

A photograph of a baby being held by two adults. The baby is wearing a blue and white patterned shirt and is looking up. The adults' hands are visible, holding the baby. The background is blurred. A white rectangular box with a thin border is overlaid on the image, containing the text "ESTATE PLANNING GUIDE".

ESTATE PLANNING GUIDE



THE **FINITY** LAW FIRM

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OUR PROCESS

**Protecting you, your family, and your
business is not a do-it-yourself job.
The risk is too big! We are here to
work with you to accomplish your
goals and provide you the peace of
mind you deserve.**



ABOUT US

The Finity Law Firm focuses on legal solutions that protect your family, business, and your legacy. We know that providers of legal services can be quite deceiving when it comes to fees, payments, documents, and much more. Our Orlando law firm, based out of Winter Park, is a results-oriented provider that has adopted a philosophy of offering transparent legal solutions with a balanced approach to your needs and your wallet. Our Orlando estate planning attorneys are standing by to provide you with services you can trust and depend on. We understand each case is unique, which is why we offer **FREE** consultations to determine the needs of your family.

GUIDE PURPOSE

To provide you with the peace of mind that your estate plan effectively and efficiently protects your assets, your healthcare, and your family's harmony. We do this by providing quality education and superior legal solutions to all our clients. Embedded in our philosophy is the desire to have a family-centered practice with a balanced approach of your needs and your expenses.

LEGAL DISCLAIMER

This guide is designed to aid in your understanding of the practical, financial, and administrative aspects of estate planning. The information provided is for informational purposes only and is not to be construed as rendering legal advice or legal services. The reader should consult with an attorney who specializes in estate planning to review their own specific situation in order to properly leave behind their own legacy.



WHAT IS ESTATE PLANNING?

Estate Planning is the preparation for the distribution and management of a person's estate at death through the use of wills, trusts, insurance policies, and other legal arrangements, primarily to reduce administration costs and transfer tax liability for a person after death.

"If I Die Without an Estate Plan, I Trust the Government to Know Exactly Where I Desire All of My Personal Possessions to be Disbursed After My Death"
- Said no one ever



Simply put, estate planning is the predetermined arrangements for what should happen to your estate (aka everything that is important to you) when you die. Without estate planning you will have no control over your affairs after you pass. This may result in high estate taxes and expenses, delays in distribution, your end-of-life wishes not being met, the state deciding to whom your assets will be distributed to, and/or your children going to a guardian who you otherwise would not have approved them to go. You can use estate planning instruments such as wills, trusts, healthcare surrogates, living wills, and business succession planning to ensure that your wishes are met and your family's harmony is protected. Estate planning also allows you to:

- Transfer assets and real property privately without court involvement
- Protect your assets against potential creditors.
- Select legal guardians for your minor children instead of the state
- Plan for possible incapacitation or incompetency later in life
- Protect your family from dependency issues such as leaving a lump sum of money to a beneficiary who has struggled with alcohol or narcotics in the past
- Ensure that the beneficiary does not rapidly spend their inheritance such as a young or financially immature adult getting a lump sum of cash

IS ESTATE PLANNING RIGHT FOR ME?

Every single person has an estate whether they know it or not. It can range from cars to bank accounts to properties to life insurance to collection items to pets and everything in between. Estate planning is needed for not only every family, but every individual.

You can't plan for your death after you die!

The possibility of not being here tomorrow is not something we typically think about when we are young, but poor health or accidents can happen to anyone at anytime. When others depend on you or your income, it is your responsibility to make sure that they are protected if you are no longer able to care for them.

It is in your best interest that when, not if, you pass away that you were the one who decided how your estate was to be distributed according to your own wishes. Additionally, you will want to ensure that you are paying the least amount of taxes, legal fees, and court costs during this transfer of ownership or guardianship. Doing all of this requires proper estate planning!

ASSET PROTECTION / ESTATE PLANNING

Still not convinced estate planning is right for you? Let us help! Answer yes or no if you possess any of the following listed components. If you answer yes to one or more of these questions, then you should consider to start planning your estate.

Do you own a house?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Do you own a car?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Do you have a life insurance policy?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Do you have children or a family?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Do you have any pets?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Do you have a bank account?	<input type="checkbox"/> YES	<input type="checkbox"/> NO



ESTATE PLANNING MISCONCEPTIONS

- **There's Always Tomorrow** - Unfortunately, one day this will not be the case and there is no better time than now to setup your estate plan. People spend significant resources on products and services they will never use. That is not the case with your estate plan because there is a 100% chance it will be used.
- **If I Execute My Estate Plan I Will Have to Continuously Pay to Keep It Updated** - Our revocable living trusts can be amended, added to, subtracted from, or cancelled by you at any time without the intervention of an attorney or other estate planning professionals.

- **I Can Name My Children as Joint Owners and I Will Not Need an Estate Plan** - While this is appropriate in some circumstances, this can also cause a number of immediate problems which could completely destroy the estate.
- **I Plan on Simply Writing Out My Will and Keeping it in a Safe Place** - While this practice may work in some states, self executed wills (also known as holographic wills) that have not gone through the proper will formalities required under state law are not recognized here in Florida.
- **I Can Use a "Self Help" Website to Print the Forms that I Will Need** - Florida is known as a "strict compliance" state, meaning if the documents are not executed perfectly the court will not recognize their existence even if the decedent's intent was clear. Do not risk your entire estate to forms that you are not sure will even be valid. Remember, you get what you pay for!

More than 50% of American adults die without any sort of estate planning even though 100% needed them.



WAYS TO PLAN

**Unfortunately,
the average
American does
not have their
estate plan in
place until they
are 72 years old.**

REVOCABLE LIVING TRUST

A revocable living trust is a document created specifically for each client that will allow you to manage your assets during your lifetime and to distribute the remaining assets after your death according to your wishes. This type of trust can be modified, added onto, or cancelled by you anytime during your lifetime.

Trusts have been incorporated in American since the Colonial Era.

There are three different roles to any revocable trust. A settlor, or sometimes referred to as a grantor, is the person who creates the trust. The trustee is the person or company who manages trust assets. The beneficiaries are those who will receive trust property according to the settlor's wishes after their death. While the settlor also typically serves as the trustee and beneficiary during their lifetime, there must be at least one additional party to serve as either successor trustee or beneficiary.

While the settlor maintains control of their assets, they must be retitled into the name of the trust to ensure proper funding of the trust. At the Finity Law Firm, we fund 100% of all trusts that we create to ensure that the trust documents are fully effective before you leave our office.

Unlike wills, trusts are completely private and do not need to be probated. Currently, formal probate in Florida takes between nine months and two years to be completed and costs thousands of dollars in legal fees and court costs which are taken out of your estate.



SPECIAL NEEDS TRUST

A special needs trust in Florida, also known as a supplemental needs trust (SNT), is a trust created for the benefit of a disabled person. The purpose of a special needs trust is to preserve need-based public assistance for the individual such as Medicaid and Supplemental Security Income (SSI), Social Security Disability (SSD) and Social Security Disability Insurance (SSDI). Because these government programs are need-based, possessing large sums of money will disqualify applicants. Lawsuit payments, large inheritances, and other unauthorized sources of income may render an individual unable to get the assistance they desire. The special needs trust is designed to allow disabled individuals to continue to receive the benefits of their assistance programs while also being the beneficiary of assets placed into the trust. The creation of a special needs trust in Florida allows for a family to continue to provide for their loved ones, while still allowing that individual to maintain other benefits.

When creating a special needs trust you should consider:

- Who should be the trustee of my special one?
- Is a pooled trust a good idea?
- Is a third party special needs trust the best option?
- How will my special one receive money from the trust?
- Can I create a special needs trust myself?

IRREVOCABLE TRUST

An irrevocable trust is a type of trust that is created with the intent of not being modifiable without certain conditions being met. Terms in the trust, statutory law, and case law will guide modifications of these types of trusts as there are many factors to consider.

An example of when an irrevocable trust would be modifiable would be if all qualified beneficiaries agree to amend trust terms.

Irrevocable trusts are a great tool to use for creditor protection, life insurance policies, and avoiding federal estate taxes. Many Florida residents have life insurance policies and designating an irrevocable trust as the primary or secondary beneficiary can assure creditor protection of one of their largest assets upon death.



WILL

Easily the most famous and recognizable of all estate planning documents is the last will and testament, or simply put a "will". While modern films and televisions enjoy the drama of portraying a will reading before loved ones, as previously mentioned it is often times not the most efficient estate planning instrument. While dying with a will is better than dying intestate (or without a will), all wills are required to pass through probate.

If a will is unable to be located after the death of the testator, Florida law presumes that the will was revoked.

Further, wills only direct disbursement of assets upon death. This disbursement will occur as a lump sum of money possibly to teenagers, beneficiaries with creditor issues, or other financially immature individuals. However, wills are a cheaper alternative than trusts and may be appropriate for smaller estates with proper estate planning.

LIVING WILL

A living will, also known as an advance healthcare directive, contains particular instructions for how an individual would prefer medical care to be either administered or withheld upon the occurrence of specific medical events and/or conditions. A living will specifically states the conditions for if and what treatment you would be willing to accept or decline in the event you cannot make informed decisions on your own behalf (incapacity).

The directive can include topics such as:

- The appropriate situations and methods for which to decrease pain
- When to permit or withhold life-prolonging treatment
- What to do regarding an unborn fetus when a pregnant woman is incapacitated
- Eliminate financial problems for your family
- Make difficult decisions so your family does not have to
- Reduce or eliminate unnecessary medical expenses

POWER OF ATTORNEY

Power of Attorney (POA) is a legal instrument which grants an individual the authority to make decisions and sign legal documents on behalf of another if they become unable to do so. The authority granted varies depending on the wording or inclusion of specific powers stated in the power of attorney. The most common uses for the power of attorney privilege include selling property, accessing bank accounts, managing finances, and signing legal documents. Most clients select a spouse, family member, or friend to act as their agent on their behalf. POAs can be tailored for a specific transaction, such as selling a particular property, or be durable, meaning they are valid until the principal passes away, and everything in between.

GUARDIANSHIP

Guardianship is the process of legally appointing an individual to make decisions on behalf of a minor or an incapacitated adult. The individual who requires a guardian is known as a ward after guardianship has been granted over them. Guardianship for a minor occurs when a child's parents die, become incapacitated, or are deemed unfit to be parents, or if the child receives a lump sum of money greater than \$15,000 no matter the source. The guardian will make life decisions on the minor's behalf until they reach adulthood. Guardianship for incapacitated adults occurs when it is determined that an individual is no longer able to make competent decisions for themselves. In Florida, General guardianship information can be found in Florida Statute Section 744.

HEALTHCARE SURROGATE

One of the most important estate planning documents, a healthcare surrogate, also called a healthcare proxy, is an individual who is appointed to make healthcare decisions on your behalf if you are unable to do so. Choosing your representative must take place with careful consideration because they will be tasked with making tough medical decisions for you if you are incapacitated or otherwise unable to do so. You should have a conversation with your potential surrogate about your desires and feelings towards the difficult decisions that may come up.

"If you fail to plan, you are planning to fail."
- Benjamin Franklin



FREQUENTLY ASKED QUESTIONS

Q CAN I CHANGE OR REVOKE MY WILL?

A You can change and revoke your will at any time. A codicil, which is an amendment to your existing will, can be used to change your will. It must be drafted and executed with the same legal formalities as a will. Additionally, if you create a legally valid will and execute it properly, it will automatically revoke your old one. The last valid will is the one that is used to distribute your assets upon your death.

Q WHO SHOULD KNOW ABOUT MY WILL?

A No one except you and your lawyer should be aware of the exact contents of your will. Your executor, close friends, or the beneficiaries should know where to find it. The original should be kept in a safe and secure location.

Q WHAT HAPPENS IF I DIE WITHOUT A WILL OR TRUST?

A If you die without a will, your estate will have to pass through probate. This would cost your estate thousands of dollars and will delay distribution of your assets for months or even years. Florida intestacy laws will determine who the beneficiaries of your estate will be. If the deceased:

- Is survived by a spouse and only descendants of the marriage, then the spouse will receive everything.
- Is survived by a spouse and either spouse had children outside of the marriage, then the spouse will receive half and the descendants will receive half per stirpes.
- Is survived by only a spouse, the spouse will inherit everything.
- Is survived by descendants but no spouse, the descendants will receive everything.
- Is not survived by either a spouse or descendants, the parents of the deceased will inherit 100% of the estate. If the deceased is not survived by a spouse, descendants, or their parents, then the deceased's siblings and their descendants (the deceased's nieces and nephews) will inherit 100% of the estate per stirpes.
- Is not survived by any identifiable family members, then the assets in entire probate estate will be sold and proceeds deposited into the States School Fund.



Q WHAT IS THE DIFFERENCE BETWEEN A WILL AND TRUST?

A A will provides the instructions for the transfer of property after one's death. Unfortunately, all wills *must* pass through probate before assets are distributed to the listed beneficiaries. A trust serves a similar function but avoids probate on trust assets by removing ownership of the assets from the settlor. A properly executed trust still allows the settlor to remain in control of the trust assets during their lifetime.

Q ONCE A TRUST IS CREATED, WHAT HAPPENS NEXT?

A Assuming the trust has been properly funded, anything you want in the trust needs to be retitled. However, some assets, such as retirement accounts, should not be retitled into the name of the trust to avoid early withdrawal penalties. Additionally, your estate-planning professional should advise you about creating a pour-over will. The purpose of the pour-over will is to capture anything else that is not specifically mentioned in the trust or placed into the trust. This could include assets you acquire after the trust but have not renamed yet, new bank accounts, gifts, inheritances, etc.

Q WHAT IS THE DIFFERENCE BETWEEN A WILL AND A LIVING WILL?

A A living will and a Last Will and Testament differ in that the living will is not applicable after one's death and only pertains to medical care during one's lifetime. A will is only legally enforceable after the death of its creator and it typically contains specific information relating to property and guardianship.

Q WHAT IS THE DIFFERENCE BETWEEN A LIVING TRUST A LIVING WILL?

A A living trust transfers ownership of property or other assets from a person(s) to that of a trust itself. A living trust is enacted during a person's lifetime, immediately removing ownership from the individual. A living will is a legal document created to specify the type of medical treatment appropriate for an individual in situations pertaining to incapacitation, end-of-life care, and other scenarios where a person may not be able to consent to care on their own.

Q WHAT TASKS CAN A POWER OF ATTORNEY PERFORM?

A A power of attorney can be custom tailored to fit the individual needs of the client. For example, they may range from only covering specific tasks, such as selling a certain property while the seller is out of town, to lasting the remaining of a person's lifetime, which is most often the case between married individuals.

Q WHAT IS PROBATE?

A The term probate is latin meaning "to prove" and it is the judicial procedure where the decedent's estate is formally distributed to the beneficiaries. Generally, the process includes identifying and locating assets, paying the remaining debts and taxes, and then distributing the remaining assets to the heirs.

Q CAN I AVOID PROBATE?

A With proper estate planning, yes! Probate can be avoided in a number of ways such as transferring assets into a trust. To discover which trust is right for you and your family you should meet with an estate planning attorney to discuss the specifics of your estate.

Q WHAT IS THE DIFFERENCE BETWEEN A LIVING TRUST AND A TESTAMENTARY TRUST?

A A living trust is enacted during a person's lifetime, immediately removing ownership from the individual. A testamentary trust is typically included in a Last Will and Testament and does not come into existence until after the settlor's death. Ownership of any assets devoted to the trust may remain within the legal possession of the grantor throughout their life. The property or assets dedicated to the trust transfer into it after the estate has cleared probate.

Q WHAT IS THE DIFFERENCE BETWEEN A LIVING WILL AND A HEALTHCARE SURROGATE?

A The living will directs your requests for administering or withholding specific medical treatment during your lifetime. A healthcare surrogate, however, is the formal, legal appointment of an individual to make healthcare decisions on your behalf should the circumstances require it such as being incompetent prior to requiring a medical procedure.



ESTATE PLANNING QUESTIONS & ANSWERS

QUESTIONS	NO WILL OR TRUST	WILL	REVOCABLE TRUST
Can I avoid probate?	No	No	Yes
Can I reduce/avoid federal taxes?	No	No	Yes
Can I keep inheritance from my heirs until they reach age 30 or older?	No	No	Yes
Can I arrange to have funds managed for the benefit of an heir who is handicapped or otherwise unable to handle funds while maintaining their government benefits?	No	No	Yes
Can I make sure my grandchildren will receive my estate after my children die, excluding spouses of my children?	No	No	Yes
How long after my death until all assets are distributed and the estate is closed?	6 months - 2 years+	6 months - 2 years+	0 - 2 months
Can I retain control over my assets while I'm alive?	Yes	Yes	Yes
Can I change/revoke the plan?	N/A	Yes	Yes
Does the plan provide for someone to handle my finances if I become disabled?	No	Yes	Yes



REASONS TO PLAN

Know before you go!

SAFELY TRANSFER PROPERTY

Estate planning empowers an individual or married couple to control the disbursement of their estate after their death. A person can decide what they want to happen not only to their body but also to their worldly possessions. Failure to plan leaves significant decisions in the hands of a loved one or the court system often resulting in expensive and time-consuming litigation. Take control of the things that matter most to you and ensure that they end up with the people who matter most in your life!

PROVIDE FOR MINORS AND DISABLED

Estate planning involves imagining a “post-you” world. Where do you see your minor children living after you pass? Who is taking care of them? Who will properly care for your special needs child or loved one? How will they manage to afford it? Do not lose sleep over all of these unanswered questions. Do not leave this world or become incapacitated without a plan in place to provide for those you care about most, including yourself.

TAX EXEMPTIONS

Do not give away money you do not have because you failed to plan. Minimize the financial expenses your estate will encounter through taxes and fees. Get together with an experienced estate planning attorney to learn about all the ways they can save you money. These savings are not for your benefit alone. The primary reason to maximize savings is to ensure your loved ones receive the most of what you have left them.



PROTECT YOUR LEGACY

Dying without a plan in place can destroy family harmony. It is only those you leave behind who suffer if you do not plan accordingly. Dying without having your wishes known can tear a family apart during a time that should bring them closer together and allow them to grieve. Take the time to plan ahead while you still have the ability to do so. Ensure the peace and harmony among your family members is well preserved. Have your legacy be remembered for the accomplishments during your lifetime, not on the probate litigation that ensued after your death.

Estate planning provisions for a spouse are automatically void upon divorce or annulment in Florida (unless provisions are specifically made otherwise).

PLANNING CHECKLIST

Use this checklist to observe how far along you are in planning your estate. Simply answer "Yes" or "No" to each question to determine if you have completed each component, must fulfill the objective, or decide if it is something that you do not require.

- ☐ Did you draft a will?
- ☐ Did you nominate an executor (or personal representative)?
- ☐ Did you draft a trust?
- ☐ Did you choose a reliable trustee?
- ☐ Have you chosen guardians for your minor children?
- ☐ Did you develop a special needs trust for any of your children?
- ☐ Did you choose a knowledgeable trustee able to protect the interests of the special needs trust?
- ☐ Did you address long term end of life treatment?
- ☐ Did you minimize taxes for the estate?
- ☐ Did you draft a pet trust?
- ☐ Did you plan your memorial and burial instructions?
- ☐ Did you alert loved ones as to where they may find these important documents?

HOW TO START YOUR ESTATE PLAN?

If you're reading this,
you have already
begun!

You should consider meeting with a professional who can advise you on what products are best for you in order to have everything organized and accessible when the time comes that the legal documents are required is the ideal peace of mind anyone could ask for. Accidents happen at any time and "you can not plan for your death after you die" so make certain that you have a say in the process before it is too late! Also, keep in mind that your loved ones will truly admire the care and ease you bestowed onto them in their time of need. The act of discipline, organization, careful planning and love for them will never be forgotten.



A close-up photograph of a baby's face, smiling and looking towards the camera. The baby is wearing a blue denim jacket. The image is slightly blurred and has a dark overlay, serving as a background for the title.

WHY CHOOSE US?

In the probate world, Florida is known as a “strict compliance” state, meaning that if a will and/or trust is not executed to specific Florida laws the estate plan will not be recognized. Hiring an attorney that specializes in estate planning will ensure that your legacy is properly left behind. Be cautious if you use documents downloaded from the internet for free as they are most likely not tailored to Florida’s specific laws. Further, be wary of places that advertise “free wills” as many times they require that the estate be probated through their firm which will yield them significantly more money in legal fees on the backend. Remember, if it sounds too good to be true, it probably is!





OUR PROCESS

1**EDUCATION**

During your initial consultation, we focus on educating you and your family on the subject matter. The more informed you are, the better decision you can make!

2**YOUR UNIQUE ESTATE PLAN**

After your education crash course, we discuss your specific needs and goals for your estate plan. Together, we develop a plan to protect your assets, your family, and your legacy.

3**DRAFTING & EXECUTION**

With a balanced approach of your needs and your wallet, we draft and execute your documents, giving you the peace of mind you and your family deserve!





FREE INITIAL CONSULTATIONS



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