

Old Colony Law

Seven Reasons for Estate Planning

Estate planning can feel overwhelming and confusing, particularly for those who have not engaged in estate planning before.

To help you get started thinking about some of the considerations and what estate planning might look for you, we've identified the seven fundamental reasons to engage in estate planning.

DISTRIBUTION OF ASSETS AT DEATH

A majority of Americans do not have wills. People spend their whole lives accumulating assets (real estate, retirement accounts, investment accounts, digital assets, bank accounts, personal belongings), but then do not spend a few hours to plan how their assets will be distributed when they die. When a person does not make a **will**, that person leaves it to the state to decide how to distribute their assets at their death. How Massachusetts distributes your assets may surprise you. Here are some examples:

- If you are married and either you or your spouse have children from outside of your marriage, your spouse just gets the first \$100,000 of your assets, plus 50% of the remaining assets, with the remaining 50% going equally to your children.

- If you are married and do not have children, but at least one parent survives you, your spouse gets the first \$200,000 of your assets and the balance is divided, with 75% going to your spouse and the remaining 25% going to your surviving parent(s).

PLANNING FOR INCAPACITY

In addition to a will, a comprehensive estate plan includes a power of attorney and a health care proxy. A **power of attorney** allows you to appoint a trusted person to take care of your financial, property and business affairs if you become incapacitated because of a medical condition or an accident. A **health care proxy** allows you to appoint someone to make end-of-life, emergency and routine medical decisions on your behalf if you are unable to make these decisions for yourself. In addition, medical directives set forth instructions as to whether you want extraordinary medical measures to be taken if you are brain dead or have only a very short time to live. If you become incapacitated without a power of attorney or health care proxy, it may require expensive and intrusive court proceedings to appoint someone to make these decisions.



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ASSET PROTECTION FOR BENEFICIARIES

Your child's spouse may be able to claim a portion of your child's inheritance if they get divorced. At your death, an **asset protection trust** can be established for each of your children to ensure that their inheritance is not reached by a divorcing spouse. Additionally, if a child or other loved one is in a high-risk profession (such as a physician, attorney, architect, engineer or contractor), an asset protection trust will also protect that child's inheritance from suing patients or clients, or other creditors.

MANAGING A LOVED ONE'S INHERITANCE

A person can simply leave an inheritance outright to a spouse, child or other loved one. That may be fine, but could be a disaster if that loved one lacks financial sophistication, is immature, is a spendthrift or has different ultimate loved ones. In many cases, a **trust** for a loved one makes sense. Here are some examples:

- You have children from a prior marriage. Will your spouse ultimately leave the assets he or she receives from you to your children?
- Your spouse or children are not good with finances. Leaving their inheritance in trust allows your financial advisor to continue to manage investments and a trustee to ensure that the inheritance lasts for their lifetime and is well spent.
- Your children are minors or still young (under age 30 or age 35, for example) and need assistance with their inheritance. In these cases, it is appropriate to establish an age of

maturity trust for your children until they attain an age of maturity.

- You have a child with disabilities. A special needs trust can help ensure that your child continues to receive financial support while also preserving eligibility for government benefits.

ESTATE TAX ELIMINATION OR REDUCTION

The federal estate tax exemption for 2024 is \$13.61 million per person, so fewer estates are subject to federal estate tax anymore. Massachusetts, however, has only a \$2 million exemption per person from state estate tax. Surprisingly, even for those who do not consider themselves wealthy, this \$2 million threshold can be easily reached resulting in **Massachusetts estate tax** if you do not have proper estate planning. Life insurance, retirement accounts, real estate and bank accounts are all taken into consideration when calculating estate tax.

AVOIDING PROBATE

Probate in Massachusetts can be difficult and expensive. Creating a revocable trust or titling your assets properly can **avoid probate and save costs**.

APPOINTING GUARDIANS

For parents with children under age 18, a will is vital to ensure that your choice of **guardians for your minor children** is honored. Without a will, parents leave it to the court to decide guardianship of minor children, often with family members fighting over who should have control.