

CONTACT A MEMBER OF
THE ESTATE PLANNING
TEAM



FOSTER SWIFT
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

WHAT IF I DON'T PLAN?

An old adage aptly states, "If you fail to plan, you plan to fail." Proper estate planning allows you to control the disposition of estate assets at your death, instead of allowing the state to decide how your estate is to be distributed. The potential consequences of relying on the state's default administration procedures include:

- Entrusting the care of minor children to a person selected by the court instead of by you.
- Distribution of your assets to beneficiaries you would not have chosen.
- Administration of your estate by someone you would not have chosen.
- Public, rather than private, administration of your estate.
- A larger portion of your assets being spent on estate administration fees instead of going to your beneficiaries.
- A greater opportunity for family squabbling because of a lack of clear instructions.
- Children receiving funds before they are mature enough to manage them.
- Allowing a court-appointed and supervised guardian and conservator to make medical and financial decisions if you become incapacitated.

GET STARTED WITH FOSTER SWIFT

If you have never given thought to planning your estate, or if it has been several years since you last did so, we would be pleased to assist you in establishing or revising your estate plan. The laws affecting estate planning often change. The estate planning attorneys at **FOSTER SWIFT** can help you navigate those changes.

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Estate Planning



An estate plan is a vital tool that will help you and your loved ones retain control over your person, your property, and the future disposition of your assets.

Learn more at [fosterswift.com](https://www.fosterswift.com)

It is important to have a knowledgeable estate planning attorney help you design, draft, and implement your personal estate plan. At Foster Swift, our estate planning attorneys have many years of experience preparing estate plans that are suited to the specific needs of each client—from the young family just beginning their life together to the seasoned business executive concerned with the succession of the family business.

FORMING THE PLAN

A basic estate plan usually consists of a **Will, Patient Advocate Designation, Durable Power of Attorney** and, often, a **Revocable Trust**.



AVOIDING THE PROBATE PROCESS

After an individual dies, probate is the court-monitored process by which assets owned by someone at their death are administered and transferred to a decedent's creditors and then distributed to the beneficiaries designated pursuant to the decedent's will if a valid will exists or otherwise to the decedent's heirs at law. With planning, probate can be avoided. Some of the disadvantages of the probate process include the following:

- The estate is publicly administered.
- There are increased administration costs, including a probate court inventory fee.
- There are greater burdens placed on the family members to administer the estate.

Assets not subject to probate include:

- Jointly held assets (with rights of survivorship).
- Assets held by contract with correctly-designated beneficiaries (such as life insurance, 401(k) plan accounts, etc.).
- Assets held in trust.

WHY IS A WILL NECESSARY?

A will directs the transfer of a person's property upon death. Any assets transferred via the will do **NOT** avoid probate. In some situations, a well-drafted will is sufficient to effectively and efficiently transfer assets of an estate. In more complex circumstances, a will ensures that all assets are properly transferred into a trust to be administered and distributed according to the terms of the trust.

A will should accomplish the following tasks:

- Nominate a trusted person as personal representative to administer your probate estate.
- Nominate guardians and conservators for any minor children.
- Express your intentions regarding distribution to beneficiaries of assets titled in your name at death.

WHAT IS A TRUST?

A trust is an agreement that governs the management and distribution of the trust assets without involving the probate court. The terms of a trust can be shaped to your specific desires. Most trusts are drafted so that they can be amended or revoked at any time.

How does a trust work?

A trust only governs assets that are properly transferred into the name of the trustee. The assets held in the trust are then held, invested, and distributed over time, in accordance with your wishes.

WHAT ARE THE BENEFITS OF TRUSTS?

- **Avoid conservatorship.** A properly funded trust, along with a power of attorney, may avoid the need for a court-appointed conservator in the event the settlor becomes incapacitated. A successor trustee would be named to manage trust assets and make distributions for the settlor's benefit.
- **Avoid probate.** A properly funded trust will shield assets from probate. Funding is both one of the most important and one of the most neglected aspects of estate planning with trusts.
- **Protect assets (and children).** Trusts can be used to delay distributions over a period of years. Trusts can also give a trustee discretion to withhold distributions from a beneficiary under certain circumstances (such as a beneficiary who will use distributions to support a drug or

gambling addiction) and to avoid becoming subject to creditors of a beneficiary.

- **Reduce or eliminate estate taxes.** If a married couple has a taxable estate (combined net worth of more than \$10.98 million using 2017 exemption levels), properly funded estate tax planning trusts can help reduce or eliminate estate taxes.

THE IMPORTANCE OF POWERS OF ATTORNEY AND PATIENT ADVOCATE DESIGNATIONS

Do you know who would take care of your medical decisions, finances, and business interests if you were incapacitated? It might not be who you think – or it might not be anybody at all – if you fail to plan. You can control who will make decisions for you in each of these situations by naming agents of your choosing in a durable power of attorney or patient advocate designation. An attorney-in-fact can be appointed to make financial decisions on your behalf, and a patient advocate can be designated to make medical decisions for you.

KEY POINT: If you become incapacitated and have not appointed an agent under a durable power of attorney and have not designated a patient advocate, it may be necessary to begin guardianship and conservatorship proceedings in probate court in order to qualify someone to act on your behalf. This would result in the court having continuing supervision of your guardian or conservator during your lifetime.

DO YOU ALREADY HAVE A PLAN IN PLACE?

If you already have an estate plan in place, it is important to review your plan approximately every five years with an attorney, and sooner if you experience a significant change in personal circumstances. Your estate plan should be tailored to you for every stage of your life.

NEED TO DESIGN A MORE COMPLEX PLAN?

We can assist with Estate Tax Planning Trusts, QTIP Trusts, Retirement Benefit Trusts, Irrevocable Life Insurance Trusts, Grantor Retained Annuity Trusts, Special Needs Trusts, Family LLCs & gift leveraging tools, Charitable Trusts, and Business Succession Planning.