

Beginning the Estate Planning Process

Overview

Estate planning is an opportunity to put your wishes into legal documents for your health care, minor children or dependents, finances, and assets. No matter how large or small your net worth, everyone should consider an estate plan. If you do not plan ahead, your state's laws will create your plan for you after you pass. This planning can be hard to do, because it often involves thinking about mortality. It is recommended to begin this process at age 18, when the legal rights of parents come to an end. While assets may not be many in this life stage, having a say with advanced directives and possessions is the legal right of the person. We all have something to pass on. It may not be titled property, but it could have sentimental value and it is your right to choose who you want to receive it. Having an estate plan will help ensure your wishes for **your** possessions happens, even when you are not around or may be unable to speak for yourself.

Step 1: Start the Conversation

There will be different times that you (and your partner/spouse if applicable) may be ready to talk about estate planning, including the transition of assets. This may be when a child turns 18, when a relationship/marriage or new child enters your life, or another life event occurs. No matter when you reach that time, coming together and having a conversation will be vital. Using "I" statements in this communication may be helpful. You may wish to get input from your beneficiaries as to what they would like to have of yours, including personal possessions. Or you may decide not to include your beneficiaries in the planning at all . . . it is your estate, so it is up to you.

Step 2: Advance Directives

No matter how much we all want to make our own decisions, we may not always be able to do so due to health. Setting up advance directives ensures that your wishes are followed, even if you cannot make the decision for yourself. These documents could include a living will, do-not resuscitate order (DNR), a durable power of attorney (DPOA) for healthcare, DPOA for financial affairs, or signing a simple health insurance portability and accountability act (HIPAA) form.

Consider who you name as a power of attorney carefully. Will they follow your wishes as stated and have the time or desire to commit to this role? Power of Attorney for healthcare decisions and for financial decisions can be different people and certainly do not need to be a relative. They can be a trusted friend or, in the case of financial decisions, can be an entity such as a trust department of a bank or an attorney. Talk to the person you would like to appoint to see if they are willing to serve as such. Adding an alternative person is recommended in the event your primary power of attorney is unable *if* the time comes. These

documents are available online, with an attorney, or in the case of the healthcare forms, with a healthcare provider.

Step 3: Determine your Estate Value: Getting Organized with Collection of Information

Everybody's estate is worth something and changes all the time. Determine what you have and what it is worth. Don't think about just a monetary value. Many items will hold a sentimental value as well. Create a comprehensive list of all assets such as accounts at banks, investment and retirement accounts, health savings accounts, titled/untitled property, insurance policies, and online/digital accounts including social media. Write down how each of these assets are titled, any legal descriptions, and who is listed as beneficiaries. Collect all relevant paperwork such as titles, insurance policies, proof of ownership of any asset, birth/death/marriage/divorce certificates, pre or post nuptials, previous wills, trust, DPOA or medical directive documents, social security cards, and so on.

Other important information to record are your professional advisors such as banker, accountant, insurance agents, and attorney, passwords to accounts, monthly bills, and debts — both what you owe and those who owe you. List all credit accounts open, such as credit cards or other businesses where you have an account. Include memberships in organizations and all members of your immediate family, including ex-spouses, whether you intend to make them a beneficiary or not. Think about who you might want to name as an executor and, if you have minor children, a named guardian, then talk to these people to make sure they are willing to serve. K-State Research and Extension's publication, *Our Valuable Records*, MF685 is a document to help record the information above.

Step 4: Set Goals

Everybody has different goals. You may be using these materials because you have a family business that you want to pass on or wish to keep your financial information private. You may have a spouse, minor children, special needs beneficiaries, or favorite charity to provide for. Easing the burden of dealing with financial matters in your absence may be the best legacy you leave.

This process may also bring to light other products or planning that may be needed to ensure your goals are met. We are all in different stages with a different goal of how we want things to look and how this process is going to go. Goals may be different if planning with a partner or spouse so working with a professional may help you develop your plan together. When making considerations, it may be helpful to remember that *"fair isn't always equal."*

Step 5: Create the Legal Plan

Once you have everything put together, it is time to make it official. This is the step to make your planning legally binding. Some online forms exist for those do-it-yourself types. However, if there is any question there could be an issue or if your estate is the least bit complicated, an estate attorney would be helpful to guide you through the laws/legal documentation that would hold up in a court of law.

A will is one document typically considered in an estate plan. It incorporates much of the information collected in step 3, outlining your decisions, including your executor/personal representative and guardianship of minor children. Probate court will be involved to oversee the disbursement of assets with a will, unless circumstances exist that make this unnecessary. For example, if the estate is less than \$40,000, a small estates affidavit could be filed. Some assets can be transferred directly by naming beneficiaries on accounts such as retirement, investment, health savings accounts, and life insurance. Payable-on-death designations with assets such as bank accounts allow assets to pass directly. This information is set up and updated with the entity that holds the account. These are tools that can help avoid probate, which can be a lengthy, costly, public distribution of your assets.

For titled assets, transfer-on-death deeds and how an asset is titled, such as joint tenancy with rights of survivorship, can directly pass these assets too, bypassing probate. Real estate and titled vehicles can be passed directly in Kansas with transfer-on-death deeds. Consider carefully the potential downsides of joint tenancy and tenant-in-common titles, as this could expose your asset to risks such as lawsuit or debtors or other legal situations involving title holders. In Kansas, if adding more than a spouse, it will be necessary to note

joint tenancy, as the title could default to tenancy in common, which is slightly different. An attorney or other estate planning professional can help you decide what is best for your situation.

A trust is another option to pass your assets. There are revocable and irrevocable trust options to meet your goals such as probate avoidance, asset protection, or trusts that allow for special circumstances of beneficiaries, such as a special needs trust. A pour-over will is often used as a complementary document for a trust, as it can help ensure everything goes to the trust. Funding the trust is an important and sometimes overlooked task.

An estate planning professional can also help you understand tax implications for the decisions you make. Information related to gift or estate taxes could be examples, as well as a step up in basis, which adjusts the cost basis of an asset to current fair market value, to lower capital gains tax if sold.

Step 6: Share the Plan

You have spent all this time planning, now it is time to let others know. It will be up to you as the creator of the estate plan as to how many details you wish to share with your executor, trustee, or heirs. Simply stating where the needed information is located when the time comes may be enough. This can give piece of mind to families that preparations have been made. *A final wishes or letter of last instruction* document could be created. A letter of last instruction often has many of the details recorded in Step 3, with an addition of final wishes/arrangements information. The Kansas Board of Mortuary Arts has a free memorial planning guide if you have not preplanned. If one of your goals is to minimize family friction, having your wishes in writing will help.

Step 7: Review and Modify

Life happens. There will be changes, so make sure your plan changes as events in your life happen. Reviewing every few years is important. If you utilize an estate planning professional, simply asking them if you need to do anything is not enough. Make sure you read and understand your plan. The more complicated the estate plan is, the more important the review is. Too many people fail to consider this an ongoing process and forget to make modifications as their life changes.

Making a plan isn't always easy. Having a plan is a gift that you leave to your loved ones. It is a way for your wishes to be carried out and to leave a legacy.

References:

Kansas Legal Services –

<https://www.kansaslegalservices.org>

Kansas Bar Association – <https://ksbar.org>

American College of Trust and Estate Counsel (ACTEC) – <https://www.actec.org>

Kansas Office of Revisor of Statutes—KSA 58-501, 58a-401, 59-3501

Forgue, Garman. Personal Finance. Chapter 17

AFCPE Accredited Financial Counselor Candidate Study Guide, Retirement and Estate Planning Module

Kansas Board of Mortuary Arts – <https://ksbma.ks.gov/resources/publications/memorial-planning-guide>

Other K-State Research and Extension supporting publications in the bookstore:

- MF3699 Checklist for After a Death
- MF3468 Estate Planning Terms
- MF3453 Estate Planning Goals
- MF3454 What Your Attorney Should Know
- MF3280 Advance Healthcare Planning in Kansas
- MF3122 Decisions After Death: Funeral Expenses
- MF3123 Decisions After Death: Practical Suggestions Regarding Financial and Legal Matters
- MF3591 Digital Estate Planning
- MF685 Our Valuable Records
- MF2721 Financial Checkup

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Acknowledgement

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This publication is not intended to provide a substitute for legal advice. Nor is it intended to serve as a complete and exhaustive text on estate planning. Rather, it is designed to provide basic, general information about the fundamentals of estate planning so you will be better prepared to work with professional advisors to design and implement an effective estate plan.

Information in this publication is based on the laws in force on the date of publication.

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Kansas State University Agricultural Experiment Station and Cooperative Extension Service

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