

YOU CAN DO THIS!
SIMPLE STEPS TO ESTATE PLANNING



WELCOME TO THE WEBINAR

- Please submit your questions via the Q&A button, so they can be answered during time we have allotted at the end of the presentation
- Feel free to submit any questions to us via email as well, and we can respond back later
- Today's webinar is being recorded
- Please contact us at TrustEstate@mccandlaw.com for video replay information or for a copy of the slide presentation
- For more news and information about our firm, please visit our website at www.mccandlaw.com and follow us on LinkedIn and FaceBook

TODAY'S PRESENTERS



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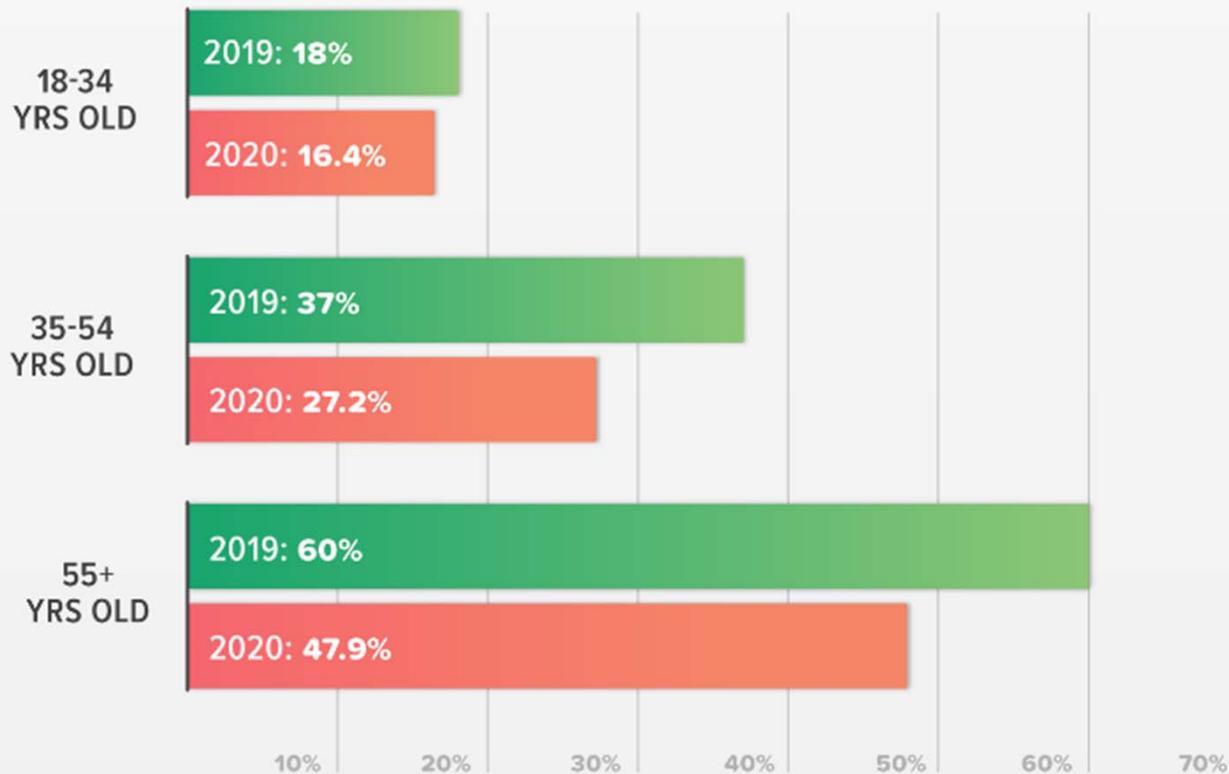


POLLING QUESTION:
DO YOU HAVE A WILL?

CARING.COM ANNUAL SURVEY (AS OF DECEMBER 2019)

Older and Middle-Aged Adults Are **20% and 25% LESS LIKELY** to have a Will than in 2019

Percentage of People Who Have Estate Planning Documents by Age Group:



WHAT IS ESTATE PLANNING?

- Estate planning is no longer just about avoiding estate taxes and what happens with your assets at death
- Other driving factors include...

INCAPACITY PLANNING

ASSET PROTECTION

INCOME TAX PLANNING

FAMILY HARMONY

LEGACY PLANNING

GOALS OF ESTATE PLANNING

- Care for/protect self during lifetime (incapacity, asset protection)
- Care for/protect family members and intended beneficiaries
- CONTROL – transfer my assets to whom I want, the way I want, and when I want
- Minimize or eliminate probate and death taxes
- Maximize assets distributed to your loved ones
- Protect assets from beneficiary's creditors
- LEGACY – pass on family values and ideals to next generation(s)
- Fulfill charitable intentions

WHAT IF I DON'T HAVE AN ESTATE PLAN?

- Court-appointed guardian/conservator will be required to manage your financial affairs in the event of incapacity
- Court-appointed guardian of the person will likely be required for health care decisions
- Court-appointed guardian/conservator will be required for your minor children, if both natural parents/guardians are not available
- Court-supervised probate will be required to transfer title for all assets in your individual name that do not otherwise pass by right of survivorship or beneficiary designation
 - Assets will generally be “frozen” at death until an Executor or Administrator is appointed
- Estate will pass in accordance with intestacy law vs. to intended beneficiaries
- Assets will pass outright to spendthrift or special needs beneficiaries

ASSETS THAT GENERALLY AVOID PROBATE (PROBATE “WORK-AROUNDS”)

- Assets owned jointly with right of survivorship
 - Probate still required in the event of simultaneous death
 - CAUTION: Avoid the common probate workaround of adding one or more of your children or other family members as joint owners on your property
 - Exposes the property to their creditors and they can withdraw the entire balance, if they wish
 - Requires their consent and potential partition action in order to sell real property
- Assets that pass by beneficiary designation (unless estate is named as the beneficiary or no beneficiary is named)
 - Retirement accounts and pensions
 - Life insurance and annuities
 - Accounts payable or transferable on death (POD or TOD)
- Automobiles and boats – title can generally be transferred at the DMV without probate
- Assets owned by a revocable trust (to be discussed later)

CORE ESTATE PLANNING DOCUMENTS

- **Advance Medical Directive/Living Will**
 - Sets forth your wishes with regard to health care and end of life treatment
 - Authorizes anatomical gifts and organ donation
- **Durable Health Care Power of Attorney (with HIPAA Authorization)**
 - Appoints Health Care Agent to make health care decisions on your behalf
- **Durable Financial (General) Power of Attorney**
 - Appoints Agent to handle financial matters on your behalf – terminates at the Principal's death
 - Best to avoid “springing” powers that only become effective upon disability
- **Standby Guardian/Power of Attorney for Minor Child**
- **Last Will and Testament**
 - Appoints Executor to administer estate at death, and distribute assets to intended beneficiaries in accordance with the terms of the Will
 - Appoints Guardian for minor children, if needed
 - Appoints Trustee for any ongoing trust for surviving spouse, children or other beneficiaries
- **Revocable Trust (where recommended/applicable)**
 - Appoints successor Trustee (or Co-Trustee) to ensure effective management of your assets in the event of your incapacity or death
 - Avoids court-supervised guardianship and/or probate proceedings

OTHER KEY ESTATE PLANNING TERMS

- **Agent** – appointed to make financial or health care decisions on behalf of the client under a Durable Financial or Health Care Power of Attorney; terminates at your death
- **Executor** – responsible for administering decedent's estate, paying final bills, taxes, etc.
- **Trustee/Co-Trustee** – individual or institution appointed in the trust document to administer the trust
- **Trust Protector** – individual (other than the Trustee) designated in the trust document who may be granted certain special powers over the trust, such as to remove/replace the trustee, change trust situs, make certain amendments to the trust, etc.
- **Grantor/Settlor** – individual who creates/transfers assets to a trust
- **Beneficiary** – individual or entity designated in the trust document who may receive income and/or principal distributions from the trust
- **Guardian** – appointed to have custody of your minor children, if both natural parents/guardians are not available

HOW TO CHOOSE A FIDUCIARY

- Pick someone who you can trust to carry out your wishes and to act solely in your best interests
- With regard to management of your assets and financial matters, should be someone who is organized and pays attention to details and recordkeeping
- With regard to your health care decisions, should be someone who will carry out and respect your wishes and be your advocate, if needed
- Generally, try to avoid naming children and other family members as Co-Fiduciaries – what if they can't agree??
- Best to name at least 1 back-up fiduciary
- Consider a bank, trust company or professional fiduciary as a back-up fiduciary (or as co-fiduciary with a family member)
 - Especially where inherent conflicts exist like second marriage situations with children from prior marriage and other adverse family dynamics
- Your designated fiduciary will generally need to hire professional advisors with regard to legal advice, tax preparation and investment management

ADVANTAGES OF REVOCABLE TRUSTS

- Better tool for incapacity planning vs. durable power of attorney alone because the revocable trust actually owns legal title to the grantor's property
 - More acceptable by financial institutions than a power of attorney
 - Grantor can provide more specific direction and guidance to the trustee regarding level of care/support and management of assets in the trust document
- Avoids probate if properly funded (i.e., assets retitled from grantor's name to the trust) before death), including ancillary probate of any out-of-state real property
- Ensures privacy for estate and beneficiaries (not public record like probate)
- Avoids ongoing court-accountings that may be required for testamentary trusts
- Contains all dispositive and administrative provisions for how assets shall be distributed at the grantor's death
 - "Pour-Over" Will is mostly skeletal document, intended to catch any assets that are not owned by the trust at death, and "pour" assets over from probate estate to revocable trust
- Completely revocable and amendable by the grantor
 - Typically, grantor is trustee (or co-trustee) and sole beneficiary during their lifetime
 - 100% includible in the grantor's taxable estate
 - 100% accessible by the grantor's creditors
 - Generally, disregarded as a separate entity for income tax purposes during grantor's lifetime – all items of income and deductions allocable to the trust are reported on the grantor's tax return

WHEN MIGHT A WILL VS. REVOCABLE TRUST BE SUFFICIENT?

- Limited assets that would not otherwise require probate at death (e.g., jointly-owned property, TOD/POD accounts, retirement plans, life insurance)
 - Does not plan for unforeseen contingencies, such as incapacity, failure to name contingent beneficiary in which case asset would be payable to the estate, simultaneous death, etc.
- No desire for on-going trust planning – all assets are to be paid outright to beneficiaries at death
- Desire for court oversight/probate if family members do not get along or other conflict is anticipated

DOING NOTHING VS. WILL VS. REVOCABLE TRUST

	Estate Tax Planning	Income Tax Planning	Names Someone to Handle Your Affairs When You Die	Names Who You Want to Receive Assets	Names Someone to Handle Your Affairs If You're Unable	Asset Protection for Heirs / Beneficiaries	Avoids Probate	Avoids "Living Probate"	Private Process
Doing Nothing – No Will, No RLT	✗	✗	Government Decides	Government Decides	Government Decides	✗	✗	✗	✗
Will	✓	Limited and often not included	✓	✓	✗	Possible, but often not included	✗	✗	✗
RLT	✓	✓	✓	✓	✓	✓	✓	✓	✓

What's right for you? The answer depends on your circumstances.

Doing nothing is certainly not the answer. We can help define your estate planning goals and objectives, and determine which planning technique is right for you and our family.

ADVANTAGES OF TRUST PLANNING (VS. LEAVING INHERITANCE OUTRIGHT)

- Controls/ensures the transfer of assets to the grantor's intended beneficiaries – prevents diversion of assets to unintended beneficiaries
- Provides asset protection for the beneficiary's inheritance (e.g., in the event of divorce, judgment creditor, etc.)
 - Avoids co-mingling of beneficiary's inheritance (separate property) with marital property
- Provides for ongoing/centralized management of the trust assets, via an individual or corporate/professional trustee (or co-trustee)
 - Beneficiary can generally serve as their own trustee so long as the ability to make distributions to themselves is limited to an ascertainable standard for health, education, maintenance and support
- Provides special oversight and management of trust assets for minor children or loved ones with special needs
- Minimizes estate and generation skipping transfer (GST) taxes

TYPES OF IRREVOCABLE TRUSTS

- Grantor has no power to revoke or amend an irrevocable trust, and generally cannot be a trustee or beneficiary of the trust
 - Assets are generally excludable from the grantor’s taxable estate
 - Trust assets are generally not available to the grantor’s creditors, or to the creditors of any beneficiary (if spendthrift provision is included)
 - Can be created during lifetime or at grantor’s death
- Often used for lifetime gifts to reduce or “freeze” the grantor’s taxable estate and shift future appreciation to the beneficiaries, while retaining oversight and ongoing management of the gifted assets in trust (vs. outright gift)
 - Particularly important for higher net worth clients now with depressed asset values and pending decrease of estate tax exemption from \$10MM to \$5MM in 2026 (or sooner)
- Types of irrevocable trusts
 - Life Insurance Trust (ILIT)
 - Education/Minor’s Trust
 - Marital Trust
 - Family (Bypass) Trust
 - Spousal Lifetime Access Trust (SLAT)
 - Dynasty Trust
 - Stand Alone Retirement Trust
 - Pet Trust
 - Grantor Retained Annuity Trust (GRAT)
 - Qualified Personal Residence Trust (QPRT)
 - Charitable Remainder or Lead Trust (CRT, CLT)
 - Self-settled Asset Protection Trust
 - Special Needs Trust
 - Medicaid Asset Protection Trust

WHEN TO UPDATE YOUR ESTATE PLAN

- Marriage
- Divorce
- Birth/adoption of child or grandchild
- Death or disability of spouse, child or other beneficiary
- Children attain age of majority and are no longer minors
- Move to another state
- Significant change in assets or income (sell business, buy investment property, inherit wealth, win lottery, etc.)
- Desire to change appointed fiduciary (Agent, Executor, Trustee)
- Changes in tax and non-tax laws
- Updating at least every 5 years is a good rule of thumb
- **PROPER PLANNING = PEACE OF MIND!!**

OTHER PLANNING CONSIDERATIONS

- Review all beneficiary designations and asset titling
- Account consolidation
- Digital assets/online accounts
- Long-term care planning
- Life insurance for liquidity, legacy and business succession planning
- Asset protection planning/umbrella liability insurance
- Annual exclusion gifting and advanced lifetime gift planning
- Charitable planning
- Legacy planning – Letter of Wishes
- WORKING WITH A TEAM OF ADVISORS WILL SAVE TIME AND \$\$ AND PROVIDE PEACE OF MIND FOR YOU AND YOUR FAMILY

HOW BEST TO WORK WITH YOUR ATTORNEY

- Organize your financial information prior to meeting with an estate planning attorney
- Ask Questions!
 - How much of the attorney’s practice is focused on estate planning?
 - Understand the attorney’s billing structure – flat fee vs. hourly
- After your estate plan is complete, review and update your asset titling and beneficiary designations, as applicable
- Call us if something changes in your life to avoid “crisis planning” and other unintended results
- Discuss your wishes with your family and consider including them in the estate planning process
- Email TrustEstate@mccandlaw.com to schedule a meeting

BENEFITS OF A WELL-DESIGNED ESTATE PLAN

A well-designed estate plan provides benefits in five key areas:

Peace of Mind	Incapacity	Assets	Protection	Taxes
<p>Name guardians for minor children</p> <p>Appoint trusted people to manage your affairs</p> <p>Keep your affairs private</p> <p>Build a legacy to pass to your loved ones</p>	<p>Choose who will make emergency health care decisions in the event you are unable to do so</p> <p>Identify how you wish to determine if you are mentally disabled</p> <p>Care for you and your loved ones in the event you are unable to do so</p>	<p>Avoid delays and expenses related to probate</p> <p>Prevent possible will contests and disputes</p> <p>Designate your beneficiaries for retirement plans and life insurance policies</p>	<p>Protect your children's inheritance if your surviving spouse remarries or from a divorcing spouse</p> <p>Protect assets passed to your surviving spouse and to your children's inheritance from creditors and lawsuits</p>	<p>Minimize possible federal and state estate taxes at your death (including taxes on your house, life insurance and IRA's)</p> <p>Maintain consistency with current tax laws</p>

QUESTIONS?



THANK YOU!



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Elizabeth focuses her practice in the areas of estate planning, elder law, special needs planning, guardianships and conservatorships, and estate administration. She has developed a reputation among her peers in the legal community as the “go to” person in the areas of elder law and special needs planning.

She is a Past-President of the Virginia Chapter of the National Academy of Elder Law Attorneys (“VAELA”), and a Certified Elder Law Attorney. She is also a member of the Special Needs Alliance.

For consecutive years, Elizabeth has been listed among the Best Lawyers of America, Super Lawyer® in Elder Law, *Washingtonian’s* Top Lawyers in Elder Law, *Northern Virginia Magazine* top elder law attorneys, and “Legal Elite” by *Virginia Business Magazine*.

A little-known fact: Elizabeth is a former professional violinist, having played with the Binghamton Symphony Orchestra and the Binghamton Pops.



Virginia focuses her practice on guardianships and conservatorships, estate planning, estate administration, divorce, and all other aspects of family law.

Virginia has been in the practice of law since 2005, after she graduated from The George Washington University School of Law. She enjoys working with families and individuals in transition to create solutions for their problems and plans for their future.

Virginia is currently serving as the President of the Northern Virginia Chapter of the Virginia Women Attorneys Association. She was named as a Rising Star by Super Lawyers for Virginia for 2010-2019 and for the District of Columbia 2013-2019. She was named an Influential Woman in the Law in 2019, and has been designated as a Top Attorney by Arlington Magazine and Northern Virginia Magazine. She lives with her husband and 3 children in Reston, Virginia.

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Melinda focuses on providing holistic multi-generational income and wealth transfer tax planning advice and estate and trust services to high net worth individuals, families, and business owners.

She brings a unique and diverse perspective from her work in private law practice, Big Four accounting firms, and private banking/trust services.

Melinda is listed among the *Washingtonian's* Top Trusts and Estates Lawyers, and is a frequent speaker and writer on estate and trust planning. She recently attained the Accredited Estate Planner® (AEP®) designation by the National Association of Estate Planners & Councils.

On a personal level, Melinda is a strong supporter of local philanthropy and the arts in Northern Virginia, and is a current Board member of the Community Foundation for Northern Virginia.

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