

AN E-BOOK BY HURLEY LAW

Estate Planning Basics



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INTRODUCTION

Hello, we want to be your go-to law firm.

Hurley Law is a full service law firm serving businesses and families across the Cincinnati-Dayton Ohio region. Our main office is located in Middletown, Ohio and we have several additional office locations across the area.

Our team of lawyers share a common mission: To provide high-quality, cost efficient, and timely solutions to our clients' legal problems, while maintaining the highest ethical standards.



We handle a wide variety of legal matters including bankruptcy, business, criminal, employment, divorce, estate planning, litigation, personal injury, probate, real estate, tax, and more.

If you have a legal matter, odds are we can help. And if not, we will try to refer you to someone else that can.

After reading this e-book, we hope you will give us the opportunity to be of service to you.

CHAPTER 1

What Happens if you Don't Plan?

A Judge will Decide; Not You or Your Family.

If you die without having a will in place, state law will determine how your assets and property are distributed. This process is called "intestate succession."

Your family will have to open a probate case and the Probate Judge will make the final decision regarding who gets your assets.

Typically, your spouse and children will be first in line to inherit your assets, followed by your parents, siblings, and more distant relatives. If you have no living relatives, your assets could go to the state.

Some people think that, if they are married, their spouse will automatically receive 100% of their assets. This is not true. Some of your estate will pass to your spouse, but it will be shared with other family members.

Without a will, you also give up the opportunity to name an executor of your estate. The court will appoint someone to manage the probate process.

If you have minor children, you lose the opportunity to nominate a guardian to care for them if both parents die.

Further, your family would be forced to go through the probate process. The probate proceedings are more complex, lengthier, more expensive, and there may be disputes among family members over the distribution of your assets.

Having a good estate plan can avoid the probate process all together, saving your family a lot of money, time, and stress. A good estate planning attorney will customize your estate plan in a way to help you avoid probate if at all possible.

Failing to plan can also have consequences if you become ill or disabled without having powers of attorney in place. If that happens, your family might be forced to obtain a guardianship over you. Like probate, guardianship are also a costly and invasive legal process that can be avoided entirely with careful planning.

CHAPTER II

What is a Standard Estate Plan?

The Four Basic Documents

We recommend that everyone have a standard estate plan that includes the following four (4) documents:

1. Last Will and Testament
2. Financial Power of Attorney
3. Healthcare Power of Attorney
4. Living Will

Additional Documents

Additional legal documents may also be recommended. This will depend on your specific goals and concerns.

Examples include a transfer on death affidavit for any real estate to be able to automatically transfer ownership of your home to your family when you die, without the need for your family to go through the probate process for your home.

Some families may also want to consider a revocable trust. This will be discussed more later in this eBook.

If you own a business, you should consider adopting a business succession plan.



CHAPTER III

What Does a Will Do?

**Divide Your Assets**

A last will and testament (commonly referred to as a "will") is a legal document that outlines how your assets and possessions should be distributed after you die. It allows you to specify your wishes and provide for your loved ones, as well as make arrangements for the care of any dependents.

**Guardian for Minor Children**

If you have minor children, you can name a guardian in your last will and testament. This person would have legal responsibility for your children's care, including their education, healthcare, and daily needs.

**Executor**

In your will, you can name an executor who will be responsible for managing the distribution of your assets and ensuring that your wishes are carried out. You should always identify one or more alternative executors in case the primary one is unable or unwilling to accept the role.

A last will and testament can also include instructions for funeral arrangements, charitable donations, pets, and any other wishes that you may have.

CHAPTER IV

Why is a Financial Power of Attorney Important?

Avoid a Guardianship

A financial power of attorney allows someone you trust to manage your financial affairs if you are still alive, but unable to do so.

If you become incapacitated due to an illness or injury, you may not be able to manage your own finances. With a financial power of attorney in place, the person you named as your attorney-in-fact can step in and manage your finances on your behalf, paying bills, managing your investments, and making financial decisions in your best interest.

Without a financial power of attorney in place, your loved ones may need to go to court to establish a guardianship to manage your finances if you become incapacitated. This is a very time-consuming and costly process, and the person appointed by the court may not be someone you would have chosen.



CHAPTER V

Why are Healthcare Planning Documents Important?



Healthcare Power of Attorney

A healthcare power of attorney and a living will are two separate, but equally important documents to have.

A healthcare power of attorney allows someone you trust to make healthcare decisions for you if you are unable to do so yourself.

Much like a financial power of attorney, you may be unable to make healthcare decisions for yourself if you become incapacitated due to an illness or injury. With a healthcare power of attorney in place, the person you named as your agent can make decisions on your behalf based on your wishes and values.

If you do not have a healthcare power of attorney, family members may disagree about your medical treatment, leading to conflicts and potentially legal action. A healthcare power of attorney can help prevent family conflicts by designating one person to make healthcare decisions on your behalf.

CHAPTER V CONTINUED

Living Will

A living will allows you to make your end-of-life wishes known in advance and ensure that your wishes are respected even if you are unable to communicate them.

A living will can provide guidance on the type of medical care you would like to receive if you are terminally ill or permanently unconscious, including decisions about life-sustaining treatments, resuscitation, and palliative care.

A living will can relieve the burden on your family by providing them with guidance and direction in making difficult healthcare decisions. A living will allows you to ensure that your healthcare wishes are respected, even if you are unable to communicate them at the time. This can provide peace of mind for you and your loved ones.

Goal: Avoid a Guardianship

If you don't have a healthcare power of attorney or a living will in place, and you become incapacitated and unable to communicate your medical wishes, then no one will have legal authority to make decisions for you. This is true even if you are married. In that event, your family will have to go to the Probate Court and apply for a guardianship over you.

Obtaining guardianship is a time-consuming and expensive process, involving court hearings, assessments of capacity, and legal representation. It's generally considered a last resort when no other options are available.



CHAPTER VI

Why Should you Try to Avoid Probate?

Time and Money.

Any estate planning attorney will work with you to ensure your assets are divided according to your wishes. But a really good estate planning attorney will also help you accomplish your goals while avoiding the probate process.

There are several reasons why it is important to avoid probate, when possible.

Time: Probate proceedings can be lengthy and time-consuming, often taking months or even years to complete. During this time, assets may be tied up and inaccessible to beneficiaries, which can cause financial difficulties and delays.

Money: Probate can also be expensive, with court fees, legal fees, and other expenses adding up quickly. These costs can reduce the overall value of an estate, potentially leaving less for beneficiaries to inherit.

Publicity: Probate proceedings are public record, which means that anyone can access information about the estate and its distribution. This lack of privacy can be especially problematic for families who wish to keep their affairs private.

Complexity: Probate can be a complex process, involving numerous legal and financial requirements. This can be especially challenging for families who are already dealing with the emotional strain of a loved one's death.

With a well thought-out estate plan, in most cases, everything you own can pass to your spouse or children automatically, outside of the probate process. The tools we use to avoid probate are surprisingly simple and cost effective for most people.

Depending on the types of assets you own, you might only need one or two additional legal documents in place. Some people might want to consider adopting a revocable trust which we will discuss in the next chapter.

When we make estate plans for our clients, we will only recommend what you need. Some legal documents can be overkill and a waste of money, and we will never try to up-sell you something that you don't need.

CHAPTER VII

Do You Need a Trust?

Maybe, Maybe Not.

Due to evolutions in estate tax laws and transfer-on-death laws, fewer people will benefit from having a trust compared to decades past.

A living trust, also known as a revocable trust, is a legal arrangement in which a trustee is appointed to manage or distribute your assets after your death. This is similar to an executor named in your will, but it is different, and a trust has some advantages.

The main reason people set up a living trust is to avoid the probate process. Because the assets in a living trust are already held in the trust, they are not subject to probate proceedings. However, many people can still avoid the probate process using simpler and more affordable probate-avoidance planning.

There is no single test or formula for determining exactly who needs a trust. We will talk through your circumstances with you to help you decide whether adding a trust to your estate plan is a good choice for you.



CHAPTER VII CONTINUED

Most Common Reason to have a Trust: Minor Children

A living trust can be a good option for people that have minor children, because it gives you much more control. You can specify that assets be distributed to your children at specific ages or milestones. For example, if you have three children, your Trustee can divide your estate into three equal buckets for each child. Then, the Trustee can distribute 1/3rd to a child when they reach age 25, another third at age 30, and the final third at age 35. This is just one example, and you can be as creative as you want.

If both parents pass away at the same time (like a car accident), the value of your life insurance, home, retirement, and other assets can add up quickly. Without a trust, your children will generally have access to their full inheritance at age 18 or 21. Some people worry that their children might not make good decisions if they have access to that large amount of money at that young age.

Other Common Reasons

Trusts are also common for individuals who own businesses, multiple parcels of real estate, or are very high net worth. Trusts can also be a great tool for people that have disabled children and other complex family situations such as blended families and second marriages.



CHAPTER VIII

How to Avoid Probate Without a Trust?

Thanks to evolutions in Ohio law, it is easier than ever before to avoid the probate process without having to deal with the expense and complexity of setting up a living trust. These are the common strategies:



Beneficiary Designations

Certain assets, such as life insurance policies, retirement accounts, and bank accounts, allow you to name a beneficiary who will receive the assets upon your death. By naming beneficiaries, these assets can pass directly to the beneficiary outside of probate.



Joint Ownership

If you own property or assets with someone else, such as a spouse or child, in joint tenancy with right of survivorship, the property will pass directly to the surviving owner outside of probate.



Payable-on-Death (POD) and Transfer-on-Death (TOD)

Similar to beneficiary designations, POD and TOD accounts allow you to designate a beneficiary who will receive the account assets upon your death. This is an option for most real estate, vehicle titles, bank accounts, stocks, and other financial assets.

CONCLUSION

Why hire us?

We know that you have a lot of options when choosing your attorney. If you are not yet convinced that Hurley Law is a good fit for you, we encourage you to spend some time comparing us to others. Read our website content. Check out our social media. Watch our videos. And most importantly, read what other clients just like you have said about our work.



Excellent law firm! Very pleased with the professional service including quick turnaround times and timely communications.



I have dealt with a number of attorney firms over the years and this was by far the best experience I've ever had. They were professional, efficient and effective. I would highly recommend them.



A+experience! I went to them with several legal tasks. Hurley Law was not only efficient, they were very helpful by bringing to light several issues I had not been aware of before we started. I got exactly what I wanted in a timely way and well within the estimated cost of doing so. I will definitely use them again for any other legal needs. Highly recommend!

