

# Estate Planning Basics:

**The Fast Track to Getting Your:**

**Will  
Power-of-Attorney  
Living Will**

**....in Place Today**

**WEBINAR  
WORKBOOK**



*Preserve Your Legacy*

**Elder Law Guidance**

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## WELCOME

Welcome to the Estate Planning Basics webinar series. We are so glad you are taking this time to invest in yourself. The information presented here will help you discover the most important choices to keep in mind as you create your Estate Plan. We will help you create the three most important legal documents a person should have.

There are three parts to this webinar. We will guide you in:

Part 1—Creating your Will

Part 2—Creating your Power of Attorney (POA)

Part 3—Creating your Living Will Advance Directive (LW)

As we go through this webinar series, you will:

1. Gain a clear understanding of why these are the three most important documents you can have.
2. Have in your hands the framework for your Will, POA and LW. You can take this information to an attorney and finalize them.
3. Possess peace of mind knowing that your plan will control what happens at the end of your life (rather than hospitals, Kentucky law, and courts making those decisions for you).
4. Be prepared to choose an attorney, know what to expect when you visit an attorney, including costs.
5. Know how to communicate with family members so that your wishes will be observed, and that your family will have the basis for love and support for one another when that day comes.
6. Feel confident knowing you have the right people in place to handle these sensitive documents.
7. Provide your family the direction and protection they need for your future and theirs.

So, CONGRATULATIONS!!!! You are no longer one of the more than 75% of Americans who know they should but still haven't made a Will. You are taking action.

Let's Get Started!

And, by the way, thank you for letting us help! We're offering you a starting point and are here for you when you complete this workbook to finalize these critical documents. We are willing and ready to help you preserve your legacy.

Scott Collins, Owner

Elder Law Guidance

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## WHO ARE WE?

Elder Law Guidance is a veteran-owned law firm operating out of Richmond, Kentucky dedicated to protecting families from the loss of everything they own to the extreme cost of long-term healthcare. Our team of professionals, ranging from attorneys to customer care specialists, excels at highly competent, highly professional service to you and our clients.

Our firm focuses on the legal issues that emerge as we age, particularly as we near retirement and thereafter. One of the biggest issues we face, and plan for the least, is how to pay for long-term healthcare. We dedicate our expertise toward Medicaid, VA Benefits, Special Needs and Estate Planning, Probate and Guardianship. You could choose any attorney, truly you could, but you may spend more time with and money on them as they are not wholly devoted to this specialized, growing and changing area of law. You will spend less working with us than you would losing money trying to figure out these complex issues on your own. That is our guarantee.

## WHY WE HELP

These areas of planning and assistance are very important to us. Watching generations of hard working, skilled and talented, sacrificing people, we see our own families starting from scratch and fighting to get ahead. Each generation may have done well, but something seems to always go wrong, and all the progress of the previous generation does not get passed on to the next. We do not want you to have worked your whole life to see it lost at these last stages.

We also believe that the beauty of life is a life well lived. There is nothing more valuable than the years of accumulated wisdom and experience that someone in their later years possesses. In our throw-away world, we are overlooking the most valuable part of our families: Our parents, grandparents and elderly. This last stage of our lives should be our richest and most fulfilling. We are committed to the dignity and respect that each life deserves after years of giving to the world around them. It's not out to pasture, or out-of-touch time. Rather, it is front-of-the-line and top-of-the-journey time. And we want to treat you with that level of care and respect.

We are honored to serve you each day because of your past and for your family's future!

We are here to serve you!

Scott Collins

## WHAT IS AN ESTATE PLAN AND WHY DO I NEED ONE?

An *estate* is the legal term used to describe the possessions that belong to a person. An estate plan is a plan for what will be done with your possessions once you die. People often assume that a spouse or family will get their possessions after they pass away, or that they don't need an estate plan unless they have a large amount of wealth. Actually, everyone has an estate plan. The laws of the state you live in at the time of death dictate an estate plan for you if you have not created your own. Even if you don't care who gets your possessions once you pass, planning your estate will make the lives of your surviving family members much easier.

Estate planning can be quite complicated, but it does not have to be. We want to help you keep it simple. And we want to help you get yours completed. Every day we meet people who planned, thought about it, wanted to, but did not complete their estate plan. No worries! The Commonwealth of Kentucky has a plan in place for you. But we don't want that for you. We want your wishes to be followed. We want your family to go through the process of grieving your passing and caring for each other without the stress and turmoil that an intestate death creates.

More than 75% of  
Americans  
know they should  
make a Will,  
but they still have  
not.

INTESTATE? What is that? Intestate is when you die without a Will (the core of an estate plan). Those who die intestate, that is without a will, have their possessions distributed according to the (intestacy) laws of Kentucky. Generally, intestacy laws are that your possessions are divided equally among your surviving family members. However, there are priorities to those survivors so whoever is of a higher priority takes your possessions. Guess which of your surviving family members takes possession first? Second? What about third? It may come as a surprise to you, that it is not the spouse that takes first in Kentucky. It is your blood-related and adopted children who take first. If you had no children, then your parents take second. If your parents have already passed away, then your siblings (that is your brothers and sisters) take next. Your siblings include your half-sisters and half-brothers, although they only take half as much as full-blood brothers and sisters. If there is no one in a class to take, then your possessions pass on to the next group. There is one exception to this. If you had siblings but they have passed away before you, then their children (if they had any and they are living), then your sibling's share goes to that sibling's children equally). If you have no siblings, then your possessions pass to your spouse.<sup>1</sup>

Yep! You heard right! Spouses stand in fourth place to inherit if we die intestate. That doesn't seem fair does it? The legislature of Kentucky does not think so either, so they carved out a little option for the spouse to take half the money and one-third of the residential property and the children get half and one-third respectively, so that the spouse isn't left impoverished.<sup>2</sup> This

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<sup>1</sup> KRS 391.010.

<sup>2</sup> KRS 392.020.

may seem like a strange arrangement, but it makes more sense if we understand how it came about. This is an old method that passed down from decades ago so that if family land was inherited from father to son, an outsider couldn't marry in and take the family land out of the blood line. So, the lines and priorities of descent in Kentucky prioritize the bloodline. If this state-provided estate plan is not enough for you (that spouses take fourth, and only receive one-third interest in the residence), consider how this one-third interest will work for blended families. Stepmom now owns one-third of the house with stepchildren! ALL I CAN SAY IS...I hope they all get along!

This is why you need an estate plan. You need to state up front who is in charge. Who is going before the court? Who is going to ensure taxes are paid, bills are paid, and that those you choose get your possessions? If you don't, the state may appoint anyone. And anyone, even a creditor to whom you owe money when you pass away, may start the process of distributing your estate.

The court process of winding up your affairs after you pass away, which includes not only distributing your possessions, but also paying taxes and debts and transferring real estate, is called *probate*. In Kentucky, there are very few exceptions to a person's estate not needing to be probated. The process of probating an estate has a lot of dread attached to it. Probate can be very helpful, and in most cases is not very expensive. The most dreadful probate situations are those where no one prepared for probate by creating an estate plan. And, the smaller the estate the more needful probate can be. Large assets such as annuities, life insurance policies, IRA's and 401k plans usually include their own estate planning direction. It is those more personally held items, like personal possessions or the checking account, where more troubles arise among the decedent's (the person that has passed away) survivors.

The bottom-line is probate should not be feared or even avoided for many. The real fear is failing to plan. Estate planning will save your family stress, lots of time, money, and gives you the peace of mind to know that everything will be handled just as you wish. Then your family can focus on the things that matter most: caring for each other.

#### Estate Planning Quiz 1:

1. What does Intestate mean?
  - a. The state where you pass away,
  - b. Dying without a will,
  - c. Things included in your estate.
2. Estate Planning is:
  - a. Required by law,
  - b. For those who own more than one house, or are wealthy,
  - c. Essential for anyone with personal possessions.
3. When there is no Will, the first priority group to inherit is:
  - a. The Parents
  - b. The Children
  - c. The Spouse
4. The only one that can ask the Court to start the process of distributing your possessions is:
  - a. Your spouse,
  - b. Your family members,
  - c. Any creditor,
  - d. All of the above.
5. The only things that do not go through probate is:
  - a. Residential home,
  - b. Insurance policies,
  - c. Checking accounts,
  - d. Vehicles,
  - e. Savings accounts.
6. The most important thing in estate planning is:
  - a. Good record keeping,
  - b. Having a large estate,
  - c. Having one,
  - d. Peace of mind.

Answers:  
1.—b; 2.—a; 3.—b; 4.—d; 5.—  
b; 6.—c.

## WHAT IS IN AN ESTATE PLAN?

As we said earlier, estate planning can be complicated, but doesn't have to be. And, there is complex estate planning and basic estate planning. What we will help you with here is basic estate planning. We want to get you started. If you need to go further after this webinar, wonderful. We just want to help get you on your way.

First, let's get a picture of what is ahead. If estate planning is figuring out who is going to get your stuff when you are gone, then what goes into that? Regardless of how complex an estate plan is, there are six basic tools:

1. Last Will and Testament
2. Durable Power of Attorney (Healthcare and Financial)
3. Living Will Advance Directive
4. Retirement Accounts (IRA's / 401K's)
5. Insurance Policies
6. Trusts

In this section, we are going to get you through the first three of these listed above. But before we do, let's say a word or two about the last three items: 4, 5 and 6. There can be wonderful benefits in sitting down with an Estate Planning or Elder Law Attorney to discuss these. You should periodically review all designated beneficiaries in all of your bank accounts, investment accounts, retirement accounts and your insurance policies. Payable on Death designations on accounts is a very important planning tool as well. None of these items including insurance policies should pay out to the estate. They should pay to beneficiaries of your choosing, such as children, trusts, or charities.

Trusts are an essential planning tool for most everyone. But that is another session, so join us for any one of our Medicaid Webinars. Trusts are the foundational way to keep from losing your money to the government or to long-term care costs. There is a lot more that we could go into as we look at advanced estate planning, which would include:

- Asset Preservation
- Long-term Care Planning
- Veteran's Benefits
- Tax Strategies
- Gun Trusts
- Pet Trusts

Well, I think you get the picture. We all don't need some fancy-shmancy pet trust (or maybe you do?)! But we do all need a Will, a Power of Attorney and a Living Will.



## WHAT IS A WILL, POA & LIVING WILL?

The Will—A Will simply describes 1) who is in charge of distributing your possessions after you have passed away (and all of the details that go along with that), and 2) who gets those possessions. It also makes preparations for any loved one that needs special consideration (usually your spouse).

The Power-of-Attorney—Your Power-of-Attorney (POA) appoints a person to have legal authority to act on your behalf while you are alive (simply for convenience or in case of emergency/or diminished capacity).

The Living Will Advance Directive—A Living Will Advance Directive directs medical personnel, mainly doctors, to go by your predetermined preferences for two specific areas of life-sustaining treatments (feeding tube & life support). This is not an “either/or choice” but an “always keep vs. allow removal at the discretion of an appointed person (your healthcare surrogate)” agreement.

We are going to lead you through each of these legal documents and how to make the choice for each concern along the way.

## HOW TO USE THIS WORKBOOK AND THIS WEBINAR

Follow along with the video you have downloaded from our website. If at all possible, print out this workbook so you can fill in the blanks along the way, write notes in the margins, and jot down your questions so we can help you.

If you follow this approach, when you come to the very end your Estate Plan will be complete. All you will have to do is take it to an attorney. We’d love to help you, as we specialize in all aspects of end-of-life legal options and can streamline your experience to make the most of your time with us. Our initial consultation is free, so you have nothing to lose!

You can bring this workbook with you to your consultation or to another trusted attorney and have them complete this for you. You will be happy that you did. Responsible management of your personal life and peace of mind for your future are the ultimate gift you give your family. Thank you for taking the time to work through these sessions with us.

If we can help in any way along the process, please email or call us!

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## SECTION 1 CREATING YOUR WILL

In this section we will cover the choices for your Will.

### WHO GETS YOUR POSSESSIONS WHEN YOU DIE?

You decide or the Commonwealth of Kentucky will.

#### Three Major Decisions

In a Will there are really only three primary decisions. Who will be in charge of handling everything when I pass away? Who will get my possessions? Who do I need to make special provisions for?

A Valid Will in Kentucky  
(2 options):

The entire document must be in your own handwriting with one witness present when you signed it who must later appear in court and attest to it being your actual Will,

OR

A typed document with your signature and 2 witnesses in your presence and one another's presence when you sign it, along with a notary.

#### 1) Who will be in charge? The Executor.

I want \_\_\_\_\_ to handle the distribution of my possessions when I die.

This decision is not about giving honor to someone or making sure someone knows that you love them. The person in charge is called an Executor (or an Executrix if female) The name implies something: they get things done. They will have a lot of work to do, so they need to be able to handle pressure and handle others who may not be agreeable. They do not have to be the best person with money, but they must be trustworthy and organized.

Your Executor/Executrix will have to go to court and go before the judge at least once, maybe even three times, so it does help if they are more local or have the flexibility to get off work.

**\*\*You should always choose a backup for the Executor/Executrix. If your primary person listed above is unable to serve, who would be your second choice?**

If \_\_\_\_\_ cannot handle the distribution of my possessions when I die and serve as **Executor**, then I want \_\_\_\_\_ to handle the distributions and handle my affairs.

(You can have as many back-ups as you want, and you can have more than one person fulfill the position).

#### 2) Who will get your possessions?

☐ I want all of my possessions to go to \_\_\_\_\_.

☐ I want all of my possessions to be split among (name) (percentage)

1) \_\_\_\_\_ %

2) \_\_\_\_\_ %

3) \_\_\_\_\_ %

4) \_\_\_\_\_ %

5) What if this isn't possible, if one of these people have passed how should their portion be handled? \_\_\_\_\_

(make more lines as needed)

☐ I want the specific things listed here to go to specific people:

Except for: \_\_\_\_\_ which I want to go to \_\_\_\_\_

6) What if that isn't possible? For the specific items? To whom should they then go? And what if that isn't possible?

What about special people: the kids, a person with special needs or your spouse?

☐ I have the following Underage Children:

\_\_\_\_\_

I would want \_\_\_\_\_ to care for these children after my death, and if he/she cannot, then I would want \_\_\_\_\_ to care for them.

I would want their money to be held in Trust for them and I would want \_\_\_\_\_ to manage that money until they reach age \_\_\_\_\_.

☐ Adult Children & Spouses

\_\_\_\_\_ I would want my adult children to take their inheritance without regard to their spouse getting it someday, or

\_\_\_\_\_ I would prefer to restrict my adult children's share so that if they have passed it does not go to their spouse but does go on to their blood/adopted children only.

If you chose to restrict, who would you want to hold the grandchildren's share until they reached adulthood? \_\_\_\_\_. At what age would you like for these grandchildren to receive their share? \_\_\_\_\_

Are there any other concerns you have? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is there anyone in the family with special needs? \_\_\_\_\_

Does your spouse have a long-term care insurance policy? \_\_\_\_\_

Did you or your spouse serve in the military? When \_\_\_\_\_

**\*\*DISCLAIMER:** These basics for your Will are a huge step forward, but please be aware that in planning for long-term healthcare expenses, there is much more to do. Additional resources are available, and we are happy to lead you to your next step.

**COMMENTS OR QUESTIONS:**

I will get my Will completed by \_\_\_\_\_, because if I do it will make me feel  
\_\_\_\_\_ because \_\_\_\_\_  
and as a result I will be able to \_\_\_\_\_.

## SECTION 2 CREATING YOUR POWER OF ATTORNEY

What is a Power-of-Attorney? A Power-of-Attorney (POA) is essentially the adult equivalent of a school permission slip like we had as kids. If we wanted to go on the school trip, we had to get permission from a parent to go. And on that permission slip, our parent gave permission for the teacher to act as our parent and if anything went wrong, the teacher could take the action necessary for getting us to the doctor or travel and take us where we need to go or transfer money from our school lunch account and use that money to pay for our meal while on the road. Right? This makes perfect sense when we were children, but as adults we have been taking care of everything ourselves for so long that we don't think of how important such authority could be. This is especially true if something goes wrong.

Why would I need a POA? Imagine you were in a car accident on the way to the store. You are in the hospital unconscious and the doctor needs to make a choice about surgery. You cannot give permission because you are unconscious. Who has the legal authority to tell the doctor she may perform surgery? Your spouse? The closest of kin to arrive first? Any family member who lives with you? Any family member that is immediate family (son, daughter, mother, father, spouse, sister, brother)? How about none of the above. The doctor must provide the surgery if in his opinion it is essential or in your best interest. Without a POA in place, the doctor must do what the doctor thinks is best regardless of your preferences, your ability to pay, need to consider alternatives, your belief system...none of your concerns matter and the doctor must choose. Why? Because no one has the legal authority to act on your behalf.

Or what if while you are in the hospital after that car accident, in which you lost your wallet, you need to get the bank to stop payment on the checks that were in your wallet and to cancel your credit cards? If you don't act quickly, someone could write hundreds of dollars in checks over the next few days. With the POA, your agent (the person you have chosen to act on your behalf) could handle all of this for you. In fact, they could handle it before you even get out of surgery.

Without a POA in place you have your choices replaced by a medical professional's but without your specific concerns taken into consideration. You have no one who can make emergency financial choices that could prevent loss of lots of cash or to help you get cash in a hurry when needed.

This is why all of us need a POA! But let's go a step further. If, as we age, you begin to have memory failure or a little dementia. Let's hope that doesn't happen, but if it does and there is no POA in place, you may not be able to get one due to your cognitive decline. If you are unable to because of cognitive decline, then the only option will be going to guardianship court and have someone else be appointed as your guardian. The POA is the option to prevent that.

### CHOOSING A POWER OF ATTORNEY AGENT (ATTORNEY-IN-FACT).

Just as we said when speaking about choosing the Executor of your Will, your POA should not be a choice to make someone feel good, honored or treated fairly. The position can be a position of pressure. It requires organization, patience, and flexibility. You must be able to trust your POA.

- 1) Who would you trust to be in charge of healthcare decisions for you right now if you could not do it for yourself? \_\_\_\_\_. If that person could not serve, who would you want to step in and help? \_\_\_\_\_.
- 2) Who would you trust to be in charge of financial decisions for you right now if you could not do it for yourself? \_\_\_\_\_. If that person could not serve, who would you want to step in and help? \_\_\_\_\_.

### RESPONSIBILITIES OF YOUR ATTORNEY-IN-FACT

The person you appoint to have the authority in your POA is your agent. The legal term is Attorney-in-Fact. The Attorney-in-Fact cannot do whatever they want with your money\healthcare choices or records. They are bound to follow your guidance. They have a fiduciary role. That means that they are bound to act in your best interest. If they do not act in your best interest, they can face criminal penalties.

Generally, the work of an Attorney-in-Fact is not heavy. There can be times when it is, but overall, the work is light, and they will rarely need to do anything for you. However, once long-term is needed, there could be an increase in the amount of work they would need to do for you. But even when the workload increases it is nothing more than what a normal, caring family member would do anyway.

The Attorney-in-Fact is not personally responsible for your debts when they act on your behalf. So long as they act in your best interest, and so long as they make a good faith effort, they are not personally responsible.

### COMMENTS OR QUESTIONS:

I will get my POA completed by \_\_\_\_\_, because if I do It will make me feel \_\_\_\_\_ because \_\_\_\_\_ and as a result I will be able to \_\_\_\_\_.

### SECTION 3 CREATING YOUR LIVING WILL ADVANCE DIRECTIVE

Your Living Will Advance Directive (LW or LWAD) is a little misleading. This medical directive form is not a will. It is a directive notating in advance what your wishes are regarding life-prolonging treatment.

There are essentially two questions to a Living Will Advance Directive. If you are in a situation where the medical professionals are about to administer or have been administering life prolonging treatment, do you wish that these treatments (artificial nourishment such as a feeding tube and breathing support apparatus) continue no matter what, or do you wish for someone of your choosing to be able to have these withheld or withdrawn if in their opinion they are no longer helpful, and they wish for you to pass away peacefully with only medication for pain management?

Even if you have healthcare POA's set up, a Living Will will override the power of the Healthcare POA. If you wish for these life-prolonging treatments to continue regardless, then declare that in your LW. If you wish for your healthcare surrogate to have the authority to have such treatment removed, then you need a LW.

Your Choices:

- 1) Who would you like to make emergency choices for you today if you had an accident?  
\_\_\_\_\_ and if they could not, who would be your second choice?  
\_\_\_\_\_.
- 2) If you were in an accident, do you want doctors to keep you alive as long as they can no matter what? (Yes / No) (circle one). Or would you like someone to have authority to choose to remove artificial nourishment if in their informed opinion it was no longer helpful or in your best interest? (Yes / No) (circle one).
- 3) If you would like someone to have that authority, would you want them to have it for a feeding tube \_\_\_\_\_ breathing support \_\_\_\_\_?

These choices are very important and can have a big impact on future healthcare choices. Your family members would greatly benefit from an open conversation with you about your preferences.

The single largest predictor of whether a family has conflict after the passing of a loved one is the degree of open communication within the family. Your family needs to know how you feel about care choices that are this significant. Not sure how to start or approach these discussions? We can help you with that, just call us at any time.

We look forward to hearing from you!

## CONCLUSION

Congratulations! You have done all the work necessary to complete your estate plan. This is a major step in preparing for your future and for your family's future. These choices, once you have them formalized with an attorney, will deliver peace of mind and prevent the circus that many families suffer.

We are so happy you have come this far. So use this momentum and finish the process. Complete your plan today. Call us and schedule a meeting to complete your Estate Plan and preserve your legacy. We provide convenient, caring counsel and are eager to serve you.

## WHAT'S NEXT

1. Contact us with any questions that came up as you went through the webinar.
2. Call us and arrange to get us your workbook so we can begin creating your Will, POA and LW. We will need to collect some personal information to do this such as names, addresses and ages of family members, or any other person, that is referred to in your Estate Planning documents.
3. Complete a legal service agreement to hire our firm to complete the process for you.
4. Schedule a meeting to sign your documents. We have several convenient ways to do this that range from video conference meetings to mobile drive-through signing, and of course the face-to-face in-office meeting for clarity and more comprehensive service is a great option.
5. Get your completed documents returned to you for safekeeping.
6. Make plans to attend another webinar that addresses your more advanced needs such as Veterans Benefits or Medicaid planning for long-term care. We excel in these areas, too!

## OTHER RESOURCES

(Available on our website)

How To Organize Your Most Important Documents and Records  
How to Talk to Family About End of Life Matters  
Caregivers: What To Look For and How to Find it  
Elder Law Guidance Online Learning and Monthly Newsletter