



Investment Guide

How To Do Estate Planning On The Cheap

Deborah L. Jacobs, 12.06.10, 12:00 AM ET

Yes, it can be painful to pay for estate planning. Lawyers charge a lot. The benefits of a plan are delayed, and you don't live to see them anyway. Who wants to spend big bucks on a plan when times are so tough and the federal estate tax is in flux?

Fewer and fewer Americans, it seems. Only 35% had a will in 2009, and only about half had any estate-planning documents at all--a will, a trust or a financial or medical power of attorney, according to a survey by Lawyers.com. That's a drop from previous years.

What about do-it-yourself planning? In theory, you can use books or software and websites that spew out documents for free or for a fraction of what lawyers charge.

There's a decent argument that doing something on the cheap is better than doing nothing. If you die without a will ("intestate," in legalese), state law will determine how most of your belongings are distributed, and it may not be in the way you'd want. If you're a single or surviving parent who dies without a will, the court will decide who should raise your minor children. And certainly, before you're wheeled into the operating room, it's better to have signed living-will and medical power-of-attorney forms--even if you haven't consulted a lawyer.

The trouble with do-it-yourself planning, however, is that even if your situation seems simple, there are many oddball things a layman wouldn't think of that can go wrong, especially with a will. These mistakes can end up costing your heirs a lot more than you saved in legal fees.

Example: Fort Lauderdale lawyer Joanne Fanizza recently handled the estate of an elderly Florida woman who had a guy (not a lawyer) in her condo building write her will. He worded it in such a way that her estate lost "homestead protection"--meaning protection from her creditors--for her condo. So even though she had no debt, her kids had to sit out Florida's 90-day creditors' claims waiting period before selling the condo. "The real estate market was falling, and every day cost them money in lost value," Fanizza reports.

To be sure, not every will written without a lawyer leads to a horror story and some written by lawyers go awry, too. But owning a home, being married or having children complicates estate planning and increases the risk of foul-ups. And with the federal estate tax scheduled to come back next year for those who leave behind more than \$1 million, minimizing Uncle Sam's bite will be a concern for many more people. (Plus, 19 states currently have their own estate taxes, and some of those kick in at fairly low asset levels.)

Here's another alternative: Capitalize on the fact that lawyers, too, are relying on software and find one who will prepare documents for you cost efficiently.

We've listed below five key estate-planning documents, rough low-end costs for having a legal pro prepare them and some of the value a lawyer might add. Each estimate is based on an hourly rate of \$300 (although some estate lawyers charge as much as \$1,000) and covers the document, a brief consultation and help spotting pitfalls or opportunities unique to your situation. The prices assume the matter is simple enough to take minimal professional time and that the lawyer uses software.

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Jonathan G. Blattmachr, a retired partner of Milbank, Tweed, Hadley & McCloy and founder of the Melbourne, Fla. company InterActive Legal, which sells software for estate lawyers, helped us determine how much of an attorney's time would be

involved under those conditions. He notes that a lawyer who prepares your will and perhaps a life insurance trust might throw in the other, simpler documents listed here for free or for a nominal additional cost. So it pays to negotiate for a lump-sum price. You should be able to get the whole package for \$1,200 to \$2,000, but don't be surprised if some lawyers ask for \$4,000 or more. If, after reviewing this list, you still want to use do-it-yourself software, then consider hiring a lawyer to review your self-prepared documents. Figure on paying for one to two hours of his time at \$300 an hour.

Basic will: \$600

As the cornerstone of many estate plans, a will should transfer assets, appoint a guardian for minor children and name an executor or personal representative--the individual or institution that takes charge of your estate after you die and distributes property as you specified.

Value added: This is the document most fraught with land mines, some of which only an experienced lawyer can spot. One problem that can arise with DIY products is inadvertently cutting a family member out of your will. For example, some DIY software automatically disinherits a special-needs child if you answer yes or no questions a certain way. (If you have such a child, get professional help with your estate plan.) A more common trap goes something like this: Mom wants to provide equally for her three children. Shares in GE constitute a third of her estate. So she leaves the stock to one child and the rest of her assets to the other two. Several months before she dies, she sells the stock. The child who was supposed to get it receives nothing. If the other two siblings want to even the score, they could end up owing gift taxes.

Irrevocable life insurance trust: \$600

This trust is created to own a life insurance policy. Why use a trust? If the insured owns a policy on his own life, the insurance proceeds become part of his taxable estate. Your heirs can own insurance on your life directly, without using a trust, but not if those heirs are minors.

Value added: Though simple in concept, this trust requires careful execution. You can put money in the trust to pay insurance premiums using the "annual exclusion"--a provision that allows anyone to give anyone else \$13,000 a year. But the annual gift must be of a "present interest"--something the recipient can use right away. To satisfy this requirement the beneficiaries of an insurance trust (or their parents, if the beneficiaries are minors) are usually given what's known as Crummey powers--the right for a limited time, usually 30 or 60 days, to withdraw from the trust the yearly gift. The lawyer can supply a sample letter, called a Crummey notice.

To keep the lawyer's cost low, consider in advance whom you should name as an independent trustee and a backup trustee. Think, too, about other issues, including the timetable for distributions from the trust and how much power the trustee will have over distributions.

Durable power of attorney: \$150

This document appoints a trusted family member, friend or adviser as an agent to act on your behalf in a variety of financial and legal matters if for some reason you can't. Typically this is a concern of older people, but much younger people can also be incapacitated.

Value added: A lawyer can help you determine what rules apply in your state and whether, if you own real estate in more than one state, you will need a power of attorney in both. Other issues you might discuss: What powers should be included (for example, the power to make gifts or create a trust)? When should the document take effect?

Health care proxy: \$75

Also called a health care agent or health care power of attorney, this authorizes someone to make medical decisions on your behalf if you can't.

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Value added: The form, which varies from state to state, is generally not complicated to fill out. But if you're not sure whom to choose as your agent, you may want to discuss it with a lawyer. Whether you do this yourself or not, Blattmachr recommends signing four copies of both this document and your living will. Keep one yourself and give one each to your health care agent, your primary physician and a trusted adviser.

Living will: \$75

This expresses your preferences about certain aspects of end-of-life care, rather than simply leaving decisions up to the person named in your health care proxy.

Value added: A lawyer who has witnessed life-or-death decisions with other clients can facilitate conversations about this difficult topic. Bernard A. Krooks, of Littman Krooks in New York City, was meeting with a couple when the husband stepped out for a moment. In his absence the wife confessed that she couldn't follow her husband's wishes to pull the plug--she would keep him alive under any conditions. Krooks disclosed that to the husband, who named an adult child as his medical agent instead.

Lawyer and journalist Deborah L. Jacobs is the author of Estate Planning Smarts: A Practical, User-Friendly, Action-Oriented Guide, www.estateplanningsmarts.com.

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