



Estate Preservation Law Offices

Bridging the Gap

between traditional estate planning and asset protection

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From the Partners

Does Your Estate Plan Match Your Life Stage?



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How long has it been since you looked at your estate plan? Maybe you signed a Will decades ago. Try to picture what your life looked like the day you signed that Will — how old were your children? What did you have for assets? We routinely meet with clients who sheepishly comment on how much time has passed since they paid attention to their estate plans. Sometimes it's typical procrastination; other times it's just being caught off guard by the passage of time. If that sounds like you, you're not alone.

No matter what your age or stage of adult life, one of the biggest estate planning mistakes people make is thinking that once they sign a Will, their estate plan is set for life. Often times it takes a major life event, such as marriage/remarriage, an illness or health scare, or birth or death of a loved one, to make you realize how outdated and inadequate your legal documents have become.

Think also of the people closest to you — your aging parents, your adult children — and whether they have adequately addressed their estate planning needs. Bringing up someone else's legal affairs is a delicate topic, but the reality is, if something happens to your aging parent or adult child, you will likely be called upon to help navigate the crisis, whether it is raising a young grandchild or helping an ailing parent transition into long-term care. Ensuring that your loved ones have properly addressed and maintained their own estate

plans will allow you to help them when they need you most, and will better protect your entire family.

In this issue of *Bridging the Gap*, we address the importance of having an estate plan that matches your stage of life. It's not as simple as your age; it's a big picture analysis that takes into consideration the important people in your life (significant other, spouse, children, parents, siblings, nieces and nephews...), your current and anticipated net worth, your health, and your subjective goals and concerns.

Signing an estate plan is a great feeling. It is one of life's most important "to do" items, and it is very satisfying once you've completed it and can mentally check it off your list. Just remember that, like most things in life, it needs maintenance and attention. Read on to consider whether it's time for you or someone you love to revisit (or maybe address for the first time) estate planning.

Estate Planning and Asset Protection

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Estate Preservation Law Offices

Protecting assets during your lifetime. Preserving them for future generations.

Exploring the Stages

Earlier in adulthood, an estate plan may be as simple as having a Will, Durable Power of Attorney and Health Care Proxy. As life moves along, Trust planning often becomes advantageous. No matter what life stage you or your loved one is in, existing with an old (or no) estate plan is an unnecessary risk.

Young Adults:

There is a misconception that estate planning is only for “older” people. In reality, accidents or illness could lead to incapacitation or death at any age. It’s important to address estate planning early in adulthood and to update estate plans throughout life.

Once a child turns 18, parents have neither authority nor access to their children’s records regarding health/medical matters or decision making. Parents are also unable to make legal or financial decisions for their over-18 child in the absence of legal planning. This becomes an issue particularly when a child moves out/goes away to college. If young adults become ill or have an accident that leaves them unable to handle financial, legal and medical decisions, they would need to be placed under financial and/or medical guardianships, a process that is both time consuming and intrusive.

At the very least, before they have any assets of significance, young adults need:

- **Durable Power of Attorney:** Naming someone to make legal/financial decisions for you in the event of incapacity or unavailability.
- **Health Care Proxy:** Naming someone to make medical/health decisions in the event of illness/diminished capacity.
- **HIPAA Release:** Giving specified individuals the right to access one’s medical records.
- **Living Will:** Expressing wishes regarding death not being artificially prolonged in the event of an end-of-life scenario.

Established Adults:

Developments in life such as acquiring a significant other/spouse, accumulating more significant assets, and birth/adoption of children, will raise the stakes for estate planning. As assets and new meaningful life relationships enter the picture, planning measures that become relevant (in addition to the “Young Adult” documents) may include:

- **Will:** To designate beneficiaries of solely-owned assets. In the absence of a Will to specify beneficiaries, certain assets will automatically pass to default heirs under state law.
- **Living/Revocable Trust:** The most versatile tool in estate planning, a living trust can do almost anything — from protecting the inheritance of young or special needs beneficiaries, to reducing estate taxes for married couples.

Your particular situation will dictate your planning needs:

- ❖ **Single Individuals:** Over time, adults begin accumulating assets, such as employment benefits (401K, life insurance), and have people enter their lives other than parents/family whom they may now want to designate as a decision maker (on a power of attorney or health care proxy) or a beneficiary of their assets in case of death. They may want to include beneficiaries (such as a young niece/nephew or an aging parent) who are financially vulnerable or unable to manage an inheritance.
- ❖ **Unmarried couples:** A couple in a committed relationship may begin overlapping their financial existences — making purchases (such as a home) or sharing bank accounts. Without proper estate planning, unmarried couples do not have inheritance rights in each other’s separate assets (unless named as a beneficiary on an asset) nor any right to participate in each other’s financial and health decisions in case of illness or disability. They may want to provide for each other in the event of death, but also wish to benefit other relatives. If their assets (including life insurance) exceed \$1 million, their estates would be vulnerable to state estate taxes (without the benefit of estate tax benefits afforded to married couples).
- ❖ **Unmarried couples with children:** The same issues listed for “unmarried couples” apply, except now the financial security of children is at stake. Parents are the “natural guardians” of their children, so when parents are not married it does not affect their parental rights. But in the absence of a Will, it is the children, not the surviving parent/partner, who could be inheriting the deceased parent’s assets. Without proper estate planning, the surviving parent would need to become a court-appointed conservator (financial guardian) to oversee the money for the children under court supervision until age 18.
- ❖ **Married couples:** It is tempting for married couples to shift into cruise control when it comes to legal planning. In most cases, their assets are jointly owned and they are named as beneficiaries on each other’s separate assets (retirement, life insurance). However, spouses must also be prepared for illness or disability

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during life, which would require legally designated decision makers to manage affairs. If a married person becomes incapacitated, the other spouse has no legal access to the ill spouse's separate assets (retirement accounts, business assets, separate bank accounts or real estate), and also does not have automatic rights to make significant medical/health decisions. Married couples without children might also be surprised to learn that if one of them dies without a Will, the other spouse may have to share a portion of the inherited assets with the deceased spouse's extended family. In the absence of proper planning, married couples in Massachusetts are also at risk to lose a portion of their estate to unnecessary estate taxes.

❖ **Parents:** Children's inheritance rights are secured, even in the absence of a Will. However, in many cases children should not be receiving inheritances in their own name right away. Minor and young adult children generally lack the maturity to responsibly manage an influx of wealth. Many individuals have disabilities or other special needs — whether mental health, developmental issues or other conditions — that entitle them to

benefits with asset/income limits, so no matter what their age, they should not hold assets. Others are financially vulnerable because of marital issues or creditor problems, and stand to lose inheritances to hostile third parties. Substance abuse has become another area of acute concern for parents. Protecting their children's inheritances from threats of all kinds should be at the forefront of parents' estate planning goals. A properly designed and funded revocable trust can protect children's inheritances from every one of these issues. Parents of minor or special needs children should also ensure that they have a Will that addresses guardianship of their children in the event of their death.

❖ **Blended families:** Married couples with children from prior relationships and widowed stepparents must plan precisely to avoid unintentionally disinheriting stepchildren. Parents married to someone other than their child's other biological parent must also be careful to avoid unintentionally disinheriting their children. In the case of couples who regard each other's children as their own, it may not occur to them that if one of them dies, the other's children have no inheritance rights in the survivor's

estate. Many couples, particularly those who get together later in life, intend to keep their assets separate to benefit their own children at death, but unforeseen developments such as a sudden nursing home stay (potentially requiring assets to be shifted to the other spouse's name) or reflexively titling assets jointly can lead to the first-to-die's children being unintentionally omitted. A carefully designed and funded estate plan will ensure these unfortunate oversights do not occur.

Retirees/Seniors:

As you enter your senior years, make sure that your plan is as clear and ready to be executed when necessary. Consider what could happen if you become incapacitated and unable to handle your own affairs. Evaluating the exposure of your assets to a nursing home stay becomes a significant focus. Your existing estate plan might adequately address your familial circumstances and tax planning, but lack a long-term care/nursing home component.

❖ **Single/Widowed individuals:** As unmarried individuals approach their

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The Unpartnered Life? You Still Need Estate Planning

Living “unpartnered” (without a significant other) is increasingly common: As of 2017, 42% of U.S. adults lived without partners. There are many examples of “unpartnered” individuals: living with parents, living alone, single parents, widowed/divorced individuals, and couples living apart. The list goes on.

If you are an adult with no partner, estate planning is critical because you may not necessarily have a go-to or presumed person in life to make decisions or inherit assets. Living solo without a will, durable power of attorney or health care proxy means that if you become incapacitated or die, the state must be involved — either to determine your heirs in the event of death, or to appoint a decision maker through the courts if you are alive with an illness or

disability that limits your capacity. It is critical that you proactively designate decision makers and beneficiaries of your assets.

Perhaps you find yourself without a significant other after a long-term relationship or marriage. If your significant other/spouse has passed away, your existing estate plan documents should be reviewed to make sure you have contingent beneficiaries and decision makers. If you have gone through a divorce or break-up, you may need to revoke old documents to ensure that you do not leave your ex in place as a decision maker or beneficiary.

For this growing segment of society, estate planning is critically important to ensure that your wishes are honored and your privacy is preserved.

Practice Areas

Estate Planning
Asset Protection Planning
Elder Law and Medicaid Planning
Business and Corporate Planning
Special Needs and Disability Planning
Estate and Trust Administration
Guardianships and Conservatorships
Tax Planning: Corporate and Individual
Charitable and Exempt Organizations
Equine and Pet Trust Planning
Veterans' Benefits Planning
Financial Aid Planning

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For our clients' convenience, we also have offices in Leominster, Uxbridge, Braintree, and Hyannis, MA.

Contact Us

Whatever services you need, you may rely on us for steadfast, friendly and skillful service.

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senior years, they should contemplate the risks of their assets going to nursing home/long-term care expenses. Unmarried seniors who wish to preserve an inheritance for children or other beneficiaries face a set of stringent rules when it comes to the nursing home spend downs. While the rules for married couples allow for last-minute asset shifting, single individuals face a strict 5-year look back. Irrevocable Trusts are often the advance planning technique of choice for sheltering assets from long-term care. Beyond the nursing home, unmarried seniors should also have proper (and recent) documents in place to ensure they have decision makers of their choosing to manage health care and financial matters in the event of illness/incapacity. As individuals age, they should also pay special attention to ownership and beneficiary designations on assets to ensure that they are up to date — it is common, for instance, for a widowed individual to fail to update life insurance or IRA beneficiaries after the first spouse's death.

❖ **Married individuals:** On the nursing home/long-term care front, married couples generally have more flexibility and opportunities to protect assets. Even in a last minute nursing home scenario, they can shift assets without a look back or penalty. With strategic and straightforward advance planning and the right provisions in their Wills, they can situate assets for maximum nursing home protection upon the first spouse's death. Beyond nursing home issues, many seniors have no (or very old) documents in place for lifetime decision makers for health care and finances, leaving them vulnerable at a time when they are most likely to need assistance. Particularly if one spouse has dementia or other limitations, it is critical that they reexamine documents and ensure that children or others are named as alternate decision makers.

Creating (or Updating) Your Estate Plan in Six Easy Steps

EPLO offers a streamlined and manageable process that helps our clients overcome procrastination to create their new estate plans or update their existing documents.

First consultation: In your complimentary consultation with an EPLO attorney, we will learn about you, your family and your assets and discuss your goals and special concerns. From there, we will develop our recommendations and provide a quote. If you're an existing client, we will discuss changes that have transpired since the last time your documents were signed.

Creating your documents: Based on the plan you have chosen, we will begin drafting your estate planning documents.

Document Review: You will review your drafts documents, and typically

have a meeting/conference with an attorney to discuss the documents in detail.

Signing: You will sign your estate plan documents, usually at one of our offices with our staff who will witness and notarize the signing.

Funding: Once your documents have been created, we will invite you to commence the complimentary funding process, where the attorneys and paralegals work with you to assess the ownership and beneficiary designations of your assets to ensure that they properly coordinate with and connect to your estate plan.

Maintenance: As you experience changes to your life circumstances and/or assets, you may wish to reassess certain aspects of your estate plan. We recommend a meeting every several years.