

LEARNING MADE EASY



2nd Edition

Wills & Trusts Kit

for
dummies[®]
A Wiley Brand



Access the resources that
work best for your situation

Communicate your wishes
to family and loved ones

Navigate the legalese of
official documentation

Aaron Larson

Attorney-at-Law

Wills & Trusts Kit

for
dummies[®]
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2nd Edition

by Aaron Larson

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dummies[®]
A Wiley Brand

Wills & Trusts Kit For Dummies®, 2nd Edition

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Introduction

Congratulations. Simply by opening this book you have put yourself a step ahead of most people. Yes, it's tough to think about what will happen to your family after you die, but confronting these issues is part of taking care of your family.

My goal in writing this book is to give you the information and resources you need to create an estate plan. This book includes do-it-yourself tools to help you draft your own key estate planning documents.

I am of the strong opinion that everybody needs an estate plan, and especially a will. With this book, anybody can create a simple will, even if it serves just as a stopgap before hiring a professional.

But don't go thinking that this book will help you only if you want to create your own will and trust. It's much broader in focus. I want you to become comfortable with estate planning documents, but also to recognize when and why you may benefit from professional estate planning services.

About This Book

Wills and Trusts Kit For Dummies is written in language that is easy to understand. It covers the basic issues in planning your estate, but also delves into the details and complications you can encounter in choosing your estate plan and creating a will or trust.

You probably won't read this book and conclude, "This is easy," but you'll probably conclude, "I can do this." If not, or if you realize that you simply don't want to plan your own estate, that's fine, too. You'll be an educated consumer when you hire a professional to draft your estate plan.

Everybody needs an estate plan, so I'll immodestly claim that anybody who doesn't have an estate plan will benefit from reading this book. You'll also benefit if your estate plan is out-of-date, and if you're not sure whether or how to update your plan.

A Special Note for Residents of Louisiana

If you've been shopping around for books on drafting your own will, you've probably found that most of them say, "This book is valid for all states except Louisiana." You see this warning for two reasons:

- » Louisiana's laws governing the execution of a will are more complicated than those of other states, and a mistake can invalidate your will.
- » More importantly, Louisiana's unique forced heirship laws will trump inconsistent bequests in your will, and you're severely limited in your ability to deviate from the state's mandatory bequests.

Even if you create an otherwise valid will, without a good understanding of forced heirship laws, a court may end up largely disregarding your will or allocating your estate in a way that bears little resemblance to what you directed.

It's beyond the scope of this book to give you the state-specific understanding you need to be sure that a Louisiana court will uphold your will. I thus reluctantly urge residents of Louisiana to have their wills drafted by a legal professional.

Conventions Used in This Book

Whenever you see a word in *italics*, I'm either introducing a new term or using it for emphasis. Likewise, all web addresses appear in `monospace type`.

Throughout the book, I include sidebars that contain information and anecdotes that expand on the topics discussed in the chapters. You'll easily spot the sidebars by their gray background color. The sidebars can be amusing and informative, but there's nothing in them that you have to read to understand the material in this book. If you're pressed for time, skip over the sidebars. If you find the time to read them later, they'll still be there.

Foolish Assumptions

When writing this book, I had to make a few assumptions about you, the reader. If you meet any of these qualifications, you can find what you need in this book:

- » You don't know much about estate planning and want to get a comprehensive understanding of what is involved.
- » You have a small to average estate and want to create your own estate plan composed of a will and possibly a living trust.
- » You have a large estate and want to do the basics of your estate plan yourself while getting professional assistance with specialized trusts and tax planning.
- » You have absolutely no desire to plan your own estate, but want to know how the estate planning and probate processes work and want to know what you're doing when you hire an estate planning professional to create your estate plan.

I also assumed that you have a computer and can use it to download and print the worksheets available with this book to create your own estate planning documents. (You don't have a computer? Then I'm assuming you have a friend who can print the forms for you.)

Icons Used In This Book

In the margins of the pages of this book, you'll find little pictures, called icons. These icons call your attention to important points about estate planning and help you avoid mistakes:



TIP

When you see the Tip icon, you find hints and suggestions to help you with your estate plan.



WARNING

The Warning icon flags a potential trap or pitfall that you may encounter and helps you avoid costly mistakes.



REMEMBER

The Remember icon highlights important actions to take and elements of your estate plan that you truly should not forget.

Beyond the Book

You can find a little more helpful related information at <https://www.dummies.com>, where you can peruse this book's Cheat Sheet. To get this handy resource, go to the website and type *Wills & Trusts Kit For Dummies Cheat Sheet* in the Search box.

Additionally, at <http://www.dummies.com/go/willsandtrustskitfd2e>, you'll find a number of files and forms to create a will, living trust, living will, durable power of attorney, and healthcare proxy. The forms you can find there are

- » **Worksheets:** Estate Planning Worksheet; Trusts Worksheet; and Wills Worksheet.
- » **Trusts:** Revocable Living Trust – Individual; Revocable Living Trust – Married Couple; Revocable Living Trust – Individual with A-B Trust; Pet Trust; Assignment of Property to Trust; Reversal of Assignment of Property to Trust; and Revocation of Trust.
- » **Incapacity planning:** Living Will; Healthcare Proxy; and Durable Power of Attorney.
- » **Wills:** Married with Children; Married without Children; Single with Children; Single without Children; Domestic Partnership with Children; Domestic Partnership without Children; and Self-Proving Affidavits.

General instructions that apply to all forms are included as well.

Where to Go from Here

You don't have to start at the beginning of this book and read straight through if you don't want to. This book is designed so that you can look at a topic you're interested in and flip straight to that discussion. However, if you're new to estate planning, consider reading through this book to get an overview of what's involved.

- » If you're about to do something dangerous and need an estate plan "yesterday," you need a will so start with Chapter 7.
- » If you're concerned about how much of your estate will get eaten up by taxes, the news (good and bad) is in Chapter 6.
- » If you have young children and want to be sure that they're taken care of, proceed to Chapter 5 for some quick guidance.
- » If you have a will or trust already, Chapters 9 and 13 cover how to update your estate plan and amend or replace wills and trusts.

1

Getting Started with Your Will or Trust

IN THIS PART . . .

Learn why you need an estate plan and the dangers of not having one

Find out how to plan your estate

Discover how to plan for special family and personal circumstances, including the care of your dependent children

Decide whether you should plan your own estate or get help from a professional estate planner

IN THIS CHAPTER

- » Understanding the estate planning process
- » Creating your estate plan
- » Getting help when you need it
- » Making your wishes known
- » Avoiding common estate planning pitfalls

Chapter **1**

Ensuring That Your Last Wishes Are Honored

You've worked hard all your life, have accumulated some assets, and have bought a copy of this book. You're ready to plan your estate.

My best guess? You're not excited about planning your estate. You have already figured out that you have a lot of work to do. You must also think about unpleasant things, including your death, the possibility of your incapacity, and how your family will cope without you.

What's the primary purpose of an estate plan? Taking care of your loved ones after you're gone. Why plan your estate now? Because the sooner you start, the more certain you can be that your plan will take care of your family's needs in the way that you want.

As you proceed with this process, you'll probably find out your estate planning needs aren't as complicated as you thought. You may discover that all you need is a will, perhaps backed up by a simple living trust. You may instead discover that your needs are more complicated than you realized and enlist the help of an estate planning professional. Yet even then, your understanding of the estate planning process and tools will help you communicate your needs and choose your best options.

Having an estate plan also provides a great deal of comfort. You'll be able to plan for your family's financial needs. And after your death or incapacity, your loved ones won't have to fret about what you would have wanted them to do. They'll know your actual wishes.

The Good, the Bad, and the Ugly: What Can Happen When You Don't Plan Your Estate

Simply put, if you don't plan your estate, the government has an estate plan in store for you. Your state's laws of *intestate succession* will apply, and the state will decide who inherits your assets, usually your spouse and children. But that's not all:

- » In the event of your incapacity, a court may appoint people to make decisions for you regarding your personal and medical care and the management of your money. A stranger may end up deciding where you live, what medical treatment you receive, and perhaps even whether you really need \$20 for a haircut.
- » If you have minor children, a court will have to decide who will care for them but will not have the benefit of your input.
- » The business you spent a lifetime building may end up failing or in the hands of a court-appointed receiver.

Planning your estate isn't a one-time task. Changes in your life circumstances can dramatically alter both your wishes for your estate and whether your original estate plan even remains viable.

Sometimes it seems like your life doesn't change much, so you may be wondering what sort of changes I am talking about. Consider the following:

- » Your estate will probably grow substantially over the course of your life, although it may also shrink.
- » You may marry, divorce, separate, have or adopt a child, or experience a death in your family.
- » Your children will grow up and establish their own households.
- » You may move between states, buy and sell property, or start your own business.

- » Your designated trustee or personal representative may no longer be available, or your relationship with that person may change.
- » Laws may change. In fact, they will. You never know when Congress will change estate tax laws, but give it time and it will happen.

In all probability, you'll update your estate plan several times during your life, and on occasion you may even start over from scratch.



WARNING

If you don't update your estate, over time your estate plan may become largely ineffective. When that happens, you're not much better off than you were before you created the outdated estate plan.

Reaping the Benefits of Planning Your Estate

The biggest advantage of planning your estate is that your wishes will be respected, both while you're alive and after your death.

Your estate plan helps you in several ways:

- » Incapacity planning helps ensure that you receive the type of medical care and treatment you want, that your assets are managed according to your own wishes, and that your end-of-life decisions are respected.
- » Your will and trust ensure that your assets are distributed to the heirs you choose, under terms and conditions you define.
- » Your business succession plan helps ensure that your business doesn't fail following your incapacity or death, and that control of your business passes to a suitable successor.

When you don't plan your estate, your incapacity plan will be defined by a court, and your estate will be carved up according to state law. The result may be far different from what you desire.

Planning for your care while you're alive

In addition to planning for the distribution of your assets after you die, a complete estate plan looks at what will happen to your estate if an accident or illness leaves you unable to properly care for yourself.

Your incapacity plan includes your durable power of attorney, healthcare proxy, and living will:

- » Your durable power of attorney appoints an attorney-in-fact who can make financial decisions for you if you become incapacitated.
- » Your healthcare proxy appoints a healthcare advocate who can help you make medical decisions if you're unable to make or communicate those decisions yourself.
- » Your living will describes what care you want to receive and don't want to receive during the final days of your life.

If you don't appoint people to help with your medical and financial needs, your family may have to go to court to have somebody appointed to make decisions for you. Your loved ones will face unnecessary burdens and confusion:

- » Your family will have to go to court to have somebody appointed to manage your personal and financial needs, at a time when they're already under stress due to your incapacity.
- » The court won't know who you'd prefer to assist with your medical and financial decisions, and may appoint somebody who you would find unacceptable.
- » Your helpers won't know your wishes or the limits you'd impose on their choices if you were able to communicate them. They'll have to try to guess what you would have wanted.



WARNING

The impact of these choices may be profound. Whatever your plans, with a court-appointed guardian supervising your medical care, you're more likely to undergo more intrusive medical care than you might choose for yourself and to spend your last days in a hospital or nursing home. (Chapter 14 discusses incapacity planning in more detail.)

Ensuring that your assets go where you want

When you plan your estate, you pick your heirs and decide how much you want to leave to them. Although state laws do restrict your ability to disinherit certain heirs, especially your spouse, for the most part you can leave your money to family, friends, schools and charities, or anybody else you choose.