

# Controlling Your Legacy

Some think “estate planning” is only for the wealthy. However, most people, regardless of wealth, have an idea of how they would like their assets to be distributed in the event of death or who they would prefer to make decisions for them in the event of incapacity. This desire for control is the true purpose for estate planning, but many haven’t implemented a full plan to assure these goals will be achieved.



## Whether You Know It or Not, You’ve Got an Estate Plan

Perhaps you’ve named a beneficiary to your IRA or 401(k), or you have some insurance with a named beneficiary. These decisions are estate planning decisions. However, not all assets come with these transfer options, and these simple distribution plans may not meet your goals. Moreover, beneficiary designations do not cover your potential incapacity or control who may care for your dependent children if you are unable. Since many fail to proactively address these contingencies each state has created a default estate plan for us.

This raises the question: do you want your own plan for who will receive your assets, who will make medical decisions for you, and who will care for your minor children or dependents; or do you

want the plan provided by your state’s law? Most would rather make these personal decisions themselves.

## Where do You Begin?

Figuring out where to start on these issues, or even where to end up, can be a daunting task. To help provide some ideas on what you’d like your legacy to look like, consider first accessing where you are today. What are your assets and liabilities, and how are your assets titled? What are your legacy goals? Do you intend to leave a certain amount of assets to your beneficiaries, or is your goal to live comfortably with your beneficiaries receiving whatever is left? What documentation do you have in place today (wills, trusts, power of attorney, etc.) to evidence these goals? Is your current

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documentation, if any, in alignment with your current goals?

By assessing where you are today, and answering some general questions of where you would like to go, you're starting to control your legacy. You can now determine what you want to happen if you are no longer able to control these decisions. You can start resolving what may be needed to care for your spouse, your children, your assets, and your health if you were to become incapacitated or how you would like these matters handled after your death.

Outlining these goals will help you evaluate what next steps are needed to achieve your goals. While everyone is unique, and there is not a “uniform” estate plan, most legacy goals can be broken down into five primary categories. We have the ability to control four of them. The fifth concern, estate and income taxes, can be an issue for some. As much as we'd like to control our taxes, the government has the most control over this issue. For those with larger estates, taxes may become a substantial issue.

The following chart summarizes some of the most common estate planning objectives and identifies some common strategies available to control your legacy.

Legacy Goal	Common Planning Documents and Strategies
<b>Asset Transfer: Controlling how your wealth will pass to your beneficiaries either during life or after death</b>	<ul style="list-style-type: none"> <li>✓ Trusts</li> <li>✓ Wills</li> <li>✓ Transfer on death (TOD)/Payable on death (POD)</li> <li>✓ Beneficiary designations</li> <li>✓ Life insurance</li> <li>✓ Gifting outright</li> </ul>
<b>Incapacity Protection: Selecting someone to make financial and medical decisions should you be unable</b>	<ul style="list-style-type: none"> <li>✓ Financial power of attorney</li> <li>✓ Health care power of attorney</li> <li>✓ Living Will</li> <li>✓ Trusts</li> </ul>
<b>Caring for minor children/dependents: Selecting someone to have legal custody of your dependents and/or someone responsible for financial matters for your dependents.</b>	<ul style="list-style-type: none"> <li>✓ Wills</li> <li>✓ Trusts</li> </ul>
<b>Charitable Intent: Donating to charity either during life or after death</b>	<ul style="list-style-type: none"> <li>✓ Gifting outright</li> <li>✓ Charity as direct beneficiary on assets</li> <li>✓ Charitable trusts</li> <li>✓ Donor Advised Funds</li> <li>✓ Private/Community Foundations</li> </ul>
<b>Tax management: Efficiently managing potential income, gift and estate taxes to maximize legacy goals</b>	<ul style="list-style-type: none"> <li>✓ Gifting outright</li> <li>✓ Transfer tax planning (Credit shelter trusts, portability, advanced planning trusts, lifetime taxable gifts, etc.)</li> <li>✓ *Insurance planning (Irrevocable Life Insurance Trusts, wealth replacement trusts, insurance as an asset class, etc.)</li> </ul>

^For more on these documents and strategies see the *Essential Estate Planning Documents* and *Common Estate Planning Techniques* articles available from your Benjamin F. Edwards financial advisor

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It's important to remember that estate planning often requires you to manage trade-offs and to prioritize your goals. A common trade-off, for example, is the simplicity of the transfer strategy and the level of control it provides. Transfer on death arrangements and beneficiary designations are often simple to implement. However, these techniques provide little control over the beneficiary's use of the funds and little control over tax consequences. For more control, trusts can provide more options. Creating trusts often requires additional costs and introduces more complexity. Depending on the strategy, your trust may even be irrevocable. In short, work with your professional team to balance the legacy goals you wish to achieve with the appropriate tools available to achieve them.

### Putting it All Together

Once you've identified your goals, considered the trade-offs, and have a better understanding of some available planning techniques, the next step in the process is to pull together your professional team to implement a plan to achieve your legacy goals. Work with your Benjamin F. Edwards financial advisor, along with your attorney and CPA, to determine what is best for you and your family. Your plan should also consider common circumstances that may occur that could require modifications to the plan. Consider contingencies for:

- What happens when you or your beneficiaries have a life event such as a birth, death, marriage or divorce?
- What happens should you or a loved one become incapacitated?
- What happens should you or a loved one face a prolonged illness?

- What effect is there if you move to a new state?
- What should you do if your net worth changes significantly?
- What happens to your plan if there is a change in the law?

While we can't always predict the changes that we may face, we can prepare for the most likely scenarios. Addressing what you would like to happen should these events occur can help solidify your planning. Moreover, most planning can be changed at any time, so you often have the flexibility to deal with most unanticipated circumstances. However, you must remain proactive in your planning to address these changes. Only you can control your legacy.

#### Appropriate control person:

Is the person you selected to make decisions for you if you are no longer able to do so aware of this responsibility? Is this control person still the appropriate control person? If you have a professional trustee named, is the entity still around? Continue to review these designations to assure your plan will be implemented properly.

If you've taken the time to assess your legacy situation, determine what goals you would like to achieve, and worked with your professional team to start documenting those goals, there are two ongoing and paramount steps to securing your legacy: Implementation and Review.

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**Implementation** - Once you have your plan in place, you have to implement it correctly.

Common things to address for many legacy plans:

**Titling:** Are your assets titled appropriately for your plan?

- If you have a will as your primary plan, do you have assets passing through probate so that your will controls what happens? Items titled as joint tenants with rights of survivorship, assets with beneficiary designations, assets with transfer on death instructions, etc., do not pass through probate generally, and therefore will not pass per the terms of your will.
- If you have a living trust as your primary plan, have you titled your assets into your trust? Simply having a trust doesn't mean your assets will pass per the trust terms. Again, joint tenancy property, beneficiary designations, transfer on death instructions, etc. control the distribution of those accounts, not the trust. However, titling those accounts into your trust allows for the provisions of the trust to control those assets.

**Beneficiary designations:** If you are using beneficiary designations/Transfer on Death provisions you need to review those designations to make sure they align with your legacy goals. Are they up to date? Should you be naming your trust? Is there an ex-spouse named on an older account? Out of date or inaccurate beneficiary designations can circumvent your legacy plan.

**Review** - The most important aspect of any plan is to review where you are to assure your legacy goals are being met. Life is always changing, and you may need to change with it. Review your plan after life events happen to you or your beneficiaries (birth, death, marriage, divorce, etc.), should the law change, or at least every three to five years.

By remaining diligent, you can assure your strategies remain aligned with your legacy goals.

Few enjoy preparing for their possible incapacity or their own demise. However, failing to prepare for these unavoidable items leaves your personal and financial goals to your state's default rules. By proactively addressing how you would like your health, your finances and your loved ones cared for when you're no longer able to manage those decisions on your own allows you the peace of mind that you control your legacy. ■

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