

Most people walk into an estate planning office thinking they need “just a will.” After a decade of sitting across the table from families, I can say that almost never turns out to be true.

A will is one tool. A comprehensive estate plan is a coordinated set of tools that handle what happens if you become incapacitated, how your assets pass at death, how taxes and long term care might affect what you leave, and how to protect the people who receive it. The difference can mean years of delay and unnecessary expense for your family, or a smooth handoff that feels almost invisible.

This article walks through that gap in practical terms, using the questions clients most often ask.

## What a Simple Will Actually Does (and Does Not Do)

A simple will answers three basic questions:

1. Who receives your probate assets when you die.
2. Who is in charge of your estate (the executor or personal representative).
3. Who becomes guardian for minor children.

That is the core of it. A will can also create basic testamentary trusts, such as a trust that holds money for your children until they reach a certain age. But it has hard limits.

A simple will does **not**:

- Avoid probate. The will is your set of instructions to the probate court. It does not circumvent the court process.
- Control nonprobate assets. Beneficiary designations on life insurance, retirement accounts, and some bank accounts override your will.
- Provide any protection against your own incapacity during life. That is a separate problem.
- Shield assets from nursing home costs, Medicaid rules, divorces, or most lawsuits.
- Automatically reduce estate taxes. That requires more planning.

Many people assume “I have a will, so my family is covered.” What they usually have is a document that addresses only one part of the puzzle, at one point in time, for only some of their assets.

## What Is Comprehensive Estate Planning?

Comprehensive estate planning is a coordinated strategy, not a single document. It addresses both incapacity and death, and it takes into account taxes, long term care risks, family dynamics, and how different types of assets pass.

At a minimum, a comprehensive plan usually considers:

- How decisions will be made if you are alive but unable to act.
- How each category of asset will pass at death.
- How to protect beneficiaries from their own issues or outside risks.
- What happens if you or a spouse needs nursing home care.
- How to minimize taxes and administrative costs where practical.

You see the difference most clearly when something goes wrong. With only a will, a serious stroke can trigger a guardianship proceeding, which is time consuming, expensive, and public. With a comprehensive plan, your financial power of attorney and health care proxy are already in place, and the person you trust can step in immediately.

## Core Components of a Comprehensive Plan

Every family is different, but most robust plans involve some combination of the following:

- A will that coordinates with, rather than tries to do the job of, your other documents.
- Revocable living trust when probate avoidance, privacy, or multi state property is a concern.
- Durable financial power of attorney and health care directives to cover incapacity.
- Beneficiary designations and account titling that line up with the overall plan.
- Targeted use of irrevocable trusts, where appropriate, for tax planning, asset protection, or disability planning.

Notice how the will is just one item in that list. It is still important, but it no longer carries the whole load.

## Wills, Trusts, and Your Home: Which Is Better?

The most common question I get is: **Is it better to leave a house in a will or trust?**

There is no one size fits all answer. The right choice depends on your goals, your state's probate system, and your family.

Leaving a home in a will means the house passes through probate and ends up in the names of the heirs you name. It is simple to set up and costs less up front. The tradeoff is that your executor will go through the court process, which can take months or longer. If the children live out of town, are not on good terms, or plan to sell quickly, this can be a real burden.

Using a **revocable living trust** lets the house bypass probate. You retitle the deed into the name of your trust while you are alive. You are usually the trustee and beneficiary during your lifetime, so nothing feels different in daily life. When you die, your successor trustee can sell or distribute the home without going through probate, often in a fraction of the time.

In many cases, the best way to leave your house to your children is either:

- Through a fully funded revocable trust, with clear instructions on whether the house should be sold or can be kept, and how costs are shared.
- Through a transfer on death deed or similar tool, where your state allows it, if your situation is simple and you understand the tax and Medicaid implications.

Each path has pros and cons. For example, a poorly designed transfer on death deed can unintentionally disqualify a child from benefits or create avoidable capital gains issues.

## Irrevocable Trusts, Medicaid Rules, and Popular Myths

The internet is full of articles about "Medicaid loopholes" and stories of people who "put the house in a trust so the nursing home cannot take it." The reality is more nuanced and far less magical.

### What Is the 5 Year Rule for Irrevocable Trusts?

For Medicaid long term care eligibility, most states apply a **5 year lookback** to gifts and transfers to most irrevocable trusts. If you transfer assets to an irrevocable trust and then apply for Medicaid within 5 years, those transfers are usually treated as gifts and can trigger a penalty period of ineligibility.

That 5 year rule does not mean your assets are perfectly safe on day 1, then instantly protected on day 1,826. It simply means that, once 5 years have passed, Medicaid generally stops counting that particular transfer when calculating penalties. States can still scrutinize whether the trust is truly beyond your control.

When people ask **how to avoid the Medicaid 5 year lookback**, they often mean “how do I protect assets while still qualifying for benefits.” The only honest answer is: you plan early, understand the tradeoffs, and accept that there is no magic loophole that gives you full control and use while also making the money invisible.

## What Is the Medicaid Loophole?

There is no single, guaranteed “Medicaid loophole.” What people describe with that phrase are sometimes:

- Use of properly drafted irrevocable trusts created far enough in advance.
- Use of spousal protections allowed under federal law for married couples.
- Strategic use of exempt assets, such as certain home value or vehicles, within limits.

This is not trickery. It is operating within a complex set of rules where timing and details matter. Getting it wrong can easily leave you worse off than doing nothing.

## Can a Nursing Home Take Your House if It Is in a Trust?

The nursing home itself does not “take your house.” The issue is whether Medicaid will pay for your care, and if so, whether the state can recover costs from your estate or trust after you die.

If your home sits in a **properly structured irrevocable trust**, created more than 5 years before you apply for Medicaid in most states, that home is often protected from being counted as a resource and from estate recovery. But the details of the trust are critical. If you keep too much control, or the trust pays income to you that can be reached, that protection can evaporate.

If the house is in a **revocable trust**, there is usually no added protection. For Medicaid purposes, assets in a revocable trust are typically treated as though you still own them outright.

## What Is the Downside of Putting Your House in an Irrevocable Trust?

Clients frequently underestimate the tradeoffs. Some of the real downsides:

You give up meaningful control. In a properly protective irrevocable trust, you are not the trustee. You cannot simply change your mind and sell the home to spend the money as you wish.

Refinancing becomes more complicated. Lenders are often hesitant to refinance or issue a home equity loan when the home is in an irrevocable trust.

Family relationships are stressed. Naming a child as trustee can create tension if you want something and they are legally bound to say no.

Tax issues must be handled carefully. A well drafted trust can still preserve the step up in basis at death, but a poorly drafted one can saddle your children with larger capital gains tax.

That is why some lawyers say there are really only three reasons you should have an irrevocable trust: meaningful asset protection, specific tax planning, or planning for a disabled or vulnerable beneficiary. Using one just to “avoid

probate" is usually overkill.

## What Is the 7 Year Rule for Trusts?

Clients often mention a "7 year rule" they have heard about. That rule comes from **UK inheritance tax law**, not from United States Medicaid or estate rules. In the U.S., the more commonly relevant timing rule is the **5 year lookback** for Medicaid and certain **5 year rules** for retirement accounts.

It is important not to mix foreign concepts into U.S. Planning. I regularly see people delay action because they are waiting on a "7 year window" that does not even apply in their jurisdiction.

## The 5 by 5 Rule in Estate Planning

The **5 by 5 rule in estate planning** usually refers to a provision in certain trusts that gives a beneficiary a limited power to withdraw the greater of 5 percent of the trust principal or 5,000 dollars each year.

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This serves two main functions. First, it can keep the trust assets from being treated as a completed gift for tax purposes when the trust is created, which matters in some advanced plans. Second, it can be used to give a beneficiary just enough legal control to achieve a desired tax result, while still keeping most of the protection features of the trust.

Most everyday families never need to rely on the 5 by 5 rule, but it sometimes appears in:

- Irrevocable life insurance trusts.
- Credit shelter or bypass trusts in larger estates.
- Specially drafted beneficiary trusts for adult children.

You do not need to become an expert in this jargon, but you should be wary of any plan that throws these terms around without explaining what they change in practical terms.

## Probate, Beneficiaries, and Which Accounts Avoid Probate

One of the easiest ways to streamline your estate is to understand how different assets pass at death.

Many people ask: **Which bank accounts avoid probate?** Bank and investment accounts can often bypass probate entirely when you:

- Use payable on death (POD) or transfer on death (TOD) designations to name beneficiaries.
- Title accounts in the name of a revocable trust.
- Hold accounts jointly with right of survivorship, where appropriate.

Each choice has tradeoffs. Joint accounts can unintentionally disinherit other heirs and expose the money to the joint owner's creditors or divorce. POD or TOD designations can conflict with the rest of your plan if you change your will but forget to update the account. Trust owned accounts give the most control, but require more setup.

A will acts as a safety net for what remains in your name alone. A comprehensive estate plan uses will provisions, beneficiary designations, and trust ownership together so everything moves in the same direction.

## What Should Not Be Included in a Will

A will is public once it is filed for probate. That fact alone should shape what you put into it.

You generally should not include:

Highly sensitive information, such as full account numbers, passwords, or PINs. Those belong in a secure, separate document, not in a court file.

Detailed funeral or memorial instructions that must be acted on quickly. The will is often read after the funeral decisions are already made. Use a separate letter or pre arranged plan.

Assets that pass by beneficiary designation, such as life insurance or retirement accounts. Listing them in the will without aligning the designations leads to confusion and conflict.

Complex, changing business arrangements. Operating agreements, buy sell contracts, and similar documents are better vehicles, with the will referencing them at a high level.

A surprising number of family fights start because someone tried to micromanage every small item in the will. I often suggest a short separate letter for personal property, referenced in the will but not legally binding, so you can adjust it without a full legal update.

## Who Should You Not Name as a Beneficiary?

The question **"Who should I not name as a beneficiary?"** comes up more often than "Who should I [trust attorney orange county](#) include."

You should think carefully before naming:

Minor children directly on life insurance or retirement accounts. Doing so usually forces a court supervised guardianship and delays access. A trust for their benefit works far better.

Beneficiaries receiving needs based government benefits, such as Supplemental Security Income or Medicaid. An outright inheritance can disqualify them. A special needs trust is almost always the safer option.

People with serious creditor, addiction, or marital problems. Handing them cash outright can do more harm than good, and it is often gone quickly to creditors or an ex spouse. A protective trust, with a responsible trustee, changes the outcome.

Someone you barely know or trust as a co owner or joint beneficiary, just to "make things simple." Unwinding a poorly chosen joint ownership is often more costly than having done nothing.

The most common inheritance mistake I see is naming the wrong person in the wrong role. A comprehensive plan spends as much time on people and structure as on tax or legal language.

## **Taxes, Gifts to Children, and How Much You Can Inherit**

Estate and inheritance tax questions surface quickly when families start talking numbers.

### **How Much Can You Inherit from Your Parents Without Paying Taxes?**

For federal law, the key number is the federal estate and gift tax exemption. In 2024, that exemption is 13.61 million dollars per person, scheduled to reduce roughly by half in 2026 unless Congress acts. An estate under that level typically does not owe federal estate tax.

However:

- Some states have their own estate or inheritance taxes with much lower thresholds, sometimes in the 1 million to 2 million dollar range.
- Inheritances can have income tax consequences, especially when they involve retirement accounts.

You generally do not pay income tax on a cash inheritance itself. You may pay income tax on distributions from inherited pre tax retirement accounts, like traditional IRAs or 401(k)s. Rules changed significantly under the SECURE Act, often requiring many beneficiaries to empty inherited retirement accounts within 10 years.

A comprehensive plan looks not only at "how much can you inherit without paying taxes," but what types of assets your heirs will receive and how those assets will be taxed when used.

### **What Is the Best Way to Gift Money to an Adult Child?**

Gifts to adult children raise both tax and behavioral questions.

From a tax perspective, you can give up to the annual exclusion amount each year per recipient (17,000 dollars in 2023, 18,000 dollars in 2024) without using any of your lifetime exemption or filing a gift tax return. You can give more, but larger gifts start eating into your lifetime exemption and require reporting, though most families will never reach the point of actually paying federal gift tax.

From a planning perspective, the best way to gift money to an adult child depends on the child:

- For a responsible, stable adult, an outright gift may be fine, preferably documented and coordinated with the overall plan.
- For a child with spending issues, addiction, or a troubled marriage, a gift into a controlled trust often preserves the benefit while protecting against risks.

I often tell clients that lifetime gifts are a test run of their estate plan. If a 25,000 dollar lifetime gift causes major problems, leaving 500,000 dollars outright at death is unlikely to go better.

# Costs and Value: How Much Does It Cost to Have an Estate Planning Attorney?

The natural question after hearing all of this is: **How much does it cost to have an estate planning attorney?**

Costs vary widely by region, complexity, and the lawyer's experience. Very broadly:

- A truly simple will based plan, with basic powers of attorney and health care directives, might range from a few hundred to a couple of thousand dollars for an individual or couple.
- A comprehensive plan involving one or more revocable trusts, coordinated asset titling, and more detailed tax or blended family work often falls in the 2,000 to 5,000 dollar range in many markets.
- Complex plans with multiple irrevocable trusts, business entities, and advanced tax work can run significantly higher.

What matters more than the number is whether the fee reflects an actual plan or just a stack of documents. An inexpensive will that does not address beneficiary designations, account titles, or long term care risks can be a very costly bargain for your family later.

Good estate planning should feel like having a guide who understands both the law and real family dynamics, not a quick online form.

## When a Simple Will Is Enough, and When It Is Not

There are situations where a simple will, paired with up to date beneficiary designations and basic powers of attorney, is likely enough. A single person with modest assets, no real property, and stable adult beneficiaries often falls into that category.

Comprehensive estate planning becomes more important when:

- You own a home or multiple properties.
- You have minor children, a blended family, or strained relationships.
- You worry about long term care costs or have a family history of dementia.
- Your total assets approach or exceed state or federal tax thresholds.
- You have a child or beneficiary with special needs or serious personal challenges.

The real question is not "Do I need a will or a trust," but "What combination of tools will best carry out what I want for the people I care about, under the laws that apply where I live."

A simple will is a start. A comprehensive estate plan turns that starting point into a structure that can withstand real life: incapacity, conflict, and the unexpected.

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