

**Estate and  
Pre-Planning  
Guide**

# The Documents You'll Need

Legal forms act as your voice when you're no longer here to describe specific choices.

Contact a qualified estate-planning attorney to walk you through the documentation process. These documents will ultimately lay out your plan in intricate detail.

At the same time, they allow your remaining loved ones the time to grieve – and to celebrate your time together – rather than having to make difficult choices about your possessions, investments and final financial decisions. You can even outline end-of-life medical choices.

Complete the following legally backed forms in order to set up your estate plan:

## LAST WILL AND TESTAMENT

The most well-known document for planning, a will works as an official expression of how your possessions are to be disbursed and who receives certain other assets. You should also name a trusted love one or outside professional to manage and settle your estate. If you don't, the court will appoint one. If you have minor children, a legal guardian should also be appointed. Otherwise, again, a court official will make the decision.

## LETTER OF INSTRUCTION

This informal paperwork is not legally required, but still recommended. Your letter will put the last will and testament into context, so that the executor and/or your beneficiaries understand why you made each decision. This is particularly important if you have make choices that will be perceived as out of the ordinary or unexpected.



© ADOBE STOCK

## DURABLE POWER OF ATTORNEY

Creating a durable power of attorney ensures that your wishes are followed should you become mentally or physically unable to handle your own affairs. You'll select someone who will take over your every-day expenses, collect and manage on-going benefits, and oversee remaining investments and property.

These decisions may be made in one of two ways, either as an immediate durable power of attorney or as a so-called "springing" DPOA.

Immediate declarations are just what they sound like: Your designate is immediately responsible for the estate. People typically use this option when that have been diagnosed with life-threatening

diseases or surgical procedures. Springing durable power of attorney declarations, on the other hand, name an overseer who does not become active until needed sometime in the future. Discuss these plans with an estate-attorney who will guide you through the process, keeping in mind that springing options aren't always permitted.

# Estate Planning Scams

Most scams are easily detected, if you know what to look for.

Familiarizing yourself with the most common approaches is a powerful weapon in fighting back against scammers. There are also tried-and-true methods to protect yourself and your assets. Here are a few helpful recommendations:

## WHAT TO LOOK FOR

These scams typically begin with a phone call. Unsuspecting seniors may be asked for sensitive information on the pretense of an issue with their account, or invited to attend a seminar where they can receive important information about estate planning. You may be pressured to secure your future through a living trust, playing on the typical worry that grieving beneficiaries won't be able to deal with sudden death and a host of new responsibilities.

They may also use a scare tactic where they describe the courts suddenly stepping in, then pushing aside your personal wishes. Often, these con artists are simply trying to gain access to your personal financial details in order to make illegal withdrawals. They may also be simply trying to sell your data to other scammers.

## MOST COMMON SCAM

The most common scam involves taking control of a living trust, an account with your



© ADOBE STOCK

possessions and assets that's managed by yourself or a designated person at the time of your death. There are two basic kinds of trusts, revocable or irrevocable. Revocable trusts are adaptive accounts which are managed by one or more people who are designated as a beneficiary upon the

owner's death. These trusts may be changed or terminated at any time, based on your sole discretion as the owner. Irrevocable trusts, on the other hand, are accounts where property and assets are placed and the designated manager can not be canceled or charged. Scammers often try

to gain access to these trusts in order to empty them before an unsuspecting senior is aware of what's happening.

## HOW TO AVOID THEM

The best way to protect yourself is to hire a reputable attorney or a trusted estate planner, and refer all ques-

tions to them. Verify everyone's credentials through the appropriate government entity or professional association. Never sign a document or change order that you don't completely understand. Update your trust periodically to make sure that your wishes are still being followed.

# Wills and Living Trusts

These two legal documents are similar, but there are key differences.

Here's a look at what separates them:

## WHAT WILLS DO

Your last will deals strictly with what happens to your property and assets after you have died. You'll designate who will receive everything in your estate, including cash on hand, personal belongings, investments and property. A trustee oversees distribution. Depending on what kind of will you've created, it may also name guardians for your dependents, create power of attorney, and outline end-of-life health-care choices.

## WHAT LIVING TRUSTS DO

Unlike with a will, your assets can be distributed among beneficiaries before you die when they have been placed in a living trust. Everything is held until a predetermined time, with instructions about management and distribution. For instance, assets placed into a trust account for a minor can be given to them when they turn 21 whether you are still alive or not. Living trusts do not allow you to name guardians, designate someone with power of attorney or detail health-care decisions.

## PROBATE COURT

Wills are subject to probate



© ADOBE STOCK

court, meaning a court is involved with distributing your assets despite the fact that you've outlined how things should go. Probate is a legal process meant to determine if your will is valid. The decedent's assets must be located and individually evaluated, while all remaining bills and taxes are paid. The remainder of the assets are then distribut-

ed to those mentioned in the original document. Revocable living trusts typically allow you to bypass this process. As the name suggests, they're created while you're still alive and are also adaptable, meaning you have the right to change or dissolve the agreement at any time. The person appointed in this trust then transfers ownership of your property to your

designated beneficiaries, usually without any involvement from the court.

## NAMING A TRUSTEE

In both cases, you'll have to select someone to manage your assets. They have to be someone you trust, someone who can manage sometimes complex financial information, and someone who can

sort through all of this during a delicate and emotional time after you're gone. Discuss potential selections before hand to make sure your designated trustee is comfortable with this new responsibility. If there's no one in your immediate family who fits the bill, consider naming a qualified bank official or trust-company representative.

# Pre-Planning Mistakes

A difficult subject becomes even more so if you fall into these traps.

Hiring the right pre-planning advisor is critical, of course, but so is having frank discussions with your family, and facing end-of-life decisions as early as possible. Some also fall into the trap of approaching pre-planning as a one-time decision-making process.

The Institute on Aging offers these tips on developing the optimal strategy:

## HIRING A PRO

Ensuring that your assets are properly distributed, and that your wishes are followed, can actually make things easier for those you leave behind. They can take a needed moment to grieve and to remember the good times together, rather than diving right into a complex financial situation. Find a reputable financial advisor to help you get started.

They'll have key information on needed documents, a decision-making timetable, wills and living trusts, insurance and taxation. They'll also be available for updates of your estate and preplanning documents, should insurance, assets or health situations change. In the end, however, these are very personal decisions, so make sure to find a person with whom you feel the utmost comfort and trust.

## HARD DISCUSSIONS

Talking about estate and preplanning isn't easy, but you shouldn't go through this process alone.

Bring loved ones into the discussions, if only to get a better feel for who might be comfortable taking on the roles of overseeing financial and medical decisions. Designating power of attorney

is an important safeguard through the process, and the person you've selected has to feel up to the task.

These designees may be in charge of directing delicate processes, including things like whether or not someone remains on life support. Financial designees must be knowledgeable and trustworthy, since they'll be han-

dling sensitive and complex legal and money matters. Talk through everything early on, and the best candidates for these roles will become more clear.

## THE BIG PICTURE

Determine if you want to set up a living trust, since that will determine whether you can distribute assets before your

death. Make your end-of-life choices clear.

Write a last will and testament, with an explanatory letter. Be sure that all relevant paperwork is gathered and in an agreed-upon place where it can be accessed by your designee.

Finally, planning and paying for your funeral will take one more worry off the table.



# Inside Lady Bird Deeds

The program was reportedly named after former First Lady Claudia “Lady Bird” Johnson.

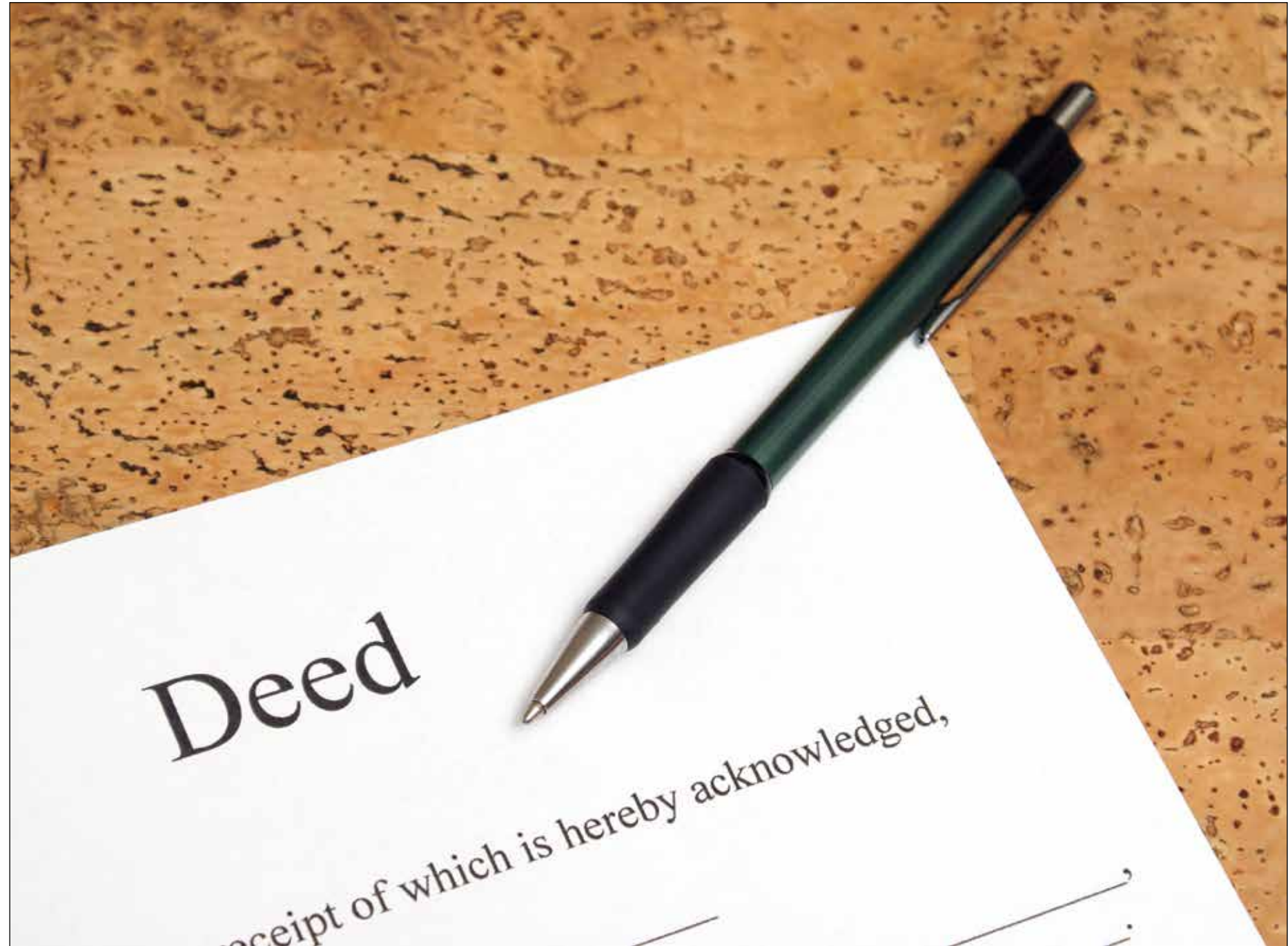
President Lyndon Johnson apparently put one in place for after his death, ensuring that the property would be transferred automatically without the need for probate. In some states, you can follow the same path for transfer. Here’s what you need to know:

## HOW THEY WORK

A lady bird deed creates a so-called life estate for the original owner, or life tenant. One or more people, organizations or trusts are then named remainder beneficiaries who inherit the asset when the owner dies. They’re adaptable, so the owner can change his mind at any time. In death, the property automatically passes to the beneficiaries by law, bypassing probate to transfer the title. Lady bird deeds are also known as an enhanced life-estate deed, since traditional life-estate deeds do not give original owners continued rights without beneficiary involvement.

## MEDICAID BENEFIT

Lady bird deeds allow new Medicaid recipients to avoid a penalty period if the transfer happened within the five years before application. Otherwise, the value of the property would count against the appli-



© ADOBE STOCK

cant since they wouldn’t retain the right of use. Laws may also allow state agencies to recover assets from a person’s probate estate upon their death, and lady bird deeded property hasn’t gone through probate.

## TAX CONSIDERATIONS

These deeds are considered an incomplete gift for tax pur-

poses, since control is retained by the original owner. So you won’t file a gift tax return or pay gift taxes on this transfer. Tax law views the life tenant as the owner until their death. Thereafter, remainder beneficiaries pay less income taxes because the property qualifies for an adjusted rate that doesn’t take into account

appreciation which happened while the deceased held the title.

## SOME LIMITATIONS

Not all states allow this form of deed.

An owner may want to take another approach if they are likely to die with a sizable unpaid lien. Experts don’t typi-

cally advise lady bird deeds if there are multiple default beneficiaries – since they will have to work together to potentially sell the property.

A lady bird deed also doesn’t usually make a provision for descendants who die before the donor. These kind of disagreements often lead to partition lawsuits.

# Finding An Estate Attorney

You've probably seen the ads for web-based pre-planning, but hiring a pro is a safer bet.

There are intricate rules and regulations involved on both the state and federal levels, as well as personal financial and medical considerations. Just be sure to properly research local attorneys so you can find the right expert to guide you through the complex estate-related legal process. Mistakes made today could have huge consequences later, both financially and emotionally.

## WHAT TO ASK

An estate attorney will make sure your assets and possessions are dealt with according to your wishes after death. They can also direct you around common pitfalls in the process. But many firms handle estate and preplanning while practicing many other kinds of law. That's why the National Academy of Elder Law Attorneys recommends that you ask if their practice emphasizes estate planning. You'll want to get the clearest possible idea about their experience and qualifications before signing on.

Find out what percentage of firm staff is devoted to this specialty. Ask how long they've personally been practicing, and other experience-related questions, since that will tell you if they have the expertise to accomplish all that you'd



© ADOBE STOCK

hoped through pre-planning. They should be a bar-certified attorney with an in-depth knowledge of state and federal law in order to create and legally execute these documents.

Once you've found the right match, it's time to create a strategy for the future.

## COMPLEX PROCESS

The federal government has its own guidelines, and every state has set up specific requirements and regulations that govern this complex process. A qualified estate planner will ensure your assets are fully protected only by understanding differing laws regarding things like the rights of

dependents to inherit, property rights for spouses, and estate and inheritance tax laws.

Using online tools might save a few bucks upfront, but these arrangements are meant to ensure your final assets and obligations are properly handled. If the documentation isn't mistake free and legally

appointed, you might be putting undue strain on loved ones at the worst possible moment. An estate attorney will draft documentation that you can be secure in knowing is lawful and ready to be executed as needed. They are also standing by to update the paperwork as requirements or personal situations change.

# Should You Update Your Will?

A will serves as your ironclad directive on how to disperse assets to loved ones. But what if things change?

Here are a few of the most-cited reasons for updating this critical document:

## MARITAL STATUS

Those who get married with a will already in place should update it to include their new spouse. Most states direct an estate transfer to your spouse should you die without a will, but the process can be both lengthy and difficult. Obviously, those going through a divorce will also want to address your soon-to-be-former spouse's status as a beneficiary or estate executor. In some cases, their role as guardian for dependents may also be revised. Your will should also reflect the changes associated with remarrying when you have children from a previous marriage.

## FINANCIAL SITUATION

Inheritances are sometimes increased or decreased, based on particular financial situations. Those who receive a large sum of money through business dealings, lottery winnings or other windfalls may choose to update their will to pay out more to various beneficiaries. On the other hand, you might have to decrease individual payouts as addition-



© ADOBE STOCK

al children are born. The loss of a job or income-producing property might also require an adjustment in how much is paid out, in order to ensure the estate's other financial obligations can still be met.

## TAX LAWS

Wills are written with the current rules and regulations

in mind – but tax laws can change, and they often do. It's hard for the average lay person to keep up with this ever-shifting landscape, so ask for periodic reviews from a professional. A will articulates your personal vision for the future, and is meant to create a legacy for generations to come. Don't let all of that hard work and

planning go to waste over an unseen rules change.

## HOW IT'S DONE

There are three ways to change your will – creating a codicil, writing a new will or replacing a personal property memorandum. Codicils add another page to an existing will, in order to avoid having to

completely redo everything. The two will be read together as one document.

Revoking the will and starting over is recommended when there are wholesale changes.

If your original will has a personal property memorandum, that can also sometimes be replaced separately.