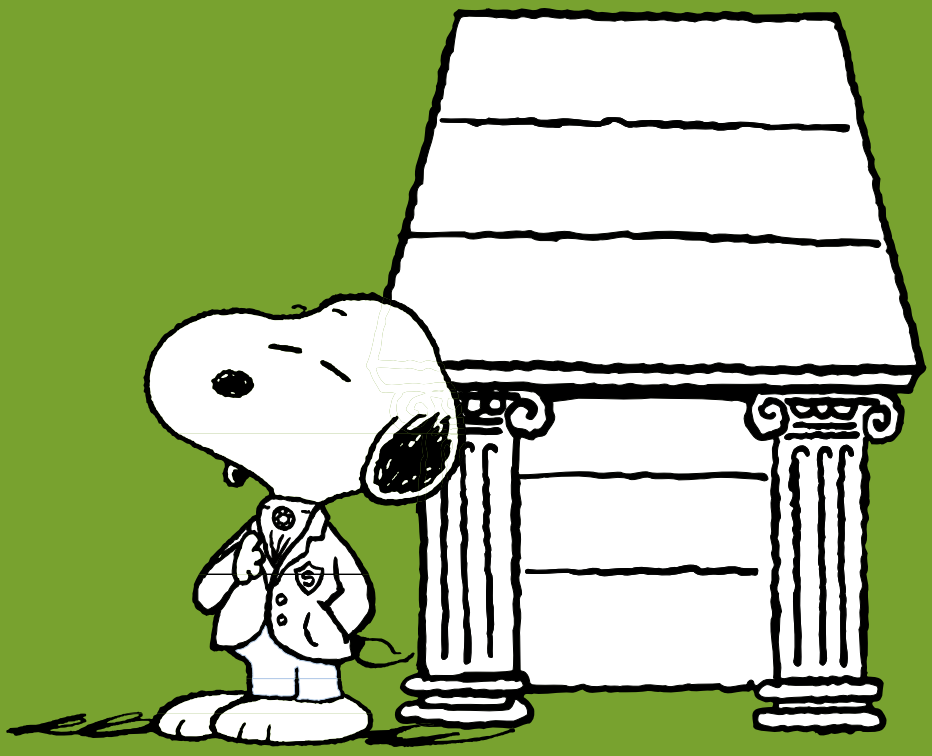
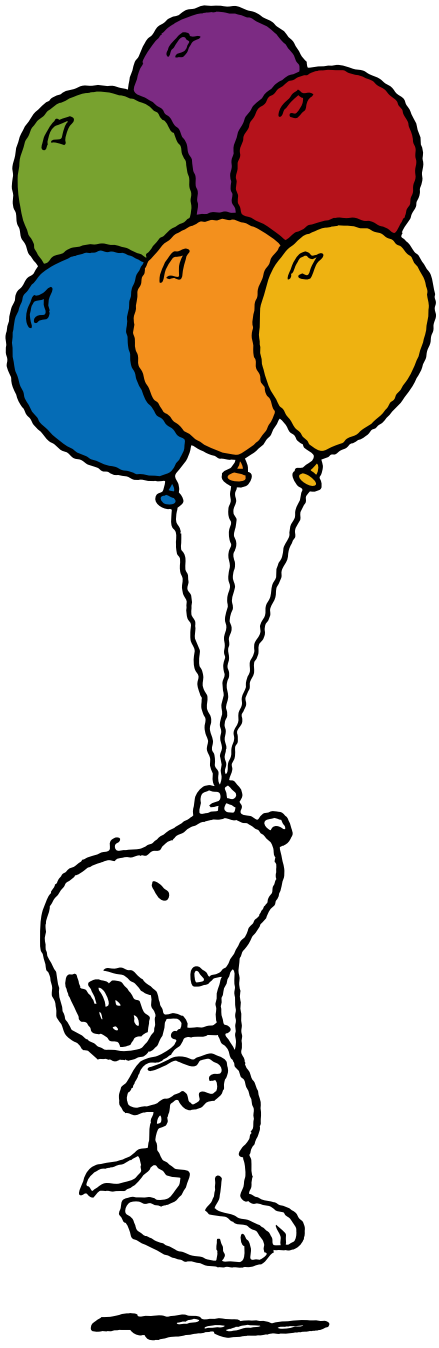
# Estate Planning

MetLife

Life Advice

Understanding distributions of assets and estate taxes





LIFE ADVICE®

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**If you'd like to better ensure that your assets are distributed as you'd like them to be when you die,** estate planning is the answer. Through successful estate planning, your assets would be transferred to your chosen beneficiaries while minimizing tax consequences. Estate planning can also help assure that family members know how you'd like your financial and medical affairs to be handled if you become incapable of making your own decisions.

The process of estate planning includes inventorying your assets; talking over important decisions with family members; and retaining an estate planning attorney to draft a will and/or establish a revocable living trust along with appropriate supporting documents. This brochure provides only a general overview of estate planning. You should consult an attorney, and perhaps a CPA or tax advisor, for additional guidance tailored to your specific situation.

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This Life Advice booklet, *Estate Planning*, was produced by the MetLife Consumer Education Center with assistance from the American Association of Individual Investors and reviewed by the Cooperative State Research, Education and Extension Service, USDA.

## Do I Need to Worry?

Estate planning is for everyone, not just the very wealthy. Regardless of the monetary value of your financial assets, it's likely you have possessions that have significant value to you and to those you care about—the china your great, great grandparents brought with them when they immigrated, or the Bible that has been handed down in your family for generations. You likely have family members and other loved ones for whom you want to provide upon your death.

Certainly, if your assets are worth $1 million or more, estate planning can benefit your heirs by minimizing the taxable portion of your estate from federal and state estate taxes. Also, tax laws on the books for 2010 will bring new income tax issues that will also need to be addressed prior to one's death. Remember, all of your assets are included in your taxable estate, and adding up the value of your assets can be an eye-opening experience. When you include your home, investments, retirement savings and life insurance policies you own, you may be surprised at the value of your estate.

## Taking Stock

A good first step in estate planning is to inventory everything you own (i.e., your assets) including assets jointly owned and assign a value to each asset. The following list can help you get started, but you'll probably need to add some categories and delete others.

- Residence
- Other real estate
- Savings, e.g., savings accounts, CDs, money markets
- Investments, e.g., stocks, bonds, mutual funds
- Pension and/or other retirement accounts, e.g., 401(k), IRA, 403(b)
- Life Insurance policies and annuities
- Ownership interest in a business
- Motor vehicles, e.g., cars, boats, planes
- Jewelry
- Collectibles, e.g., art, antiques
- Other personal property

Depending upon your specific situation, you may need professional advice (e.g., a real estate or antiques appraiser) to determine realistic values. Once you've estimated the value of your assets, you're ready to do some planning.

## Why You Need to Consider a Will

A will is a legal document designating the transfer of your property and assets after you die. Although creating a will is not a difficult process, about half of all Americans die without one. If you die without a will, or "intestate," the court steps in and distributes your property according to the laws of your state, which may or may not coincide with your wishes. If you have no apparent heirs and die without a will, it's even possible the state will claim your estate. Remember, wills are not just for the rich; your will ensures that your assets will go to family members or other beneficiaries you designate.

Probate is a legal term, which means to "prove" a will. During probate, the court determines that your signed will is a genuine statement of how you want your estate to be distributed. Depending upon the state in which you are domiciled, the probate process may take a few months or it may take years, and it can be an expensive process. If you own real property in more than one state, you will have probate in each of these states. In most cases, probate takes about two years and they are public proceedings to be avoided if privacy is a concern. Careful planning can reduce or avoid the probate process. For example, you may set up a living trust and/or you may ensure through appropriate beneficiary designations that neither life insurance nor retirement assets go through probate.

Each state has specific requirements, but in general, a will can be written by any person over the age of 18 who is mentally capable—commonly stated as "being of sound mind and memory." Although it may seem like something you can do yourself, it is recommended that you consult an attorney for help when creating a will.

To be valid, a will must comply with the laws of the state in which you live. Only about half the states recognize "homemade" wills. State law may stipulate that you use specific language, sign the will in a particular way and/or have a certain number of witnesses of a certain age present when you sign.

Bear in mind that having a will is especially important if you have young children because it gives you the opportunity to designate a guardian for them in the event of your death. Without a will, the court will appoint a guardian.

## Elements of a Will

Basic elements of a will include:

- Your name and place of residence
- A brief description of your assets
- Names of spouse, children and other beneficiaries, such as charities or friends
- Alternate beneficiaries, in the event a beneficiary dies before you do
- Specific gifts, such as an auto, residence or family heirlooms
- Establishment of trusts, if desired
- Cancellation of debts owed to you, if desired
- Name of an executor to manage the estate
- Name of a guardian for any minor children
- Name of an alternative guardian, in the event your first choice is unable or unwilling to act
- Your signature
- Witnesses' signatures

Probably the most important considerations when making your will are naming a guardian for your minor children and naming an executor.

## Naming a Guardian

If you die while your children are still minors or you have children who cannot care for themselves in adulthood, you'll want them to have the best possible care in your absence. Making a will gives you the opportunity to select the person you believe can provide that care. The guardian you choose should be over 18. Before naming a guardian, talk to the person you'd like to name to make sure they are willing to assume the responsibility. Also, name an alternate guardian who can take over if the primary guardian is unable or unwilling to fulfill the responsibility. This is especially important if your children are young or will require lifelong care. If you do not name a guardian to care for your children, a judge will appoint one, and it may not be someone you would have chosen.

Although it is legal to name a couple as co-guardians, it may not be advisable. It's possible the couple may choose to go their separate ways at some later date, and, if so, a custody battle could ensue.

## Naming an Executor/Executrix

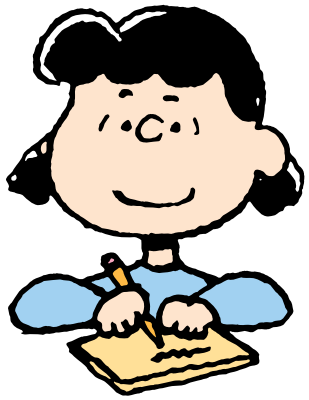
The person who carries out or executes the instructions in a will is called an executor or executrix. Obviously, your executor should be an individual you trust. Most people choose their spouse, an adult child, a relative, a friend or a trust company or attorney to fulfill this duty. Choose someone who can handle all of the financial matters involved with settling your estate, and check with that person ahead of time to make sure they are willing to assume the responsibility. Some states stipulate that the executor must be a state resident. It's a good idea to appoint an alternate executor in case the first person you name is unable or unwilling to fulfill the responsibility. The responsibilities of an executor generally include:

- Collecting your assets
- Paying creditors
- Paying taxes
- Notifying Social Security and other agencies and companies of the death
- Canceling credit cards, magazine subscriptions
- Distributing assets according to the will

While you can specify in your will that an executor waive payment in order to be eligible to serve as executor, this is only suitable if the person named is a beneficiary of the estate or a very close personal friend, since being an executor is time consuming. You should expect your estate to pay an independent executor for this service. Banks or trust companies will not serve as executors of estates unless entitled to payment. If no executor is named in a will, a probate judge will appoint one, most often a bank or an attorney.

## Revocable Living Trust

The revocable living trust is an alternative that can be used to distribute assets after one's death. Unlike a will, however, it comes into effect while you are still alive and may be funded with assets during your lifetime. You can change or cancel a trust at anytime. Assets held in a living trust will avoid the probate process as outlined



above. These trusts can maintain privacy, reduce administration expenses and streamline the post-death administration of assets. A special type of will, the "pour-over" will, is usually prepared along with the trust. This would serve the limited purposes of nominating guardians and pouring assets not otherwise already owned by the trust into the trust.

### Put It in Writing

An inventory of your assets is a good start, but it's not the only information your attorney will need to create a will or revocable living trust. Your attorney will also need a list of family members and other beneficiaries (e.g., charities) that you may mention in your will or living trust, an estimate of your outstanding debts and an outline of your objectives (e.g., to provide college tuition for my grandchildren). This information will be used to consider how you want to distribute your assets.

Ask yourself lots of questions: Is it important to pass your property to your heirs while saving taxes? How much money will your grandchild need for college? Do you need to provide for a child who has a disability? Are you concerned about protecting your loved ones in the events of lawsuit or divorce? Do you wish to make specific bequests (gifts) of cash or property to loved ones or charity? An attorney familiar with estate planning will help you identify the questions and guide you in determining the answers.

Be as specific as possible when naming beneficiaries. For example, state the person's full name as well as his or her relationship to you (child, cousin, friend) so your executor will know your intentions. Clarity will help to prevent challenges to your will or trust.

Items not specifically mentioned need to be addressed in a catchall clause of your will or trust called a residuary clause, which generally states, "I give the remainder of my property to...." Without this clause, items not specifically mentioned will likely be distributed in accordance with state law.

Note that the estate usually pays outstanding debts and taxes before beneficiaries receive their shares. You may want to clear up debts that you think may be a problem, or make specific provisions for payment of those debts in your will.

States require that you sign the will in front of witnesses; the number of witnesses varies by state. Witnesses should not be beneficiaries of the will, and only one copy should be signed.

If you need help finding a qualified estate planning attorney, the Web site of the American Bar Association (www.abanet.org) has information to help you find one, although they will not make specific recommendations. See "For More Information" on page 7.

## How Are Estates Taxed?

If you think taxes are bad while you are alive, estate taxes can be far worse if you happen own enough assets at your death and do not have an estate tax plan. Federal estate tax law permits each taxpayer to transfer a certain amount of assets at death, free from federal estate taxes. The following chart shows, by year, the dollar amount of your estate excluded from federal estate taxes and the tax rate on the taxable portion of an estate. Note that rates are as high as 55 percent for the taxable portion of the estate.

| Exclusion Year | Highest Amount | Estate Tax Rate |
|---|---|---|
| 2009 | $3,500,000 | 45% |
| 2010 | No federal estate tax, but the gift tax remains if the current law is not reenacted by December 31, 2010. | |
| 2011 | $1,000,000 | 55% |

The lifetime gift tax exclusion is $1 million and it is in effect in all years including 2010. This is a major change from pre-2001 law.

At the time of this writing in 2009, Congress and the President are debating healthcare reform and the bills that would impact the federal estate tax are stalled. Some believe we will have another year of a $3.5 million exclusion followed by a much lower amount. Others believe that no action will be taken until sometime next year, or later.

Finally, remember to take into account your state's estate or inheritance taxes, which are beyond the scope of this pamphlet. Consult an estate planning tax professional or attorney for more information about federal and state estate taxes.

## Gift Taxes

Federal gift tax law permits each taxpayer to transfer certain amounts of assets free from gift tax during their lifetimes. Current law provides for a $1 million federal gift tax exclusion regardless of what happens to the federal estate tax exclusion.

## Minimizing and Even Eliminating Estate Taxes

There are a number of estate tax planning methods you can use to minimize federal taxes on your estate.

The first order of business is to utilize the estate tax exemptions to which we are all entitled under federal law while also taking into account and utilizing state estate exemptions. Given the variety of state estate tax provisions, this brochure only discusses federal tax law.

A married couple has the ability to utilize the federal estate exemptions of both spouses. These exemptions are like coupons that must be used or they will be lost. Many wills and trusts leave all assets directly to the surviving spouse ("I Love You Estate Plan"). Since there is an unlimited "marital deduction" between spouses who are U.S. citizens, there is no federal estate tax when the first spouse dies. Using the marital deduction, all assets are transferred to the surviving spouse and the estate tax is deferred until the death of the second spouse. The problem with these I Love You Estate Plans is that the married couple has lost the use of the "coupon" of the first spouse to die and the combined estate will be subject to higher federal estate taxes upon the death of the surviving spouse.

To avoid this problem, many couples utilize the exemption of the first spouse to die by establishing and funding a bypass or credit shelter trust at the time of the first death. They do this by ensuring that the will or trust of the first spouse to die contains special language that directs the creation of the bypass trust at that time. The assets of the first spouse to die will then go into the bypass trust up to the amount of federal estate tax exemption. The surviving spouse will have access to the bypass trust as well as his or her own assets. For example, if the estate of a married couple is $4 million, and the federal estate tax exemption is $2 million, bypass trust planning will enable a married couple to utilize both coupons and transfer as much as $4 million free of federal estate tax. This saves $225,000 in 2009. The assets in the bypass trust will appreciate free of estate taxes, so the amount transferred to loved ones may be greater than $4 million. Again, it is important to consider state estate-tax planning when utilizing this method, and an experienced estate attorney can best help with such planning.

Giving away assets during your lifetime also will reduce your taxable estate. Federal tax law generally allows each individual to give up to $13,000 (scheduled to be adjusted periodically for inflation) per year to anyone, without paying gift taxes, subject to certain restrictions.

This means you can transfer some of your wealth to your children or others during your lifetime to reduce your taxable estate. For example, you could give $13,000 a year to each of your children, and if your spouse does likewise, a total of $26,000 per year can be given to each child. You may make $13,000 annual gifts to as many other people as you wish without having to pay federal gift taxes or utilize any of your lifetime gift tax exclusion, but amounts in excess of $13,000 will count against the amount shielded from tax by your applicable exclusion. This will reduce your lifetime gift exclusion, and then once it is used you will pay gift tax. There are ways of reducing the "cost" of such gifts that are beyond the scope of this brochure. Gifting can be a very powerful planning tool if properly implemented.

Charitable gifts are another way you can reduce estate taxes. Any such gifts must be made to an organization that operates for religious, charitable or educational purposes and is duly qualified with the Internal Revenue Service. Consult your tax advisor for specific details.

Irrevocable life insurance trusts are used to remove life insurance proceeds from taxable estates and to make it easier to convert your estate's assets into cash. Life insurance trusts are funded either by transferring an existing life insurance policy or by having the trust purchase a new policy. (Note that transferring an existing policy may have gift and/or estate tax consequences—consult your tax advisor.) A number of complex rules must be followed to avoid inclusion in your estate. For example, such trusts must be irrevocable—meaning that you cannot dissolve the trust or change the terms of the trust if you change your mind later—and they must be properly established and administered during your lifetime.

Estate planning is very complex and is subject to changing laws. This pamphlet does not cover all aspects of estate planning. Be sure to seek professional advice from a qualified attorney, and perhaps a CPA. The money you spend now to plan your estate can mean more money for your beneficiaries in the end.

## Who Will Manage Your Affairs If You Cannot?

Your chances of becoming incapacitated in a given year are much greater than the chances of your passing away. Everyone faces this possibility during their lifetimes. This can happen when an individual is nearing death, or it can be the result of a temporary condition. Many people assume their spouses or children will automatically be allowed to make financial and/or medical decisions for them, but this is not so.

A funded revocable living trusts will enable your selected successor trustees to manage the assets held in such a trust in the event of your disability. Since some assets, such as retirement assets, would not be owned by these trusts, "powers of attorney" should accompany a living trust and be used in estate plans that only have wills, since wills do not address incapacity.

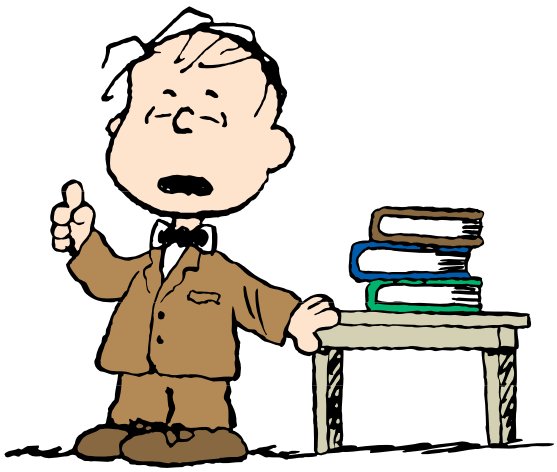
### Powers of Attorney

A power of attorney is a legal document that allows one person "the principal" to appoint someone else "the agent" to act on his or her behalf. The powers that can be exercised by the agent can be broad or narrow; the principal stipulates them, in advance. You might, for example, authorize your agent to do a specific thing (e.g., sell your house) or you might give authority to do any legal act you would do yourself. If you become incapacitated and don't have a power of attorney, your family may have to go through a lengthy, public, and expensive guardianship proceeding so someone can act for you.

There are three different types of powers of attorney:

- A conventional power of attorney gives the agent whatever powers the principal chooses for a specific period of time (e.g., 30 days) beginning when it is signed.
- A durable power of attorney stays in effect for the principal's lifetime—beginning when it is signed. This power of attorney must contain specific language stating the agent's power is to stay in effect even if the principal becomes incapacitated.
- A springing power of attorney is triggered by a specific event, such as when the principal becomes incapacitated. An attorney must carefully draft this type of power of attorney so that there is no difficulty determining when the springing or triggering event has occurred.

For estate planning purposes, a durable power of attorney is usually the recommended choice, since conventional powers of attorney can expire or terminate when they are needed most, and it can be difficult to determine exactly when springing powers of attorney take effect. Good planning dictates that you have two powers of attorney—one for financial matters, and another to deal with medical issues (healthcare power of attorney or proxy); you can select the same agent to perform both duties.



Signing a power of attorney does not mean you are giving up your right to act in your own behalf; you are ensuring that your agent will be able to act when and how you have directed, if it becomes necessary. You can revoke or cancel a power of attorney at any time. You can destroy it or make a new one, and you do not need to give a reason for doing so. If you do make changes to your power of attorney, be sure to let all involved parties know of your decision—particularly your agent and anyone they may be dealing with, as well as your attorney. Also, unlike trusts, many financial institutions are afraid to recognize financial powers of attorney that are more than few years old. Make sure you maintain current powers of attorney to avoid a host of potential problems.

All powers of attorney automatically end when the principal dies. This means that after you die, your appointed agent will have no power to make decisions. Thus, your agent's powers do not overlap with those of the executor of your estate.

Choosing an agent for your power of attorney, like choosing your executor or trustee, is an important decision; you need to trust the person completely and you need to make sure they are capable of performing the job and willing to assume the responsibility. If you come up with a choice of more than one qualified individual, it might be a good idea to choose the one who lives nearest to you. Discuss your options with an estate planning attorney.

### Planning Your Medical Care and Treatment-Advance Directives

Advance directives are written documents that tell your doctors what kind of treatment you'd like to have if you become unable to make or communicate medical decisions (e.g., if you're in a coma). They can take many forms, and the laws about them vary from state to state. It's a good idea to understand the laws of the state where you live when you write advance directives. It's also a good idea to make them before you are very ill. Federal law requires hospitals, nursing homes and other institutions that receive Medicare or Medicaid funds to provide written information regarding advanced care directives to all patients upon admission. Another federal law, the Health Insurance Portability

and Accountability Act (HIPAA) limits the use, disclosure or release of health information to those who are specifically authorized by you to receive such information. If this information is released to persons or entities not authorized to receive it, those that release such information will be subject to federal, civil and criminal penalties. It is critical that your healthcare documents and other parts of your estate plan address this important law to ensure that your physical and financial health is protected in the event of your disability.

Durable Health Care Powers of Attorney specify whom you've chosen to make medical decisions for you. It is activated any time you're unconscious or unable to make or communicate medical decisions. You need to choose someone who meets the legal requirements in your state for acting as your agent. State laws vary, but most states disqualify anyone under the age of 18, your healthcare provider and employees of your healthcare provider.

The person you name as your agent must:

- Be willing to speak and advocate on your behalf
- Be willing to deal with conflict among friends and family members should it arise
- Know you well and understand your wishes
- Be willing to talk with you about these issues
- Be someone you trust with your life

Make sure to let your doctors, family members and close friends know whom you've chosen as your agent. Your spiritual or religious beliefs may have bearing on the types of advance directives you choose to prepare. Although disability and death are often difficult subjects to bring up, it is a good idea to discuss these issues with family members to ensure that they understand your values and beliefs. The more communication you have with family members, the easier it will be for them to respect your wishes. Also if you want to be an organ donor, make sure that your agent and your family know and that you include the information in a medical directive.

Advance directives are very important documents though they don't have to be complicated. Any advance directive must comply with state laws. If you spend significant time in more than one state it is advisable to have a set of advance directives which comply with the laws of each state. It's also a good idea to have written advance directives reviewed by your doctor and your lawyer to make sure that your instructions are understood as intended. Once you've finalized advance directives, give copies to your family, medical power of attorney agent and your doctor.

A living will is similar in nature to an advance directive, but very different in details and effect. It comes into effect when a person is terminally ill and death is expected soon. It describes when you want treatment to stop and whether you want to be allowed to die naturally if you have a condition or illness from which you will not recover. A number of important issues must be addressed with this document.

A Do Not Resuscitate (DNR) order directs if your heart stops or if you stop breathing you are not be given cardiopulmonary resuscitation (CPR). It is standard procedure in hospitals to try to help all patients who have stopped breathing or whose heart has stopped. You can tell your doctor you do not wish to be resuscitated and a DNR order will be entered on your medical chart.

## Review and Fine-Tune Your Plans Periodically

Estate planning is not a one-time job. Many estate planning attorneys advise their clients to review their plans every two to three years. Also, there are a number of changes that call for a review of your plan. Take a fresh look at your estate plan if:

- Your assets change in value significantly and/or the estate tax laws change.
- You marry, remarry, or divorce.
- You have a child or new grandchild.
- You move to a different state.
- The executor of your will or the administrator of your trust dies or becomes incapacitated, or your relationship with that person changes significantly.
- One of your heirs dies or has a permanent change in health.
- Your children reach age 18.
- The laws affecting your estate change.

You'll probably need to update your estate plan several times during the course of your life. Things change as time passes. For example, once your children are grown and have their own families, you may want to make provisions for grandchildren. When you make new documents, be sure to destroy the old ones after the new ones are signed, dated and witnessed. You can also update your will/trust by adding a codicil/amendment—an addition or change. If you add a codicil or amendment make sure it is properly executed and attached to all copies of your will or trust. Consult an estate attorney for advice specific to your situation.

## For More Information

### References

*The American Bar Association Guide to Wills and Estates*
by the American Bar Association Staff
Published by Random House Information Group

*Estate Planning Made Easy*
by David T. Phillips & Bill S. Wolfkiel
Published by Kaplan Business

*Plan Your Estate*
by Dennis Clifford & Cora Jordan
Published by NOLO

### Free Publications

The quarterly Consumer Information Center Catalog lists more than 200 helpful federal publications. Obtain a free copy by calling 888-8-PUEBLO; on the Internet at www.pueblo.gsa.gov, or by writing:

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### Web Sites

**www.aarp.org**
This Web site offers free, useful information on estate planning. A free will preparation work sheet can be downloaded at www.aarp.org/families/legal_issues/legal_guides/a2004-03-25-will.html.

**www.irs.gov**
Internal Revenue Service Web site has up-to-date estate tax information.

**www.abanet.org**
Web site of American Bar Association (ABA) offers information on finding and using an estate planning attorney. The ABA does not make referrals. Click on "Find Legal Help." The ABA Commission on Law and Aging offers a free tool kit for advance planning/medical directives. It can be downloaded at: www.abanet.org/aging/toolkit/home.html.

**www.freeadvice.com**
Free, comprehensive, easy-to-understand legal information.

**http://www.csrees.usda.gov/nea/economics/fsll/fsll.html**
Click on "Tools for Consumers" for online learning to help you achieve financial security for yourself and your family.

**www.mymoney.gov**
The Federal Govenment's Web site dedicated to helping Americans understand more about their money.

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Estate Planning is very complex and is subject to changing laws. This booklet does not cover all aspects of estate planning. Be sure to seek professional advice from a qualified attorney, and perhaps a CPA.

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