

What Is Estate Planning & Who Needs One?

Fisher Law LLC



Estate planning is essential for seniors and their family members to be prepared in the event of a loved one's illness or passing. By implementing a well-thought-out estate plan, you can ensure your family is protected, you have the proper people making decisions for you in the event of your incapacity, and that your property goes to your loved ones at your passing.

At Fisher Law, LLC, we can help you build an estate plan to fit your needs. We make comprehensive and customized estate planning easier for you.

What is Estate Planning?

ESTATE PLANNING is a collection of legal documents drafted and executed in accordance with Massachusetts state laws.

ESTATE PLANNING is for every mother or father, grandparent, wife or husband, business owner or professional, or anyone who has someone they care about and wish to protect.

ESTATE PLANNING is a process that provides peace of mind for individuals and families regardless of your goals and objectives, whether it is to minimize state or Federal estate taxes (especially where the exemption level in Massachusetts is \$1 million), avoid probate at death, or avoid a court proceeding to have a guardian and/or conservator appointed for you where you have failed to execute a Durable Power of Attorney and Health Care Proxy and become incapacitated and unable to manage your affairs.

ESTATE PLANNING ensures your wishes are carried out during your life and at your passing. It is life well planned. As we are living longer, with our later years potentially challenged with declining health and a high probability of needing long-term care, an estate plan designed by an attorney that concentrates in this area will be tailored to the unique qualities, goals and dynamics of you and your family and will avoid the stress and expense when the unthinkable happens. Proper estate planning will provide peace of mind, and can keep your family out of court seeking an appointment of a Guardian, Conservator, or Executor (now called a Personal Representative in Massachusetts). This will allow your family to focus on you and your needs during your life and to carry out your wishes at death. And, isn't that what it is all about – you and your family.

ESTATE PLANNING says *I love you to the people that matter most.*

What do you need to start your Estate Planning?

Here are some questions you should consider when creating your estate plan with an experienced Massachusetts estate planning and elder law attorney.

1

DO I NEED A WILL OR A WILL SUBSTITUTE?

A *Last Will and Testament (a Will)* is the basic document that becomes operative when someone dies. However, what happens if someone is NOT dead, but cannot manage his/her affairs? Stroke, heart attack, serious surgery, Parkinson's, Alzheimer's? Does the Will help? Of course NOT!

Also, a *Will* guarantees court proceedings for transferring the assets of the deceased. The legal process is called Probate. Probate means sending your loved ones down to the courthouse before being able to distribute your assets. Most families want to avoid probate because it is time-consuming, costly, and held in public court.

In most cases, a *Will* is not enough to protect you, your loved ones, and your assets.



2

DO I NEED A TRUST?

An experienced estate planning attorney will explain to you in plain understandable language whether it is advisable to have a trust or not.

A Trust is a legal entity in that the state recognizes it as a separate "person" under the law. It is a contract between the Grantor (that is, the person who creates the trust) and the Trustee. In many circumstances and estate plans, the initial Trustee is the Grantor with a family member being named the successor Trustee upon incapacitation or death. Assets are transferred to the Trust during the Grantor's life or paid on death to the Trust and are held, managed and administered for the benefit of the trust beneficiaries, which are usually the Grantor for his or her life and then family members or charities at death.

A Trust is a compilation of instructions from the Grantor to the Trustee.

In case of incapacity of the Grantor, the Trustee knows exactly how to act and what to do to follow the Grantor's wishes. At death, a properly drafted and funded Trust will avoid probate and thus assist your loved one in the distribution of your assets in a time efficient and cost effective manner, as probate is typically a year long process and if there are unexpected issues, such as ambiguities in a Will, a Will contest between beneficiaries, a late filing after the prescribed time period, the cost can well exceed the usual cost for a typical probate.

3 WHICH TYPE OF TRUST DO I NEED?

An experienced Estate Planning attorney will be able to explain in clear and simple terms whether you need a Trust and what type of Trust will be useful for your situation.

There are two categories of Trusts, **Revocable** and **Irrevocable**, and in each category, there are many types of Trusts because each one is designed to solve a particular issue. Each type of trust serves a particular purpose and has advantages, depending on Grantor's family circumstances.

- **Revocable Trusts**
 - ▶ The Revocable Trust assists in avoiding Guardianship and Probate.
 - ▶ A Revocable Trust can be modified after the document is created.
- **Irrevocable Trusts**
 - ▶ The Irrevocable Trust assists in asset protection.
 - ▶ An Irrevocable Trust cannot be modified without the consent of ALL the original signers or parties of the document and approval of ALL beneficiaries.
 - ▶ Irrevocable Trusts are often used to prevent the loss of your home due to the high cost of long-term care, whether the loss is due to depleting the equity in the home to privately pay for such care or due to the state seeking reimbursement for care that was paid on your behalf through the Medicaid program.

4 HOW DO I CHOOSE MY BENEFICIARIES?

The Beneficiaries are the people or organizations that will profit or inherit at the time specified in the Trust or at the time the *Will* is probated.

Choosing the right Beneficiaries and the right timing of the distributions could save a lot of money on unnecessary taxation. Again, here an experienced attorney can assist with your Estate Planning matters.

Beneficiaries can be:

- Family member
- Friends or loved ones
- Charitable organizations



5

WHO WILL TAKE CARE OF MY MINOR CHILDREN?

In today's complex society many parents of minor children wonder:

What Will Happen to My Kids if Something Happens to Me?

Responsible parents of minor children nominate Guardians for their minor children and draft their instructions in case the parent becomes incapacitated or dies.

When the parents nominate Guardians for their minor children Family Court is forced to take into consideration the parent's wishes, thus, the kids are protected from court decisions that could be detrimental for the children's wellbeing.

- **Questions to ask yourself when selecting a future guardian:**
 - ▶ Who does your minor already have a relationship with?
 - ▶ Does the potential guardian have other minor children or a similar parenting style?
 - ▶ Do you have religious concerns or preferences?
 - ▶ Would your minor have to relocate or still have access to other family members?



6

SET IN PLACE A POWER OF ATTORNEY AND LIVING WILL:

Do you have these two forms of power of attorney?

- Who is your Financial Power of Attorney?
 - ▶ Who will handle your financial matters if you are not able?
- Who is your Healthcare Power of Attorney?
 - ▶ Who will handle healthcare decisions if you become incapacitated?

What is the outcome of not having these documents?

- Without establishing these documents, your loved ones would have to go through the court process to appoint someone to these roles. This process can be time-consuming and costly for your loved ones.

Have you incorporated a Living Will in your Estate Plan?

The Living Will documents your healthcare preferences.

- Do I want to be resuscitated?
- Do I want to be kept alive with machines?
- Do I want to donate my organs in case of a car accident?

You could choose to give your health care agent broad discretion to make decisions on your behalf in case you cannot make those decisions.

- Establish how you want your remains handled:
 - ▶ How will your remains be disposed of?
 - Cremation
 - Burial
 - Other
- What other instructions do you want for your funeral arrangements?
 - ▶ Where do you want to be buried?
 - ▶ Where do you want your ashes to remain?
 - ▶ What do you want your funeral to look like?



7 DESIGNATE PROPER ASSET OWNERSHIPS AND BENEFICIARIES IN YOUR ESTATE PLAN:

How your assets are titled is important because it changes the right to inherit.

- Sole ownership
- Joint tenancy
- Tenancy in common

8 DRAFT INSTRUCTIONS FOR YOUR FUTURE EXECUTOR/TRUSTEE:

What information should you include in your instructions?

- List of assets
- Logins and passwords
- Personal artifacts to specific loved ones

How Our Metro Boston Estate Planning Attorneys Work with You to Create a Plan to Meet Your Unique Needs and Give You Peace of Mind:

You are unique, and so is your family. Your estate plan should be unique as well. Fisher Law LLC will customize estate plans that address your family's needs and achieve peace of mind for you and security for your family. We welcome you to [contact us](#) today to learn more about how Fisher Law LLC can help with your estate planning needs.



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