

Estate and Pre-Planning GUIDE



Planning For LGBTQ+ Families

Estate planning is important for everyone, but for LGBTQ+ individuals and families, it can be especially critical.

Although legal protections have expanded in recent years, gaps and inconsistencies remain. Thoughtful planning helps ensure wishes are honored, loved ones are protected and decisions are not left to chance.

Estate planning is ultimately about peace of mind. For LGBTQ+ families, it provides clarity, protection and affirmation, ensuring relationships and wishes are respected both now and in the future.

PROTECTING NON-BIOLOGICAL PARENTS AND PARTNERS

Many LGBTQ+ families include non-biological parents, unmarried partners or families formed through adoption, surrogacy or assisted reproduction. Without proper legal documentation, a surviving partner or parent may have no automatic rights to make medical decisions, manage assets or care for children.

Around 40% of same-sex households remain unmarried, increasing risks if estate plans aren't specific, as state default laws favor blood relatives. Dying without a will (intestate) means assets go to blood relatives, potentially disinheriting a long-term partner, according

to Blackburn Law and National LGBTQ+ Bar Association.

Estate planning documents can help address these risks. Wills, guardianship designations, trusts for children from fertility treatments, health care directives and powers of attorney clarify who should make decisions and who should inherit property, according to JP Morgan. In families with children, naming guardians is particularly important, especially when one parent is not legally recognized or when extended family members may challenge custody.

Unmarried couples have an even greater need for pre-planning. Even with marriage equality, some couples choose not to marry or live in states

with differing interpretations of family law. Legal documents ensure that partners are treated as intended, rather than defaulting to biological relatives.

RECOGNIZING CHOSEN FAMILY

Chosen family plays a central role in many LGBTQ+ communities. Friends, former partners or community members may be the primary sources of care and support, yet intestacy laws generally prioritize spouses and blood relatives. A Merrill survey found 47% of LGBTQ+ adults consider close friends family, versus 26% of the general population.

Estate planning allows

individuals to formally recognize chosen family by naming beneficiaries, executors and agents for health care or financial decisions. Without these documents, loved ones who provided care and companionship may be excluded from decisions entirely.

Clear planning can also reduce conflict. When intentions are spelled out, families are less likely to dispute who should be involved or how assets should be distributed.

UPDATING OUTDATED DOCUMENTS AND NAVIGATING LOCAL LAWS

Many LGBTQ+ adults created wills, trusts or beneficiary designations years ago, before marriage equality or changes

in family status. These documents may name former partners, exclude current spouses or fail to reflect children or stepchildren.

Review estate plans regularly, particularly after marriage, divorce, adoption or relocation. Beneficiary designations on retirement accounts and life insurance policies need to be reviewed, as these assets pass outside a will.

Legal protections for LGBTQ+ families can still vary by state, especially around parental rights and health care decision-making. An estate attorney familiar with local laws can help ensure documents are enforceable and aligned with current regulations.



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Small Business Owners

For small business owners, estate planning involves more than deciding who inherits personal assets.

A business may represent years of work, a primary source of income and the livelihoods of employees. Without a clear plan, an owner's death or incapacity can leave a company in limbo, creating financial strain and legal confusion for family members and partners.

Thoughtful estate planning helps protect the business, preserve its value and ensure continuity during life's unexpected turns.

PLANNING FOR BUSINESS SUCCESSION

Succession planning answers a fundamental question: What happens to the business when the owner steps away or is no longer able to lead? Some owners intend to pass the business to family members, while others plan to sell to partners, employees or outside buyers.

A written succession plan clarifies who will take control, how ownership will transfer and what training or transition period may be required. Without this guidance, heirs may inherit a business they are unprepared or unwilling to run, sometimes leading to forced sales or closure.

Succession planning helps



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avoid disputes. Clear instructions reduce the risk of disagreements among heirs, partners or co-owners who may have different expectations for the company's future.

BUY-SELL AGREEMENTS AND VALUATION CHALLENGES

For businesses with multiple owners, buy-sell agreements are a critical planning tool. These agreements establish what happens to an owner's share if they retire,

become disabled or die. They typically outline who can purchase the interest, how it will be funded and how the business will be valued.

Valuation is often one of the most challenging aspects of estate planning for business owners. An outdated or vague valuation method can create conflict or leave surviving owners unable to afford a buyout. Regularly updating valuations and funding mechanisms, such as life insurance, can help ensure a smoother transition.

Buy-sell agreements also provide predictability, allowing owners and families to understand their financial outcomes before a crisis occurs.

PREPARING FOR INCAPACITY AND THE UNEXPECTED

Incapacity planning is just as important as planning for death. If a business owner becomes temporarily or permanently unable to manage operations, someone must be authorized to make decisions.

Powers of attorney and business continuity plans can designate who is responsible for financial, legal and operational matters. Without these documents, family members may need court approval to act, delaying critical decisions and potentially harming the business.

Unexpected events can disrupt even the strongest companies. Estate planning helps reduce uncertainty, protect employees and preserve the legacy an owner has worked hard to build.

Divorce and Estate Planning

Divorce marks a major life transition. Many people overlook how it affects their estate plan.

While some legal changes may occur automatically, others do not. Failing to review and update documents after a divorce can lead to unintended outcomes, including assets passing to a former spouse or decision-making authority remaining with someone no longer trusted.

Revisiting an estate plan after divorce protects both financial interests and personal wishes. Because divorce can complicate everything, it is wise to hire an estate attorney to review all aspects of an existing estate plan and to address what needs to be updated.



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WHAT MAY CHANGE AUTOMATICALLY AND WHAT DOES NOT

In many states, divorce revokes certain provisions in a will that name a former spouse as a beneficiary or executor. Some beneficiary designations may be affected by law. However, these rules vary by jurisdiction and do not apply to every document.

Importantly, not all designations are automatically updated. Retirement accounts, life insurance policies and payable-on-death accounts often require direct action by the account holder. If beneficiary forms are not changed, assets

may still pass to an ex-spouse, regardless of what a will says.

Powers of attorney and health care directives may remain valid after divorce unless they are specifically revoked. This means a former spouse could retain authority to make medical or financial decisions if documents are not updated.

DOCUMENTS THAT SHOULD BE REVIEWED AND REVISED

After a divorce, review

several estate planning documents promptly. These typically include wills, trusts, beneficiary designations, powers of attorney and health care directives.

Revisit guardianship designations for minor children, especially if circumstances or relationships have changed. In blended families, divorce may introduce new considerations around stepchildren, shared assets or future remarriage.

Business interests, jointly owned property and digital

assets may need attention. Updating documents ensures consistency across the entire plan and reduces the risk of conflicting instructions.

THE RISKS OF DELAYING UPDATES

Delaying updates can have serious consequences. Courts and financial institutions rely on written documents, not intentions or verbal agreements. Outdated plans can lead to legal disputes, delays in asset distribution and

emotional strain for surviving family members.

In some cases, family members may be forced to seek court intervention to undo provisions that no longer reflect current wishes. This process can be costly, time-consuming and stressful.

Divorce creates an opportunity to reset priorities and make intentional decisions about the future. Updating an estate plan provides clarity and control during a period of change.

Planning When You Don't Own Much

Estate planning is often associated with wealth, real estate and large inheritances.

In reality, it is just as important for people with modest assets, including renters, young adults and those early in their careers. Planning ahead is less about what you own and more about who can make decisions and how your wishes are carried out if something unexpected happens.

Even a simple plan can provide clarity and relief for loved ones.

Organizations such as the American Bar Association, the AARP Foundation and individual state governmental organizations provide some pro bono programs or guides to assistance for those who do not have a lot of money to spend on estate planning. While do-it-yourself approaches are an option, seeking professional legal advice is highly recommended, especially when dealing with complex issues like government benefits or blended families, to ensure documents are legally sound and effective.

WHY PLANNING MATTERS AT EVERY STAGE OF LIFE

Accidents, illness and sudden medical emergencies do not wait for financial milestones. Without legal documents in place, family



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members may have limited authority to help during a crisis.

Estate planning allows individuals to name trusted people to make medical and financial decisions if they are unable to do so themselves. This can prevent confusion, delays and court involvement during stressful situations.

Planning is especially important for unmarried individuals, those living far from family or people who want someone other than a next of kin to make decisions on their behalf. Clear documentation

ensures that wishes are respected regardless of relationship status or asset level.

FOCUSING ON MEDICAL AND DECISION-MAKING DOCUMENTS

For people with few assets, medical directives and powers of attorney are often the most important parts of an estate plan. An advance health care directive outlines preferences for treatment and names a health care agent who can speak on the individual's behalf.

A financial power of

attorney authorizes someone to handle bills, access accounts or manage everyday financial tasks if the individual is incapacitated. Without this authority, loved ones may need court approval to take action, even for routine matters. These documents can be tailored to personal values and comfort levels. They can be updated easily as circumstances change.

CREATING CLARITY FOR LOVED ONES

Estate planning is about reducing uncertainty. Even

when there are few assets to distribute, loved ones may still need guidance. A basic will can specify who should receive personal belongings, handle final arrangements or serve as executor.

Clear instructions help avoid misunderstandings and disagreements. They make it easier for family members or friends to carry out responsibilities during a difficult time. Planning does not need to be complex or expensive. Many people begin with simple documents and build over time as their lives and finances evolve.

Privacy in a Public Process

Many people assume estate planning is a private matter handled quietly among family members and attorneys.

In reality, parts of the process can be surprisingly public. Understanding how information becomes accessible and how to limit unnecessary exposure can help families protect their privacy and reduce stress during an already difficult time.

WHEN A WILL BECOMES PUBLIC RECORD

A will generally becomes part of the public record once it is filed with the probate court. This means anyone can access details about assets, beneficiaries and personal wishes. In some jurisdictions, records can be viewed online.

Public probate can expose sensitive information, including family relationships, financial holdings and the names of heirs. It may also attract unwanted attention from creditors, scammers or distant relatives who may challenge the estate.

While probate laws vary by state, many families are surprised to learn how much information becomes available and how long the process can take. Even modest estates can face delays and complications once court oversight begins.

HOW TRUSTS CAN OFFER GREATER DISCRETION

Trusts are often used to reduce or avoid probate and provide a higher level of privacy. Assets held in a properly structured trust are generally not subject to public probate proceedings. Instead of court supervision, a

designated trustee manages the distribution according to the trust's terms.

This approach keeps financial details and beneficiary information out of public view. It can also streamline the transfer of assets, saving time and reducing administrative burdens for loved ones.

Trusts are not only for the wealthy. Many middle-income families use them to maintain privacy, protect minor children or manage assets over time. Different types of trusts serve different purposes, and an estate attorney can help determine whether

a trust aligns with personal goals.

WHY DISCRETION MATTERS FOR EVERY FAMILY

Privacy is about more than secrecy. It is about protecting family dynamics, honoring personal wishes and preventing unnecessary conflict. Public disclosure of an estate can inflame tensions, invite challenges or create confusion during a period of grief.

Discretion can provide emotional relief. Families may prefer to grieve and settle affairs without public scrutiny or outside interference. Keeping

details private allows decisions to be handled thoughtfully and respectfully.

Estate planning is not just about distributing assets. It is about how that process unfolds and who has access to sensitive information. With proper planning, individuals can maintain control over what becomes public and what remains private.

By understanding the public nature of probate and the options available for preserving privacy, families can make informed choices that reflect their values and protect their peace of mind.


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Understanding Estate Taxes

Estate taxes often inspire anxiety, fueled by headlines, myths and misunderstandings.

Many people assume their estates will face heavy taxation, even when their assets fall well below taxable thresholds. In reality, most families will never owe estate taxes at all. Understanding how estate taxes work can replace fear with clarity and help families plan with confidence.

FEDERAL ESTATE TAXES AND EXEMPTION LIMITS

The federal estate tax applies only to estates that exceed a certain value at the time of death. This exemption threshold is high and is adjusted periodically. As a result, only a small percentage of estates are subject to federal estate tax.

If an estate falls below the exemption amount, no federal estate tax is owed. Assets may still go through probate or be distributed according to an estate plan, but taxation is not an issue.

Another key concept is portability. For married couples, portability allows a surviving spouse to use any unused portion of a deceased spouse's federal estate tax exemption. This can effectively double the amount a couple can pass on without triggering federal estate tax, provided proper elections are made.



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STATE ESTATE AND INHERITANCE TAXES

State taxes are often a greater concern than federal taxes, but they vary widely. Some states impose an estate tax, others levy an inheritance tax and many have no death-related taxes at all.

An estate tax is paid by the estate itself before assets are distributed. An inheritance tax is paid by the person receiving the inheritance and rates may depend on the recipient's relationship to the deceased.

Because rules differ by state, families who own property in multiple states or who relocate should review how local laws may apply. Understanding state-specific requirements helps avoid surprises and supports better planning.

COMMON MISCONCEPTIONS THAT CREATE FEAR

One common misconception is that having a will automatically triggers estate taxes. A will determines how assets are

distributed, but it does not create a tax obligation.

Another misunderstanding is estate taxes apply to life insurance proceeds in all cases. While life insurance can be included in an estate under certain circumstances, many policies pass directly to beneficiaries without tax consequences.

People sometimes confuse estate taxes with income taxes. In most cases, heirs do not pay income tax on inherited assets, though they may owe taxes

later if those assets produce income or are sold.

Estate taxes are complex but panic is unnecessary. For most families, thoughtful planning is about organization and clarity, not avoiding massive tax bills.

An estate attorney can help guide individuals and families through complex laws while tax attorneys and certified public accountants can ensure you pay what is owed on an inheritance and no more than that amount.

Understanding the 5-by-5 Rule

Estate planning often involves balancing flexibility with control.

One tool designed to strike a balance is known as the 5-by-5 rule. While the name may sound technical, the concept is relatively straightforward and can play an important role in trust planning, especially for families who want to provide access to assets without creating unintended tax consequences.

WHAT THE 5-BY-5 RULE MEANS

The 5-by-5 rule limits how much a trust beneficiary can withdraw from a trust in a given year without triggering certain tax issues. Under this rule, a beneficiary may withdraw the greater of \$5,000 or 5% of the trust's total value each year.

For example, if a trust is valued at \$200,000, 5% would equal \$10,000. In that case, the beneficiary could withdraw up to \$10,000 for the year. If the trust were valued at \$60,000, 5% would be \$3,000, so the beneficiary could withdraw \$5,000 instead.

This rule is commonly used when a beneficiary holds some control over the trust, such as the power to request distributions. Without limits, that control could cause the trust assets to be treated as part of the beneficiary's taxable estate.

WHY THE RULE EXISTS

The primary purpose of the



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5-by-5 rule is to prevent trust assets from being included in a beneficiary's estate for estate tax purposes. When beneficiaries have unrestricted access to trust funds, the IRS may view those assets as effectively owned by the beneficiary.

By limiting withdrawals to the greater of \$5,000 or 5% annually, the rule creates a clear boundary. The beneficiary has meaningful access to funds, but not so much

control that the trust loses its separate legal and tax status.

This structure is often used in trusts designed to support children, grandchildren or other heirs while preserving assets over time. It can be helpful in family situations where flexibility is needed but long-term planning goals remain a priority.

WHEN THE 5-BY-5 RULE IS COMMONLY USED

The 5-by-5 rule frequently

appears in irrevocable trusts, family trusts and trusts created for tax planning purposes. It may apply when a beneficiary serves as a trustee or holds a power of withdrawal. The rule can be especially useful when beneficiaries may need access to funds for emergencies or life changes, but the person creating the trust wants to prevent overuse or future disputes.

Not every trust needs this provision. Some trusts

prioritize strict control, while others allow broader access. An estate planning attorney can help determine whether the 5-by-5 rule aligns with a family's goals, tax considerations and desired level of flexibility.

Estate planning often involves careful trade-offs. The 5-by-5 rule offers one way to provide beneficiaries with access while maintaining structure, protection and peace of mind for everyone involved.