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# 10 MUST HAVE ESTATE PLAN BUILDING BLOCKS

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## 10 Must Have Estate Plan Building Blocks

Estate planning is a crucial step in ensuring that you have the final say in how your estate is distributed. A comprehensive estate plan does not have to be unduly complicated, especially if you think of each step in your plan as a building block.



Each of these estate plan documents serves as a building block toward a final comprehensive estate plan. The work you do now will serve as a relief to your loved ones in the future when it is time for decisions about your healthcare or the dispensation of your estate to be made.



## Essential Estate Plan Building Blocks

### 1. Power of Attorney

A durable Power of Attorney is one of the most important documents you will ever execute. A Power of Attorney gives the legal authority to a person that you trust to make decisions about your finances and your assets in the future. An experienced estate planning attorney can make sure your Power of Attorney is strong, effective, and can withstand legal challenges.



There are 2 different Power of Attorneys. A Durable one goes into effect immediately upon signing. A Springing Power of Attorney goes into effect only when you become mentally or physically incapacitated and can no longer make your own decisions. Practically speaking, it is better to have a Durable Power of Attorney simply because it is frequently hard to tell when a person becomes 'mentally incapacitated' and doctors are reluctant to sign off on this issue.

As a result, it is important to appoint an Agent under a Power of Attorney that you believe will fulfil your wishes. Though it is essential to appoint an agent you trust to have your Power of Attorney, some worry that the agent may be given too much power. There are some protections available against a dishonest agent. The agent has a fiduciary duty to act in your best interest and to keep detailed records of the actions taken on your behalf while acting as your agent. If the agent does not possess a valid Power of Attorney or fails in their fiduciary duty, then a spouse, child, or another interested third parties can bring a proceeding to determine the validity of the Power of Attorney. They can remove the agent if they can prove that the agent did not act in your best interest.

## 2. Health Care Proxy

Planning for unexpected injuries, deterioration in health, or end of life care can seem daunting. It is a time when difficult decisions may need to be made, and you may not have the mental or physical capacity to make those decisions at that time. It is a gift to those closest to you for you to make your wishes known in advance. Advanced care directives, including a health care proxy, allow you to specify your care decisions and name a trusted person to make decisions about your care on your behalf.

Under New York law, you can appoint a health care agent to make health care decisions on your behalf when you are no longer able to do so. You can then tell your agent your wishes either orally or in writing. Putting them in writing is best as it may be an emotional time, and having your wishes written down can offer peace of mind for the person acting as your health care proxy and other friends and family members.



You can opt to allow your agent to make all health-related decisions on your behalf or limit their authority to cover only specific decisions. Under [New York's Health Care Proxy Law](#), the authority for your agent to make decisions begins when your doctor makes the determination that you have lost the capacity to make those decisions yourself.

## 3. Disposition of Remains

When preparing your will, you have the right to determine the disposition of your remains, such as specifying cremation or burial and where you want to be interred. Unfortunately, the Last Will is often not viewed until days or weeks after a person's death so it's no help in determining your funeral.

[Public Health Law § 4201\(2\)](#) is important because it allows you to create a written instrument that dictates the person who has the right to make decisions about the disposition of your remains. An estate attorney can help you create such a written instrument that designates the person or persons to make decisions about the disposition of your remains and can include your wishes so that there is no confusion. The written instrument must be signed by you and the agent you designate and properly witnessed.

Your death will be a difficult and stressful time for your friends and family. Making arrangements ahead of time will relieve them of the burden of making difficult decisions during an emotional time.



## 4. Will

At its most basic, a [Last Will and Testament](#) is a statement of what you want to happen to your assets upon your death. In reality, a Will is a crucial part of your estate plan. A Will designates an executor that will oversee the distribution of your assets.

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If you die intestate, without a will, in New York, then [EPTL §4-1.1](#) will govern who inherits what from your estate. Under the current law, the proceeds from your estate will pass down the line, in order:



- Spouse
- Children
- Grandchildren
- Parents
- Siblings
- Aunts, uncles, cousins
- Descendants of great-grandparents

Without a will, you have no control over how your estate will be distributed. A will is also an absolute necessity if you have minor children as it is going to appoint the guardian for said children. The contents of a Last Will and Testament will include:

- **Tangible assets**—These are things that you can see and touch, such as the contents of a home, automobiles, furniture, clothing, artwork, and jewelry.
- **Specific bequests**—These are assets to be left to a named person or entity. Specific bequests include things like "I leave my rare book collection to my son, Jacob," or "I leave my mother's wedding ring to my daughter, Mary" or "I leave \$100,000 to Red Cross".
- **Residuary bequests**—The residuary bequests are what is left after all specific bequests are given. There is always some residuary, no matter how comprehensive your Will has been designed. It is crucial to determine who gets the residuary bequest because if it is not specified in the Will, it becomes intestacy. Estate taxes are usually paid from the residuary.
- **Administrative Provisions**—The administrative provisions provide for final expenses, the administrative cost of executing the will, and any outstanding debts.
- A Will is also going to name a guardian for minor children, appoint an Executor and a Trustee.

## 5. Trust

Trusts are crucial for estate planning, and contrary to popular belief, most people need a trust. Trusts are a legal arrangement where the Trust is created by the person doing the estate planning (“Grantor”), authorizing the Trustee to manage the assets of the trust for the benefit of a third-party (Beneficiary).



Establishing a trust is crucial for avoiding probate, reducing administrative costs, reducing potential litigation issues, minimizing estate taxes, providing for the needs of underage beneficiaries, and providing for a special needs family member. A New York attorney specializing in

estate planning can help you determine which Trust(s) is most beneficial for your needs. Trusts commonly used in estate planning include:

- Trusts for minors—Leaving money for your children's care and education until they reach a certain age or milestone is crucial to ensure that the money is used for the benefit of the children. Once a child reaches a specific age or milestone, such as a college degree, they may receive a distribution from the Trust to use as they deem fit.
- Special needs trusts—A special needs trust can protect an individual's social benefits, such as SSI income, or Medicaid benefits, while still providing money for the extras they may need.
- Revocable living trust—A revocable living trust is a tool to help avoid probate. A revocable living trust can provide for a centralized ownership of assets when that is of benefit. It is a flexible planning tool that can be revoked or revised if the grantor decides that it is in their best interest to do so.

- **Marital trusts**—Marital trusts have various applications, especially in blended families where there are children from prior marriages. Marital trusts can reduce the tax burden on a spouse and protect the property included in the trust.
- **Spendthrift trusts**—These trusts are usually created to protect the property of a trust from the creditors of a beneficiary. The trustee has complete discretion over how assets from the trust are distributed.
- **Irrevocable life insurance trusts**—The trust will move the life insurance proceeds outside the state for tax purposes and cannot be modified once established.

The above are not the only trusts that may be appropriate for your estate but are an overview of common trusts used in estate planning.

## 6. Inventory of Assets

A comprehensive inventory of assets, frequently updated, is a necessary estate planning document that will change over time as assets are added, sold, and otherwise transferred. You will start by identifying what you own in each asset class. These include:

- **Real property**—Real property is real estate owned by the grantor, including copies of deeds, legal descriptions, and the physical address of each property. You will also need the fair market value of each property.
- **Personal property**—Personal property are tangible possessions.
- **Bank accounts**—Your estate planning will need to account for each bank account, including the bank name and the account number. Make a note of whether any account has a Payable on Death provision.
- **Investment accounts**—Each investment account, including the name of the account and the account number along with the current value, will need to be included.
- **Retirement accounts**—All retirement accounts and the current value of each will need to be included.
- **Life insurance policies** – these may include policies from your employer or policies that you bought on your own.







## 7. Proper Beneficiary Designations

Depending on how your estate plan is structured, you will likely have multiple beneficiaries. Making sure that each estate planning tool has the proper beneficiary designation is essential. Primary beneficiaries, contingent or secondary beneficiaries, minor beneficiaries, trusts, and estates are some of the most commonly used beneficiary designations. Ensuring that each of your accounts has a proper beneficiary designation is crucial for having a proper estate plan.



## 8. Standby Guardianship for Minor Children

In estate planning, making contingency plans to ensure that minor children are safely cared for is of primary importance to parents. In New York, you can appoint a standby guardian as someone with the temporary authority to care for your children. A standby guardian ensures that someone can provide immediate care for your children in the event that you cannot due to:

- **Administration separation**—if you are arrested, incarcerated, detained, or deported
- **Incapacity or debilitation**—if your doctor determines that you are unable to care for your children, a standby guardian can take immediate physical custody of the child

Standby guardianship is meant to provide a safe and trusted adult to care for your child in the event you were suddenly unable to due to a situation beyond your control.



## 9. Digital Planning

Digital estate planning is a source of protection for your online accounts, digital currencies such as bitcoin, photos, or intellectual property stored digitally. A listing of your accounts, as well as login information and passwords, should be accessible to your executor so that they can have access to your digital assets.



## 10. Proper Document Storage and Available Information to Your Loved Ones

Creating a comprehensive estate plan is about making life easier for your loved ones in a time of crisis. Your careful planning will only be helpful if the documents you have created are easily accessible to those who need them.

Talk to your estate planning attorney about how long they retain the signed originals and ask them for suggestions about storing pertinent documents. A safety deposit box is rarely a good idea, as the people who need the documents may not have access to the safety deposit box.

Give a copy of the estate planning documents to your agent under the Power of Attorney, a trustee or Executor. Ensure that the person you are naming under both the Power of Attorney and Healthcare Proxy has copies of those documents.

Along with your estate planning documents, store your deeds and mortgage contracts, marriage and death certificates, list of account numbers and passwords, user ids and pins, contracts, and recent investment and bank account statements.



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**BOTTOM LINE:** Consult with your attorney to make sure you have all the estate planning documents you need. Reach out to us 212-709-8112 or book a consultation <https://calendly.com/katyasverdlov>

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