his wishes, bypassing the potential delays and costs of probate.

Jay Leno's thoughtful approach to estate planning is a reminder of how important it is to keep your documents up-to-date and to consider all aspects of your family's future. It also shows that he might have been able to avoid the guardianship had he planned earlier, but by taking these steps, Jay demonstrated that love and responsibility extend well beyond the present, ensuring that those he cares about are supported long after he's gone.



AVOID COSTLY MISTAKES

The Top 10 Estate Planning Pitfalls that Drain Wealth

Whether you're planning for retirement or have already retired, it's essential to address two key scenarios: what happens to your estate when you pass away, and what happens if you live but aren't healthy and require long-term care. A well-crafted estate plan not only protects your assets but also ensures that your wishes are followed, avoiding costly mistakes that could drain your wealth.

In reverse order, here are the top 10 estate planning pitfalls that can drain your estate and leave your heirs with less:



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NOT HANDLING YOUR REAL ESTATE PROPERLY

Transferring real estate during your lifetime can result in high capital gains taxes, significantly reducing your estate's value. Adding a child's name to the deed exposes the property to their creditors, lawsuits, and divorces, creating unnecessary risks and financial loss. Real estate should be handled through a will or trust to avoid these pitfalls.

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IMPROPER RELIANCE ON BENEFICIARY DESIGNATIONS

Failure to update beneficiary designations on bank accounts, insurance policies, and retirement accounts can lead to wealth being distributed to unintended individuals. If you have a revocable living trust, consider naming the trust as the beneficiary to ensure a seamless and controlled distribution, especially for minors or spendthrift heirs. Outdated designations can have costly consequences.

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NOT HAVING ADVANCE DIRECTIVES IN PLACE

Without a Durable Power of Attorney or Health Care Surrogate, your loved ones may need to seek a guardianship, which is not only time-consuming but also drains wealth through legal fees, court costs, and accounting fees. Avoid relying on generic forms and ensure your documents comply with Florida law to protect your estate and avoid costly court proceedings.

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NOT KEEPING DOCUMENTS CURRENT

Outdated estate planning documents could fail to reflect changes in laws or your family's circumstances. Failing to keep your estate plan updated could lead to your assets being mismanaged or drained through unnecessary legal fees. Schedule regular reviews to ensure your documents remain valid and aligned with your financial goals.

06



BUYING THE WRONG LONG-TERM CARE INSURANCE

Purchasing inadequate long-term care insurance or one without an inflation rider can cause a significant drain on your assets. A well-structured policy protects your estate by covering long-term care costs without forcing you to deplete your wealth. Consult a financial advisor to select a policy that balances protection and affordability.

05



NOT PLANNING FOR GOVERNMENT BENEFITS

Many people overlook opportunities to qualify for Medicaid or VA benefits for long-term care. Without proper planning, families can needlessly spend their savings. Take advantage of penalty-free transfers and proper planning to preserve wealth and avoid draining your estate on private care.

04



OVERSTAYING IN RISKY INVESTMENTS

Hanging on to risky investments to avoid capital gains taxes can backfire, especially if those assets lose value. This mistake can drain your estate, leaving less for your heirs. It's important to consider selling and diversifying your assets, ensuring that you have funds available for long-term care without jeopardizing your financial security.

03



NOT PLANNING TO AVOID ESTATE CONTESTS

Family disputes over inheritance can result in expensive lawsuits that quickly drain your estate's value. Avoid this pitfall by making your intentions clear through a trust or will, and work with an estate planning attorney to head off potential conflicts. Planning now helps prevent legal battles that erode wealth.

02



FAILING TO FUND A REVOCABLE LIVING TRUST

A **Revocable Living Trust** avoids probate only if assets are properly titled in the name of the trust. Failing to fund the trust can result in your estate being tied up in probate, draining wealth through legal fees and court costs. Take the time to ensure all assets are correctly transferred.

01



NOT DOING ANY ESTATE PLANNING AT ALL

The biggest mistake is doing nothing. Failing to plan guarantees that your estate will be handled by the state, draining wealth through probate and unnecessary taxes. Don't let procrastination rob your heirs of the financial security you worked so hard to build.

NOW WHAT?

At the Estate Planning and Elder Law Center of Brevard, we've helped families avoid these costly mistakes. Don't let estate planning pitfalls drain your wealth.



Contact us today to safeguard your assets and protect your heirs.

321/729-0087

DO YOU BELIEVE THIS? WILLS AND MISCONCEPTIONS

A will is a legal document that outlines how your property will be distributed after you die. Each state has specific laws regarding the validity of a will. Any mentally competent person aged 18 or older can make a will. However, if the will is made under fraud, duress, or while the person is incompetent, it may be deemed invalid.

Every adult should have a will to:

- ✓ Ensure their property is divided as they wish.
- ✓ Name an executor to manage their estate.
- ✓ Reduce administrative costs and taxes.
- ✓ Nominate a guardian for minor children.
- ✓ Direct burial arrangements

Probate is the court-supervised process of distributing assets and paying debts after death. A will provides instructions for the probate process but does not avoid it.

Why Most People Want to Avoid Probate

Probate is expensive, time consuming and public – exposing vulnerable heirs to unnecessary risk.

How to Avoid Probate

Many people believe that a will can help them avoid probate. This is simply not true! The way to avoid having your assets go through probate, is by setting up a trust and titling you assets appropriately.



PRINCE'S ESTATE: A ROYAL MESS

How Proper Estate Planning Could Have Protected His Legacy

On April 21, 2016, the world lost musical icon Prince. A cultural phenomenon, Prince left behind a vast legacy. Yet, amidst the tributes, a startling fact emerged: Prince had died without a will—intestate—leaving his estate in legal chaos.

The Chaos That Followed

Despite being meticulous about his music and image, Prince had no estate plan for his \$156 million fortune. This oversight led to a bitter legal battle among his six siblings—some half-siblings—who fought over his assets, including control of his music catalog. Under Minnesota law, his estate was to be divided among his closest relatives, but with no clear instructions from Prince, the courts had to decide who was a rightful heir and how much they should receive. The prolonged legal process drained both time and estate value, leaving Prince's heirs in turmoil.

To make matters worse, Prince's philanthropic intentions were lost. Known for quietly donating to causes he supported, Prince left no instructions for charitable giving. Without a will or trust, any wishes he may have had in this regard were never realized.

How Estate Planning Could Have Helped

Had Prince created an estate plan, much of the ensuing chaos could have been avoided.

Here's how:

1 CONTROL OVER HIS MUSIC

Prince fought fiercely for control over his music during his life. Ironically, his lack of estate planning meant that control over his catalog was handed over to a corporate entity. A revocable living trust would have allowed him to appoint a trustee who shared his vision, protecting his music on his terms.

2 CLEAR DIVISION OF ASSETS

A will or trust would have outlined how Prince wanted his assets divided, avoiding the prolonged legal fight among his heirs. His loved ones could have focused on mourning, rather than battling in court over his fortune.

3 PROTECTION FROM TAXES

Without an estate plan, the government claimed a large portion of Prince's estate in taxes—up to 50%. Proper estate planning, through charitable trusts or lifetime gifting, could have reduced this tax burden significantly.

4 ENSURING HIS PHILANTHROPIC LEGACY

Prince could have created a charitable remainder trust to continue supporting the causes he cared about. Without one, his estate was distributed solely to his heirs, and his philanthropic efforts ended with his death.

A Lesson for All of Us

Prince's estate debacle is a cautionary tale, not just for the wealthy. Estate planning is essential to ensure your wishes are honored and your loved ones are protected. A revocable living trust can keep your assets out of probate, while a will lets you determine who inherits your wealth. Charitable trusts can extend your legacy beyond your lifetime.

Prince gave the world so much, yet left his family with legal confusion because he didn't plan. Let his story serve as a reminder: estate planning is for everyone who cares about their legacy. Take control of yours today.

YOUR LEGACY, YOUR WAY:

How a Living Trust Protects Your Wishes

Estate planning allows you to ensure that your hard-earned assets are passed down according to your wishes. One of the most effective tools for this is the **Revocable Living Trust**, which gives you control over how and when your assets are distributed. Through proper planning, a living trust helps you give what you want, to whom you want, in the way you want—while avoiding the pitfalls of probate.

Probate: Common Misconceptions

Many people believe that probate is simply about paying taxes or that it only applies to large estates. In reality, probate is a legal process required for any assets held solely in your name at the time of death, regardless of the size of your estate. The purpose of probate is to transfer ownership of assets to your heirs and ensure that any debts are paid. However, probate comes with several downsides:



COST: Probate involves court fees, attorney fees, and executor fees, which can eat into your estate.



TIME: The probate process often takes many months or even years to complete, delaying the distribution of assets to your heirs.



PUBLIC RECORD: Probate is a public process, meaning that details of your estate are made available to anyone who requests them.



EASY TO CONTEST: Contesting a will is really easy. It is as simple as writing a letter to the probate judge. The whole process is then frozen for an indeterminate amount of time.



Despite its downsides, probate does offer some oversight, ensuring that creditors are paid, and legal disputes are resolved. However, most people prefer to avoid it due to the high costs and lack of privacy.

REVOCABLE LIVING TRUSTS:

What They Can Do for You

A **Revocable Living Trust** offers a powerful alternative to probate, giving you control over your assets during your lifetime and ensuring they are managed and distributed according to your wishes after your death. Here's how it works:



AVOIDING PROBATE: When you place assets in a living trust, they are no longer subject to probate because the trust, not you as an individual, holds title to the assets. After your death, the successor trustee you've appointed can distribute the assets according to your instructions without court intervention.



LIFETIME: Even though your assets are held by the trust, you retain full control over them while you're alive. You can buy, sell, or manage assets within the trust, just as you did before. If needed, you can amend or revoke the trust entirely.



PROTECTION IN THE EVENT OF

DISABILITY: A living trust protects you not only after death but also in the event of incapacity. If you become disabled and unable to manage your financial affairs, your designated successor trustee can take over the management of the trust assets, avoiding the need for a costly and time-consuming guardianship proceeding.



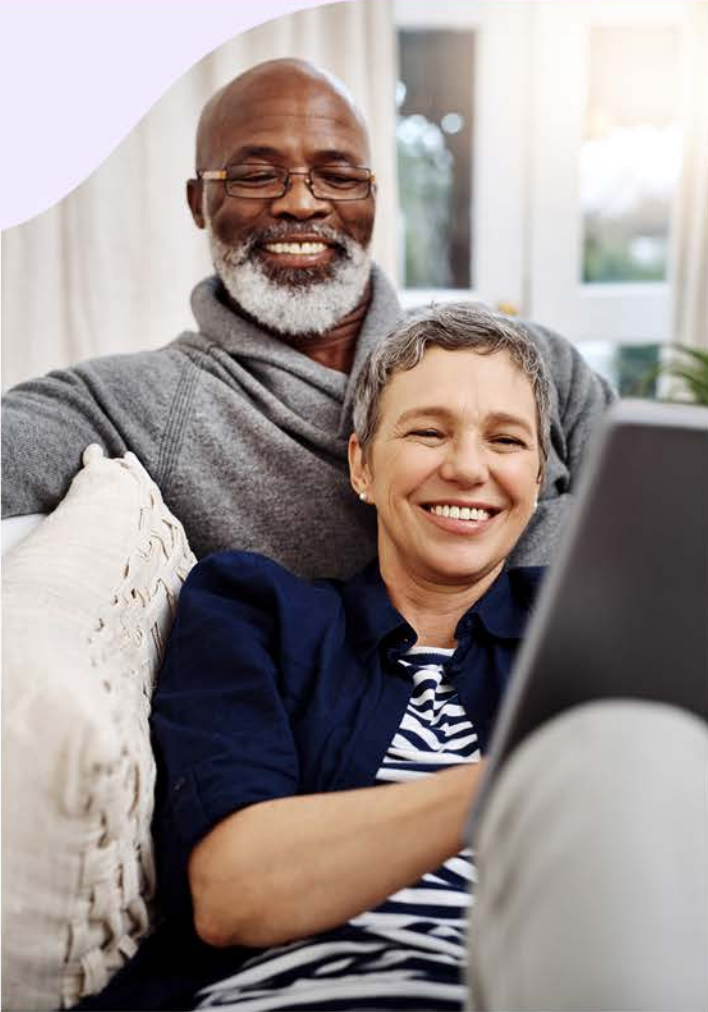
FLEXIBILITY IN DISTRIBUTION: One of the greatest benefits of a living trust is the ability to specify how and when your beneficiaries receive their inheritance. You can include provisions for managing assets for minors, or delay distributions until heirs reach a certain age. This flexibility ensures that your assets are used in a way that reflects your values and wishes.



PRIVACY: Unlike probate, which is a matter of public record, the terms of your living trust remain private. Only the beneficiaries need to know the details of your estate and how it's being distributed.

CONCLUSION:

YOUR LEGACY, YOUR WAY



A living trust is an essential tool for those who want to protect their wishes, avoid probate, and ensure that their estate is managed and distributed on their terms. By creating a living trust, you can give what you want, to whom you want, in the way you want—without the delays, costs, and public exposure of probate.

Consulting an experienced estate planning attorney can help you set up a living trust that meets your needs and secures your legacy for future generations.

THE ELDER CARE JOURNEY

HEALTHY VIGOROUS SENIOR

Medications and Some Health Problems

Medicare, Health Insurance and Private Pay

DECLINING SENIOR

Memory or Mobility Issues

In Home Assistance

Assisted Living Facility

Private Pay, Veterans Benefits, Long Term Care Insurance, and Long Term Care Benefit Plan

FRAGILE SENIOR

A Skilled Nursing Home Resident

Death

Estate Administration and Survivor Care

Private Pay, Medicaid, and Long Term Care Insurance

2-3 years

3-5 years

No matter what stage of life you are in, our Estate Planning and Elder Law Team can provide you with experienced guidance

WHAT HAPPENS TO YOUR PET WHEN YOU'RE GONE?

Your Pet May be Family to You, But the Law Sees it Differently!

Our pets give us unconditional love, companionship, and loyalty—they're truly part of the family. But what happens to them when you're no longer there to protect and care for them?

In the United States, around 82 million households have pets, and a staggering 97% of pet owners consider their pets to be part of the family, according to a recent survey by the Pew Research Center. Yet, legally speaking, pets are classified as property—similar to a car, toaster, or a pair of shoes.

The stark difference in view point means it's essential to take steps to ensure that your beloved animals



are cared for immediately if something unforeseen happens to you and that their welfare is not tied up in probate court for over a year before things are finalized. In Florida, you have the power to make provisions for the immediate care and custody of your pets, ensuring that they're cared for and cherished, even when you're no longer around.

Enter the Pet Trust

In Florida, pet owners can establish a pet trust under Florida Statutes Section 736.0408. This legal tool allows you to set aside funds specifically for your pet's care after your passing. A pet trust can last for the lifetime of the animal, and you can designate a trustee—an individual or organization—to manage the funds and ensure your pet's needs are met according to your instructions.

The Pet Trust allows you to set aside funds specifically for your pet's care after your passing.





CARE INSTRUCTIONS AND FUNDING

When creating a pet trust in Florida, you can include detailed provisions on how to care for your pet, covering aspects like dietary needs, medical care, and living arrangements. The trust can provide financial support for veterinary expenses, food, grooming, and more, ensuring that your pet is well

taken care of. Yes, the pet trust provisions are legally enforceable after you are gone, even by non-relatives who may be concerned that your wishes, as indicated in your trust provisions, are not being followed.

HIGH-STAKES PET TRUSTS

Pet trusts have gained notoriety through high-profile cases involving the wealthy. For example, real estate mogul Leona Helmsley left a whopping \$12 million to her Maltese dog, Trouble, leading to a legal battle with her human heirs. The legal fight left Trouble with the short end of the stick!

In contrast, a judge upheld the wishes of Lenore Abels, who created a \$4.7 million trust for her two cats, ensuring they received the care she desired. These cases underscore the importance of clear legal documentation when it comes to caring for our pets.





Estate Planning and Elder Law attorney Robin Petersen cautions against relying on informal agreements with friends or family members, no matter how well intentioned they may be. *"You never know what health or personal situation that person may be dealing with at a time when you are relying on them the most. Without a pet trust, your pet may end up in a shelter (or worse) if something happens to you."* A pet trust ensures your beloved pet is taken care of, avoiding abandonment or euthanasia. Most pet shelters are a pretty scary place for most animals.

If you don't have a trust, and animal control takes your animal, someone has to have legal authority to obtain that animal. If you have not planned, and you are not capable of signing legal papers at that time, **your family or designated person may not have the authority to get custody of the animal.**

THE RISKS OF INFORMAL AGREEMENTS

While many pet owners designate a friend or family member to care for their pets, relying on informal agreements can be risky. Without a legally binding pet trust, funds meant for your pet could get stuck in probate for over a year, leaving your beloved companion vulnerable.

The average annual cost of dog ownership can range from \$1,270 to \$2,803, which is significant to leave up to chance. This does not include the additional costs of illness, which can be quite staggering.



Robin Petersen
Estate Planning and Elder Law attorney

"Without a pet trust, your pet may end up in a shelter (or worse) if something happens to you."



CREATING A PET TRUST IN FLORIDA

If you're considering a pet trust, the process is straightforward. Consult an attorney who specializes in estate planning to help you navigate the necessary steps. They can guide you in answering important questions, such as:



What specific care do you want for your pets?



What happens if your pets get sick?



Who will be the caregiver, and what if they can't fulfill that role?

Additionally, be sure to specify which pets are included in the trust, including any pets adopted after the pet trust is created, and provide identifying details like photos or microchips to avoid confusion later on.

BOTTOM LINE

As a devoted pet owner, planning for your furry friend's future is an act of love. By establishing a pet trust in Florida, you can ensure that your beloved companions are cared for according to your wishes, no matter what happens. After all, they may be considered property in the eyes of the law, but to you, they are family. So, take the time to plan ahead—it's a decision that will make a world of difference for your pets and give you peace of mind as well.

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