

[Estate Planning Done Right: How to Help Your Family from the Great Beyond](#)

This is a guest post from Robert Brokamp of [The Motley Fool](#). Robert is a Certified Financial Planner and the adviser for The Motley Fool's [Rule Your Retirement](#) service. He also has a [blog](#), [Twittering thing](#). Robert contributes one new article to Get Rich Slowly every two weeks. Note: No cats were harmed in the writing of this post.

Unless you're Obi-Wan Kenobi, you're not going to be able to visit your relatives after you die to offer advice, explain things you said when you were alive, or just totally freak them out. However, you can choose the next best thing: Get an estate plan, which tells everyone what you want done with your stuff, your body, and the things that came from your body (i.e., your kids) if you become temporarily or eternally incapacitated. But having a will isn't enough; a solid estate plan involves several documents and occasional updating.

For each issue of [my Motley Fool newsletter](#), I interview an expert (in fact, the feature is called "Expert Corner"). I usually don't port them over to the GRS audience, but **this one is required reading for everyone who will eventually die — or knows someone who will**. It's with [Deborah Jacobs](#) ([@jdworking](#)), a graduate of Columbia Law School and the Columbia Graduate School of Journalism, and the author of [Estate Planning Smarts: A Practical, User-Friendly, Action-Oriented Guide](#). (Pass it along to any friends and relatives, too, if their lack of financial planning will cost you time, money, or sanity.)

You can't predict when you'll die. Prepare now to save your family money and grief.

Robert Brokamp

Studies show that most people ignore estate planning. Any opinions on why that is?

Deborah Jacobs

I think there are a few reasons:

- One is that it requires us to face our mortality, and that's not pleasant for anybody, even though it's part of life. And so far I don't know anyone who has managed to beat that.
- Another is that it costs money, but it's not spending money on something that you live to see the benefits of, even though your family will.
- I think the third reason is that it's hard to identify what you're getting for the money. That is, to a large extent, you're avoiding conflicts and you're making sure that your family is taken care of, but since you're not going to be around to witness that, it's very hard to spend money on it.

Robert Brokamp

One of the reasons I think is that the term "estate planning" isn't clear. I think some people think "estate" means you have to be wealthy, and if you don't have an "estate" — as in [a big mansion in England](#) or something — you don't need to do estate planning. What would you consider sort of a good layperson's definition of "estate planning"?

Deborah Jacobs

I think estate planning covers two things. The first thing is something that people don't typically associate with estate planning, which is providing for your own financial well-being and your medical care if you can no longer take care of yourself. That's a subject that I cover in the first chapter of [the book](#), before you ever get to this notion of passing your assets after you pass away. The first chapter is called "Nothing Lasts Forever," and the subtitle is "Read this Chapter, Even If You Are Hardy and Clear-Headed." Because of good medical care and increased longevity, more and more of us are going to reach the point of age-related physical or mental disability, for better or worse.

The good news is we *are* living longer. The bad news is the end of our life may not be a quality life. I heard a statistic recently that one in every eight of us Baby Boomers will develop Alzheimer's. That's just an incredible statistic, so the first thing is providing for your own good care as you reach those twilight years.

Then the second thing with estate planning is providing for the financial security of your loved ones and determining who gets what after you pass away. But I totally agree with you: The term is too fancy for our own good, and when I would tell people I was working on a book about estate planning, some people looked at me quizzically or they simply said, "Oh, that's not something I need, because I don't have an estate." But **an estate is everything that you leave behind when you pass away: retirement assets, proceeds of [life insurance policies](#), a home, jewelry, everything in your [bank account](#).**

Your estate is everything you leave behind when you pass away.

Robert Brokamp

What do you think are the top estate planning mistakes?

Deborah Jacobs

The first is not having a durable power of attorney, which would empower someone to handle your finances in case you become incapacitated.

The second is not having an [up-to-date will](#) — or not having a will at all. **If you don't have a will, your assets pass according to state law**, and that varies hugely. Then, not keeping your will up to date could be a terrible thing.

In the book, I include [the example of Heath Ledger](#), who had an out-of-wedlock child and a relationship that broke up shortly before he died. His will had been made when he was in his twenties, and he left everything to his parents and his sisters. When he died, he had a two-year-old child. The story ended with people doing the right thing: The parents and sisters turned down the inheritance and let it pass to the child, but it would have been a lot better if he'd provided for that himself. For example, maybe he wanted to only leave the child some of the assets, but not all of his many millions. Or maybe he wanted to leave them in trust for her care until she reached a certain age. **By not having a will or not keeping your will up to date, anything could happen.**

The third thing is not naming a guardian for minor children, which you can only do through a will. Some people think it's okay just to take someone aside and ask, "Will you be my child's guardian if something happens to me?" But those informal arrangements are not legally binding.

If I could name one more, it's not naming a beneficiary of your retirement accounts. If you don't name one, you lose a lot of the tax-deferred and tax-free compounding that is associated with these accounts. (Money in tax-advantaged retirement accounts that is left to an estate instead of individuals must be withdrawn within five years.)

Robert Brokamp

Should people use [estate planning software](#) or forms they find on the Internet, or should everyone visit a local estate planning attorney?

Deborah Jacobs

I'm very opposed to do-it-yourself products, because there are just so many things that can go wrong, things that ordinary people just can't imagine. That could be who gets what or whether a will is even valid, because there are certain formalities associated with signing and witnessing a will, which are meant to prevent fraud.

On the other hand, I think that on the whole, lawyers charge too much for these documents nowadays. The reason I say this is that the same technology that makes it possible to download a document on the Internet is being applied to lawyers' practices to produce very high-quality form documents, yet many lawyers are still charging as if they are preparing these documents with a quill pen!

I'm really on a campaign right now — a sort of liaison between two worlds. On the consumers' side, I'm saying, "Don't do this at home." On the lawyers' side, I am saying, "If you all find this so objectionable, you're going to have to lower your rates for these documents."

Robert Brokamp

So how should someone go about finding an estate planning attorney?

Deborah Jacobs

The best way is to get recommendations from people who have been in similar situations or have a similar family background. You can ask other professionals you work with — your accountant, for example.

If that fails, there are associations of lawyers that can let you know about experts in your area. I like the [American College of Trust and Estate Counsel](#), because it's a very elite group. You have to spend a great deal of your practice on trusts and estates work. To get into the organization, you have to be elected to membership, so I think that they do skim out some of the best and the brightest in this field.

Robert Brokamp

How often do you need to update your estate planning documents? I'm guessing one of the reasons to do it is if you move to a different state, since the laws vary from state to state.

Deborah Jacobs

That's one occasion to do it. The rule of thumb is that this is something you should think about every five years — or more often if there's a change in your finances or a change in your personal circumstances. That is, marriage, divorce, you become a widow or widower, you move, or the law changes, as it did at the end of 2010.

Moving to another state is a very important occasion for at least looking at your estate plan, and the reason isn't so much necessarily that the state that you're moving to won't honor you will — because all states will honor a will that is valid in the state where it was signed — but the thing is that there may be specific terms drafted for when you were living in the old state that could be problematic in the new one.

A terrific example of that involves a very, very quirky provision in Florida law where a lot of people go to retire. The Florida bar figured this out, and wouldn't you know, they got a provision added to the law that says you may not name as an executor of your will someone who lives in another state unless it is a member of your family. So let's say you have your accountant or your lawyer back in New York who you've been with forever, and you move to Florida. You can't name him or her as the executor of your estate. This is a quirky little thing, seemingly little thing, that people might not think about.

Then there are all kinds of other things that could affect your estate planning that turn on differences in the laws between states. For example, whether there is a state estate tax. Sixteen states and the District of Columbia now have a state estate tax, and so that might be something that you want to plan for.

Robert Brokamp

I think once people have estate planning explained to them, they understand why it's important. But it's also important to get your family on board, because if they don't have an estate plan, you're the one who pays the price.

Unfortunately, that can be a difficult discussion, because it brings up a lot of family issues in terms of how much parents want to reveal about their finances and who is going to get what.

Do you have any suggestions for people to encourage their relatives — parents and siblings — to get their estate plans in order without seeming too pushy or too nosy?

Deborah Jacobs

It's interesting that you raise this, because after the first edition of my book was published, I had some people who bought it directly through the website who bought multiple copies, and they said, "Send one to each of my kids." It became apparent to me that people were using my book to help start the family conversation, so when I did the second edition, I added an entire section to the last chapter of the book, chapter 19, about how to start the family conversation.

I thought very long and hard about this, because it's such a touchy subject. There are a few ways to approach this, and how you do it will depend in part on who you're talking to. I divided it in the book between with your spouse or partner — which, by the way, is not a superfluous subject, because very often with spouses, one wants to deal with it and the other doesn't, and very often the one who doesn't is the older one, who is going to be statistically speaking, likely to leave behind this younger spouse, without addressing this subject. The other section is about talking to your parents.

For each, there were a couple of approaches. One is the conversation-starter approach. So with spouses, my conversation starters can emphasize your own mortality, like, "I'd like to talk about ways to provide for you and the family in case something happens to me." Or you can make it a subject of mutual concern: "You know, we're not getting any younger. I think it's time we did our wills." Or you could focus on the children. This works well for young parents. "Now that we're parents, we really shouldn't procrastinate about this."

If you're not comfortable plunging right in with one of these openers, you could go about it in a more roundabout fashion, which is to start with current events or an anecdote about other people. The Heath Ledger anecdote, for example, would work really well for parents of young children. Or maybe you recently saw a movie together, or you read a book, or there was a news report about someone your age who recently died or a sudden death in your community. Or say a friend or a family member has talked to you about their own plans. It can take the sting out of confronting it in the direct way that I propose with the conversation starters.

With spouses, they do have a card to play if they get pushed back. They can say, "We owe this much to each other," or, "Please do this for my sake." I think we're always in our rights to say that to someone who we are emotionally and financially dependent on. So that is my approach for spouses.

With adult children, it gets trickier. I'm talking now about the parent who chooses to discuss this with his or her adult children. The first thing I have to say about this is that **parents have no obligation to change an estate plan after hearing the child's preferences**, but I do think that if you have a good relationship with your child, disclosing what you're planning can help you to refine your approach. For example, maybe you're thinking of leaving one child a larger inheritance than the other because he has more children. If you share these details, you might learn from that child that he'd rather receive the same amount as his siblings, even though he could use the money, rather than face their wrath after you are gone. So explaining the principles that have influenced your decision could make it easier for children to accept or it might lead you to rethink what you have done.

I was really surprised at one point about a year or two ago when I was writing a story about this subject for the *New York Times*, and I interviewed a very prominent person who is on the faculty of Harvard and in his early 60s, and he began to talk to me about the huge fight he had with his sisters after his father died, because he was the one who was left the country house, and he really deserved it because he spent more time there, but these sisters have never forgiven him for it. If his father had sat the kids down and said, "I'm leaving the country house to Joe" — that wasn't his name — "because he lives close to it and he spends a lot of time there, and you all never

come anyway and never cared about that house and these are my reasons.” If they had heard it from Dad, they probably would have been much more accepting of it, but instead the inheritance turned the 60-some-odd-year-old adults — who were parents and grandparents themselves — into the functional equivalent of eight-year-olds.

A question that I sometimes get when I speak on this subject is, “Should I do this as a group, or should I do it one-on-one?” My answer is that it depends on your family dynamics, and I always use the example of my family, where family secrets are spread one-on-one, and everybody will say, “Well, did you hear? But don’t tell anyone.” When it comes around, you’re left saying, “Was I supposed to pretend that I didn’t know that or not?”

If you talk to them as a group, you may get a group dynamic where you suddenly feel like they’re ganging up on you, and that could be kind of uncomfortable. On the other hand, if you talk to them individually, I think it’s a good idea to say, “I’m talking to you; I already talked to your brother when he came last week” or whatever. Let the children know that you are having the same conversation with everybody.

The most important reason for having this conversation — and again, no obligation to change what you are doing — is to explain your reasons if they’re not obvious. If for some reason you’re not treating everybody fairly, this is the chance to really iron that out, because I think what most parents want more than anything when they think about what life for the kids will be like when they’re gone is they want the kids to get along. They don’t want family conflict. Parents hate bickering when they’re raising kids. The idea that they’re all going to either drift apart or be at each other’s necks after the parent passes away is a terrible thought.

So that’s talking to your adult children. Now, the hardest conversation of all is when *you* are the adult child and your parents are getting on in years and you want to raise this with them, because then you risk seeming like you’re a money-grubber interested in your inheritance.

The other thing that you risk is the parent reacting by saying, “Oh, what do you think? I’m demented and I don’t know what I’m doing anymore? I can take care of myself.” And very often they’re on the way, but they’re so afraid of losing control that even raising the subject can really threaten their desire for independence.

So there you have to proceed very delicately, and the way I’d do it to say, “I just did my own plan. Do you think you should update yours?” Another is, if you’re not comfortable with the direct approach, convey a story about a friend’s parents who didn’t take the necessary measures, for example, by not signing a durable power of attorney and how much hardship it caused for those children.

But I *do* think that you need to guard against what are the most common grounds for contesting a will or a trust. One is undue influence, which refers to efforts to coerce someone to sign estate planning documents that favor one person over another. Another is the argument that the elderly person had no idea what they were doing when they signed the document; that is, that they lacked capacity.

If you get a lot of pushback from your parent — or maybe even a little — I think it's more important to drop the subject and back off than to potentially damage your relationship over this in what may be the very little time that you have left together.