

# Consumer Reports Money Adviser

JUNE 2006

VOL. 3, ISSUE 6 EXPERT • INDEPENDENT • NONPROFIT

feature report

## Estate-planning questions we were dying to ask

Here's some expert advice on what to include and how much a plan will cost.

**S**etting up a proper estate plan lets you indulge your inner control freak's every desire. You can dictate who will take care of your kids, who gets everything from your retirement assets to your state spoon collection, tell your family and doctors what to do if you become too sick to make decisions about your health care, and dodge some estate taxes.

If you don't create a solid plan, state laws and perhaps even court battles will make those determinations. So if you've been putting it off, it's time to face the fact that someday you're going to, well, go. To help you draw up or amend an existing plan, we posed the following questions to Alexander Bove Jr., a Boston estate-planning attorney and author of "The Complete Book of Wills, Estates & Trusts" (Henry Holt, 2000).

### Q What should be included in an estate plan?

The basics start with your will, which spells out how your property will be distributed; the name of a guardian for any minor children; and the name of your executor, who will pay your debts and distribute the remainder of your estate according to your wishes. You should have a durable power of attorney, which names a person to make legal and financial decisions for you if you're incapacitated. Everyone should also have a living will, which spells out what kind of care you want, or don't want, if your condition becomes terminal. You need to appoint a health-care proxy, a person who will ensure that your living will is followed. And you should sign a HIPAA (Health Insurance Portability and Accountability Act) release, which allows your medical information to be shared with your health-care proxy. Many plans also include one or

more living trusts to avoid probate, save taxes, and distribute most of your estate.

### Q How can I prevent someone from contesting my will?

There's no sure way to do that. You can discourage it by using what's called an in-terrorem clause. It says that anyone who contests your will loses what you left him or her. But the best way to avoid contests is to set up a living trust. While wills appoint guardians and executors, you can put most of your property in a trust, which will keep it out of probate. A trust is much more difficult to contest than a will because it takes effect immediately, while you are still alive. Since it may be in effect for some time before you die, it will be harder for someone to say you were incompetent or didn't know who your proper heirs were when you drew it up. Your will, of course, doesn't become effective until after you die.

### Q How can I find a good lawyer to draw up my plan?

Ask your accountant, insurance agent, or financial planner to recommend someone who specializes in estate planning. Also, many cities have estate-planning councils that can make referrals. You can also try searching on the Web site of the National Association of Estate Planners and Councils ([www.naepc.org](http://www.naepc.org)).

### Q What does setting up an estate plan cost?

A lot of law firms, including ours, ask you to come in for a conference that can cost \$300 to \$600. Then you'll get a letter outlining what your plan should include and how much it will cost. For most married couples with children, it will probably range from \$2,000 to \$6,000, depending on the size and complexity of the plan.

### Q Should I bring any paperwork to the first meeting?

Yes, we ask to see old estate-planning documents such as wills, and we want to see other legal documents such as divorce settlements, copies of real-estate deeds, insurance policies, and brokerage and retirement account statements.

### Q How much will probate drain away from my estate?

The cost of probate depends on where you reside and the size of your probate estate. Many states have laws that say an executor may charge on a sliding scale. So, for example, he or she may charge 2 percent of the first \$1 million of your probate estate's value and 1 percent of any amount over that. And you'll incur other fees. Real estate and other property, such as jewelry and furniture, will have to be appraised, for example. How much that will cost depends on what you have.

### Q Where should I keep my estate-planning documents?

Our firm keeps about 70 to 80 percent of our clients' original documents in our vault. If you want to keep the originals yourself, put them in a bank safe-deposit box or in a safe at home.

### Q When should I update my estate plan?

When you have a significant change in your family situation, such as a birth, death, remarriage, or divorce, or if there's a significant change in the tax laws. You may want to make alterations based on changes in the lives of your heirs—for example, if one becomes disabled. And you'll need to make some tweaks if there's a change in your finances, such as receiving a sizable inheritance from a relative or if you start a new business. \$