



3854 E. County Road 466 | Oxford, FL 34484 | 352.399.6944

Amy R. Pittman, Esq.

Stefan L. Addison, Esq.*

*Admitted in FL & NY

WHAT YOU DON'T KNOW ABOUT ESTATE PLANNING

Who needs an estate plan in Florida?

Everyone should have an estate plan. Most people tend to put off planning for the future because it can be difficult, time-consuming, and, for some, even an emotional process. However, it is essential to have a plan in place to protect you, your loved ones, and of course, your estate assets. Unfortunately, you just never know what is going to happen and delaying planning only exposes you and your loved ones to great risk.

When should you create a Florida estate plan?

While everyone should have an estate plan, you should always create one or update it when any major life changes occur, such as marriage, divorce, birth of a child or grandchild or retirement. It is also a good idea to make sure you have a current plan in place before traveling, if your domicile has recently changed (from a different state or country), or if you are experiencing any other life changes such as suffering from illness. Your plan certainly needs to be reviewed if there is a substantial change in your wealth or the assets of your estate (such as purchasing real property or inheriting money or other assets).

What are the consequences of not having an estate plan in Florida?

If you don't have an estate plan, you die intestate (without a will) and your estate would have to be administered through the probate court system. Your estate would be devised to your heirs at law as provided for by law. As a note, probate (which wills are subject to as well,) can be a very expensive, time-consuming and very emotional process. It may be advisable to avoid it whenever possible, depending on your estate circumstances and needs.

Do you have children or elderly parents? What about savings or a home?

If you answered yes to any of these, here's another question for you: Do you have an estate plan in place? While you may think that estate planning only applies to wealthy individuals with millions in assets who live on, well, estates ... think again.

Plain and simple, estate planning helps protect your family in the event that something bad happens to you. And, yet, 55% of Americans don't even have a last will and testament, leaving them vulnerable to costly court fees and legal battles. But even though it's predicated on incapacitation or death, estate planning doesn't have to be morbid. In fact, it can actually be life-affirming, because the process will allow you to take a closer look at the people you most care about in life—and ensure their future happiness.

What happens if someone doesn't do proper estate planning?

You end up in probate court—which can be extremely time-consuming and expensive. The court takes a look at your will (if you have one), as well as any heirs or potential creditors, and then oversees the distribution of your assets and payments to creditors.

How can you avoid the probate process?

First off, if you can assign a beneficiary designation to certain assets—like a life insurance policy or a tax-deferred account—you can avoid probate. In the event of your death, the asset will go to the person who you named as the beneficiary. With other assets, like a home or a regular bank account, you can't designate a beneficiary. If you have these listed in a last will, you're on the right track—but a last will still has to go through the court.

One way to avoid probate altogether is to create a revocable trust, which lets you transfer ownership of all assets to a trust that lists exactly what happens if you become incapacitated or pass away. You avoid probate because it's all contained within your Trust.

What else is involved in setting up a trust?

The most important thing you need to remember is to *actually transfer* the ownership of your assets to the trust, so nothing is left out and sent to probate. It may seem weird to change the ownership of a bank account from your personal name to a trust, but the revocable trust uses your Social Security number as the tax ID—so it's basically an extension of you. And it won't change anything for income tax purposes.

What if I just want the entire estate to go to my spouse?

You can also avoid probate if everything is owned jointly between you and your spouse—as long as your assets don't exceed the estate tax exemption. If you have more than the state or federal exemption, you'll likely want to set up two revocable trusts—one for you, and one for your spouse—to help diminish estate taxes owed. Also important: If you're married and choose not to get a trust, make sure that you retitle your home, so it's owned "tenants by the entirety." This is only given to married couples, but it means that if a spouse dies, the home is automatically passed to the surviving spouse, avoiding probate. It also offers a level of creditor protection to the survivor that's not offered by other types of property titles.

How do I plan if my kids are already grown?

You can review your estate plan every time there's a major life event, such as the birth of a grandchild, the death of a parent or a divorce. You'll want to revisit those documents because you may inherit assets that you'll need to protect or you'll have to add or change names on your documents. Additionally, if your children reach a certain age in adulthood, you may want to rethink the way you structured your trust to pay out your assets. If you'd written it so that your kids would receive one third of your estate at 25, another third at 30 and the final third at 35—and all of them are older than 28—you may decide that they're responsible enough to receive the full sum at the time of your death.

Are any other people named in estate-planning documents?

It's important to designate a health care surrogate, as well as give someone durable power of attorney. A designation of health care surrogate will make medical decisions for you in the event that you can't make decisions for yourself. When you give someone durable power of attorney, that person can carry out your financial obligations if you're unable to do so.

Tips for finding the right estate planning attorney

You'll want to make sure that there's a good personality fit. Remember that this is the person your spouse or family members will be dealing with once you're gone, so it's important that everyone gets along. You also want to make sure that the lawyer you select primarily focuses on estate planning, and doesn't just occasionally write wills and health care proxies.