



# *Kentucky* **ESTATE PLANNING** *Guide*

**The Johnson Law Group, PLLC**

---

Authors:

J. Brandon Johnson

April Sain



## TERMS AND CONDITIONS AND DISCLAIMER

**\*\*THIS IS NOT A COMPREHENSIVE GUIDE TO ALL RELEVANT KENTUCKY ESTATE PLANNING OR PROBATE LAW. THIS GUIDE DOES NOT CONTAIN LEGAL ADVICE. THIS GUIDE DOES NOT CONSIDER YOUR SPECIFIC CIRCUMSTANCES. YOU MAY HAVE OTHER LEGAL NEEDS, INTERESTS, AND COMPLEXITIES THAN THOSE DISCUSSED IN THIS GUIDE. *This guide is simply designed to help you understand general estate planning issues and assist you and your loved ones to plan for the future.***

Your situation, needs, and interests require additional and specific consideration. This guide is meant to provide a general overview of estate planning and probate in Kentucky that you may share with your family and loved ones. We hope this will lead you to get your affairs in order. We offer flat rate services to assist you in this process.

If you download or read this Guide, you accept the terms of this disclaimer. If you do not accept these terms, then you do not have permission to use this Guide for any reason.

Copyright © 2021 by **THE JOHNSON LAW GROUP, PLLC**

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher at [brandon@thejohnsonlawgroup.com](mailto:brandon@thejohnsonlawgroup.com).

# TABLE OF CONTENTS

<b>1</b>	What Is an Estate Plan? .....	4
<b>2</b>	Estate Planning Myths and Little-Known Facts .....	7
<b>3</b>	What If You Don't Have An Estate Plan? .....	10
<b>4</b>	Overview of Estate Planning Documents.....	12
<b>5</b>	The Cost of Creating and Updating Your Estate Plan .....	15
<b>6</b>	What Is an Executor and Who Should Yours Be?.....	17
<b>7</b>	Inheritance and Estate Taxes: What Are They, Who Pays Them, and When? .....	18
<b>8</b>	Estimating the Value of Your Estate .....	19
<b>9</b>	Getting Started On Your Estate Plan .....	20

## What Is An Estate Plan?

*An estate plan directs what happens to your stuff when you are disabled or die and who helps sort things out. Thinking about and planning for your death or disability is tough. However, your family will appreciate your effort at the end of your life. Ultimately, estate plans ensure – to the largest degree possible – that your house is in order and that your loved ones will be able to grieve over the loss of your life instead of arguing about your stuff.*

***An estate plan puts your wishes into writing and ensures stability when illness or tragedy strikes.***

Your estate — however large or small — is important and worth planning for. Consider everything you own — the first things that may come to mind are possibly your home, your car, your bank accounts, and things like that. But **your estate encompasses so much more than that** — all your personal property, your collection of rare memorabilia, any investment or insurance accounts, and even pets!

We will all die. Lord willing, we will not all be incapacitated. You can be assured that your estate plan will be useful when you die or if you become unable to make decisions because of your disability or incapacity. **An estate plan does two important things.** First, we help you

1. identify people to serve your interest in the case of death or disability,
2. identify your beneficiaries,
3. plan for easy transfer of assets to beneficiaries, and
4. identify opportunities for trust, business, and tax planning.

The second purpose is to establish to whom you wish your assets and property to pass to upon either death or incapacity. If you are a young married couple with children living in Kentucky, a Will is important to ensure that all property goes to the surviving spouse instead of equally divided between the spouse and children. Otherwise, your stuff will be divided between your spouse and children through a Probate Court Guardianship. These are nightmare situations that you can easily avoid by clearly delineating who gets what, when, and how.

Think also about the meaningful items you have accumulated over your lifetime—that special piece of jewelry that belonged to your grandmother or the set of golf clubs your great uncle left to you. Whether those family members made specific bequests to you or designated personal property to be distributed among family members, it is very likely that they had an estate plan in place. Otherwise, that family member's estate would have gone through probate or estate administration. Dying without a will in place is known as dying intestate, and the way assets are handled when that happens varies from state to state. No matter the jurisdiction, you want to avoid having to deal with the intestate system or causing your family to have to deal with it when you die. We will discuss the specifics of the Probate System in a later Chapter.

You may very well have heard of a Will before, but you may be asking yourself, “**what else goes into an estate plan?**” It is important to note that no estate plan will look the same, but the main components are

- 1 Last Will and Testament** (a.k.a. the Will that you are already familiar with),
- 2 Healthcare Directive or Healthcare Surrogate,**
- 3 Living Will Declarations,** and
- 4 Power of Attorney.**

If you have minor children, a Trust may also need to be created for their benefit. Many of our clients set up a trust to avoid forcing family to hire an attorney and go to probate court. Many of our clients are small business owners that need help with business succession planning. Several of our clients need strategies to pass along wealth to their loved ones or charities. We will discuss each of these documents in great detail in a later Chapter, but it is important to understand the basic purpose of each.

The **Last Will and Testament** is a detailed instruction as to the distribution of property and assets.

Your Healthcare Directives will come into play if you are unable to make important medical decisions for yourself and will designate an

individual to make them for you. This is sometimes referred to as a **Medical Power of Attorney**.

Along the same lines, a **Living Will Declaration** allows you to make important medical decisions on your own behalf in advance, such as whether you would want to refuse life support in certain circumstances.

Finally, a **Power of Attorney** assigns an individual to control your assets and finances while you are still living but unable to make decisions for yourself. Keep in mind that this is not the same as an Executor, although you could certainly designate the same person to fill both roles.

In summation, an estate plan is a way for you to decide what happens to your life's belongings after you pass away or become incapacitated. We make the estate planning process easy, simple, and complete. **An estate plan provides peace of mind that your family will continue to prosper.**



CHAPTER

# 2

## Estate Planning Myths and Little-Known Facts

*Many assume that only sick or elderly people need estate plans. In reality, it is important for everyone to have an estate plan — whether you are young, old, just starting your family, or wealthy beyond imagination.*

### The Marriage Myth

One common misconception for married folks is that an estate plan isn't necessary because their spouse will "automatically" inherit all their things upon death. This may not be the case unless you have a Will, depending on who else survives you. Under Kentucky intestate succession laws, your stuff may be divided between your surviving spouse, your children, parents, or siblings. In the absence of a Will, the law entitles a surviving spouse to half of any property not jointly owned! In other words, if you are married and your spouse owns anything solely in his/her name, that property is subject to a one-half split between you and the children.

Kentucky is what's known as an "equitable distribution" state, rather than a "community property" state. In an equitable distribution state, property belonging to a married couple is not automatically presumed to belong equally to both parties. Rather, property is classified as either "marital" or "individual" property. This only really matters in two instances — at divorce or upon death. On the other hand, in a community property state, property belonging to a married couple is assumed to belong equally to both parties, even if only one party's name is actually attached to it (with some exceptions). Because Kentucky is an equitable distribution state and not a community property state, it is even more important to create an estate plan if you're married.

## The Youth Myth

Another common misconception about estate planning is that it is only for older, wealthy people. This is not true! Even if you're young and healthy, it is important to plan for the unexpected. Additionally, as people continue to marry later in life and have multiple marriages, it is important to plan if you are cohabitating or in a long-term, committed relationship. As an example, say you have only one sibling and the two of you are estranged, no living parents, and a loving partner of ten years and you die without a Will – believe it or not, may legally inherit your property without a Will. The brother also has a legal claim to become the administrator of the Estate because he now has the economic interest in the administration of the probate matter. But with a Will in place, you oversee designating whomever you trust, and think would do the job best. In this example, you would likely designate your partner over your estranged sibling. In addition, you may want to pass all your property to your committed partner instead of your deadbeat sibling. It is important to consider these situations with a good estate planning attorney.

***Creating an estate plan gives the ultimate decision-making power and authority over your things to those that you trust – blood relatives or otherwise.***

## The Healthy Myth

Finally, a common misconception about estate planning is that a person in good health has no need to make plans regarding future medical decisions. This is the myth of invincibility. The only thing certain in life is death, with taxes following as a close second. Ensuring your estate plan works and does not create undue burden gives a sense of relief and, frankly, accomplishment of being proactive.

In later chapters we discuss the details of a Healthcare Surrogate and Medical Power of Attorney. These documents are the most important to have should you experience a life-altering accident or injury. While you may be healthy today, devastating car accidents and other medical emergencies happen daily. Being sure that your estate plan is in place allows you to ensure a designated loved one will know your intentions and make the best decision possible for you.



Our Estate Plans anticipate worst-case scenarios, and a **Healthcare Directive** is a tool that sets forth in writing how you want to handle potential incapacitation (i.e., if you would want to be kept on life support). The healthcare documents are essential, and often less considered aspects of estate planning. We want to help you understand and execute these important documents.

In sum, everyone should have an estate plan, and we want to help you plan for your future and make sure your assets are protected. We understand that you may not be jumping out of your chair to go through the process of thinking about your death or incapacity, but we hope that you do know that it is important and worth your consideration. **We offer flat rate, convenient, and comprehensive estate planning services.**



## What If You Don't Have an Estate Plan?

*We've talked in previous Chapters about the importance of having an estate plan in place and alluded to the alternative – dying without a Will and having your estate go to probate court. But what does that really mean? This chapter provides a more thorough review of the probate system and explains what exactly happens if you die without a Will.*

### 1 Opening a Probate Matter

The alternative to having an estate plan is **probate court**. Upon death, your spouse will need to hire an attorney to open a probate matter or do so pro se (without an attorney). If your spouse chooses to operate pro se, the Court will treat him or her by the same rules it treats attorneys. On the other hand, hiring a good attorney will be efficient and make the surviving spouse's life easier. A bad attorney will cost you more and not be efficient.

If operating pro se, it is important to note that the Court will only appoint an Administrator at what is known as "motion hour." There, the Court will sign documents that you provide, so it is important to bring all the right documentation.

### 2 Appointment of an Administrator

At court, the first thing a probate judge will do is appoint an Administrator to manage the decedent's estate. Some states also call this a personal representative. That **Administrator** or personal representative is generally required to post a bond and surety to ensure that he or she does not accidentally or intentionally make a mistake that costs the estate.

### 3 Accounting of Assets and Debts

After the representative has been appointed, he or she will need to determine and/or locate all assets within the estate. This is perhaps the most difficult task of the representative but is necessary to complete and file an "inventory" promptly with the Court. An

**inventory** for purposes of probate law is a list of the decedent's assets and their value.

Compiling the information for an inventory can be a lengthy and difficult task for a third party and will likely involve sifting through your bank statements, insurance policies, and tax filings. But for you, the person who knows your own assets, personal property, and accounts better than anyone else, the process is much simpler. To create a plan for the distribution of your own assets would eliminate this potential headache for your representative and ensure that all your belongings are accurately accounted for.

Next, your representative would be tasked with locating any creditors you may owe money to, notifying them of your death, and using estate funds to pay those debts. Along these lines, your representative will also have to file your final tax returns after you've died. This is a task that is unavoidable and difficult to plan for ahead of time; however, the key is to designate and prepare your executor ahead of time so he or she is prepared for the task.

### Avoiding Probate Court: Hiring an Attorney and Creating an Estate Plan

Death is difficult. Having your surviving spouse hire an attorney after your death is not ideal for EITHER party. Dying intestate creates stress – and potential dysfunction – because of the uncertainty that comes with grief. While you could have designated a representative, who agreed in advance to serve as your executor, now an individual is thrown into the role, unprepared and likely confused, having to hire an attorney or stumble through the process, while grieving.

Creating an estate plan allows you to plan for and even avoid some of the tasks this chapter has discussed. In addition to designating your own personal representative, known as an executor, when designated via Will, you can also designate how any final debts, funeral costs, or other expenses should be paid. In creating your estate plan, we will not only help you determine how and to whom to distribute your estate, but we will ensure that no loose end is left untied.

In summation, if you die without an estate plan in place, you have died "intestate" and your estate will pass through the probate system. Without putting specific instructions in place as to who you want to inherit your stuff, who you want in charge of its disbursement, or what kind of medical treatment you'd like to accept or reject upon incapacitation, the courts and your loved ones will have to work together to make these deeply personal determinations for you.

CHAPTER

# 4

## Overview of Estate Planning Documents

*We've discussed the importance of having an estate plan in place and mentioned the various documents that make up the estate plan. Chapter 3 will provide a more detailed overview of each document, explaining their basic purposes, their individual and collective significance, and what types of situations each would apply to.*

### Last Will and Testament

The first document we will discuss is inarguably the most well-known of all estate planning documents: the **Last Will and Testament**, often referred to simply as the Will. A Will should contain detailed and specific instructions as to how all your assets should be distributed upon your death. Beyond the designation of assets, another important function of the Will is to designate an Executor and a Guardian for any children under eighteen and incorporate by reference any other estate planning documents you execute.

This document is immensely important, as it is **the most personal and specific document among all those you will execute in your estate plan.**

### Living Will and Healthcare Directive/Surrogate or Medical Power of Attorney

A **Living Will** is likewise a crucial document to execute in your estate plan. Many people have likely faced the terrifying thought of, "what would I want if I were in a vegetative state and no longer able to communicate my wishes?" or "how long would I want to be kept alive on life support? Would I want to be kept alive at all?" These are scary questions, and while none of that is fun to think about, hopefully most of us will never have to answer. And while none of that is fun to think about, a Living Will allows you to provide in advance of any incapacitation specific instructions for your physician and guidance to your family members as to your wishes.

A **Healthcare Directive**, also known as a **Medical Power of Attorney** or **Designation of Healthcare Surrogate**, allows you to designate an agent to act on your behalf in making medical decisions for you if you become incapacitated. **It is a good idea to have both a Living Will and a Healthcare Directive**, as that will allow you to make certain decisions for yourself in advance as well as direct someone you trust to make any decisions you may not have considered. You can also use the Healthcare Directive to designate someone to serve as your guardian or conservator if you become mentally incapacitated but are still physically functioning.

## Financial Power of Attorney

Just as a Medical Power of Attorney directs an individual to make important medical decisions on your behalf, a **Financial Power of Attorney** allows you to decide who you would want to make financial decisions for you if you become unable to do so. This does not have to be the same person that you designate as your Medical Power of Attorney, but it certainly could be. It is especially important to designate a Financial Power of Attorney if you have assets titled solely in your name, including retirement plans, investment accounts, and insurance policies, as you are the only person in control of those assets and it can be incredibly burdensome for a loved one to try to step in and help manage your assets if you are no longer able to but haven't granted them access.

When you execute a Financial Power of Attorney, we will help you determine which type you need. There are two main types:

- 1 Durable Power of Attorney:** goes into effect immediately once you sign the document, and
- 2 Springing Power of Attorney:** goes into effect only after you have become incapacitated. This is almost always the type of Power of Attorney that would be incorporated into an estate plan. The goal is to prepare you and your loved ones for the future, so a Springing Power of Attorney which only transfers power after you are unable to make decisions for yourself usually makes the most sense.

## Trusts

**Trusts** are not always a necessary part of the estate plan but are common among those with larger estates and children who may not be old enough to handle such substantial amounts of money or

property. There are a lot of different types of trusts, but we will just cover the most common in this guide.

## 1 Testamentary Trusts

A Testamentary Trust is a Trust that is created by your Will. **Testamentary Trusts** are useful tools for young children; however, there is no requirement to create the Trust and operate any formalities until the Trust springs into existence.

## 2 Revocable Trusts

A Revocable Trust is created during your lifetime and is considered a living document, meaning it can be modified or revoked entirely after it is executed. For this reason, the **Revocable Trust** is also referred to as a **Living Trust**. The Revocable Trust is used often to hold business interests and out-of-state real estate and works to distribute funds to future generations as determined by the Grantor.

## 3 Irrevocable Trusts

An **Irrevocable Trust** is not considered a living document but, rather, a permanent one. This means that once it is executed it cannot be modified or revoked. This is like the Durable Power of Attorney discussed above, and is less common in estate planning, but of course not unheard of. Essentially, once an asset is put into an Irrevocable Trust, no one (including you!) can take the asset back out of the Trust.

CHAPTER

# 5

## The Cost of Creating and Updating Your Estate Plan

As we have emphasized in previous chapters, estate planning is not reserved only for the wealthy. Everyone should have one, and you might be surprised by how affordable they actually are. Especially when you consider the fact that you are investing in protecting yourself and your future, the relative cost will feel well worth it.

The cost of your estate plan will vary depending on your needs. For example, you will definitely want to create a Will, and are strongly encouraged to have Financial and Healthcare Powers of Attorney, but perhaps you aren't in need of any Trusts. Thus, you can estimate the cost of your estate plan by considering your individual needs. Our comprehensive estate plans range from \$800-\$5,000. We encourage you to reach out to us and schedule a consultation for a more precise estimate.



In addition to creating your estate plan, we will work with you for years to come to ensure your plan stays accurate and up to date. Sticking with the above example, say we create an estate plan for you that doesn't contain any Trusts, but in twenty years you have children, you own property, and you have a charity that is dear to you that you want to ensure a continual donation is made to upon your death. In that case, we would work with you down the road to revise and add to your current estate plan. We would also go through the original documents to make sure no important information has changed and everything is completely accurate and up to date. As with creating your initial estate plan, the cost of updating your estate plan will vary depending on your needs as well.

The bottom line is that if your estate plan is straightforward, we will be able to find a flat rate in most instances. If you own businesses, have blended families, desire trusts or asset protection planning, or require "advanced planning," these flat rates often will not apply due to the complexity of these types of matters.





CHAPTER

# 6

## What Is an Executor and Who Should Yours Be?

The executor of your estate is arguably the most important player in your estate plan (aside from you). An **executor** is the person appointed to carry out the terms you've set out in your Will. This person acts on your behalf and handles your affairs once you've died. The role of an executor is broad, with duties ranging from funeral arrangements to asset distribution.

Depending on how large your estate is, your executor may have a pretty big job on their hands. It is important both to determine who to appoint as your executor and to talk with whomever you choose about the role. As we mentioned back in Chapter 3, failing to designate an executor will mean the probate courts appointing one for you once you've died, and that person will be thrust into the role unprepared and likely confused.

In addition to choosing an executor, you may also need to choose trustees, guardians, and other representatives depending on your needs. We can help determine who should serve as your representatives, and how many you will need, when we work together to develop your comprehensive estate plan.

## Inheritance and Estate Taxes: What Are They, Who Pays Them, and When?

Estate and inheritance taxes are both very important to be aware of. Note that they are not the same thing, and the biggest difference between them is who is responsible for paying. **Estate tax** is calculated based on the value of the estate at the time of your death and will be paid by your estate. In other words, it is paid by you through your executor. **Inheritance tax**, on the other hand, is paid by any beneficiaries of your estate and is calculated based on the value of whatever they inherit. You can, however, elect to have any inheritance tax be paid by your estate.

Interestingly, Kentucky does not have an estate tax, but it does have an inheritance tax. This tax will apply to all personal property and real estate located in Kentucky but does not apply to any property owned in another state. In Kentucky, the amount your beneficiaries will be obligated to pay for inheritance tax will depend on their relationship to you and the value of the inheritance. The closer the relationship is, the lower the tax rate generally will be.

Certain family members are completely exempt from the Kentucky inheritance tax, and these are known as "**Class A**" beneficiaries. They include surviving spouses, parents, children, grandchildren, brothers, and sisters. Other relatives such as nieces or nephews will be considered "**Class B**" beneficiaries and cousins, or other more distant relatives will be considered "**Class C**" beneficiaries. Class B and C beneficiaries will be subject to the tax, but will receive \$1,000 and \$500 exemptions, respectively.

Whether you plan to have any inheritance tax be deducted from your estate or leave it for your beneficiaries to pay, it is important to understand it. When we work with you on your estate plan, we can help you determine approximately how much inheritance tax may need to be paid by or on behalf of your beneficiaries, so you can talk with them about it or plan to set it aside for them.

CHAPTER

# 8

## Estimating the Value of Your Estate

*It is important to determine the approximate value of your estate to create an estate plan properly and accurately. It is also important for tax purposes, which we discussed in more detail in Chapter 7 of this Guide. Determining an exact valuation can be time consuming, particularly if you have a large estate. It would be even more time consuming for your executor to try to do so after you've died, though, so it's crucial that you take the time while you can.*

Your **gross estate value** is what your assets and property are worth before taxes and any expenses are deducted. Other common expenses you can expect to be deducted from your estate are funeral expenses and any debt (i.e., credit cards, mortgage) in your name left unpaid. Thus, your net estate value will be what your assets and property are worth after all deductions are made.

While evaluating your real property is crucially important, it is also a very good idea to make an **inventory of your personal property** as well. Of course, this does not mean you should catalog every single item in your possession; rather, you should do so with any personal items of value. An item of value will usually be worth \$500 or more, but this could also mean items of sentimental value. Simply put, any item you want to ensure is passed to a specific beneficiary should be inventoried.

CHAPTER

# 9

## Getting Started On Your Estate Plan

*You've already taken the first step in making your estate plan: educating yourself about the process, the necessary documents, and the basics of probate.*

Now you're ready to get moving on your estate plan. The Johnson Law Group will work with you from start to finish.

It's important to talk to individuals connected to your estate plan.

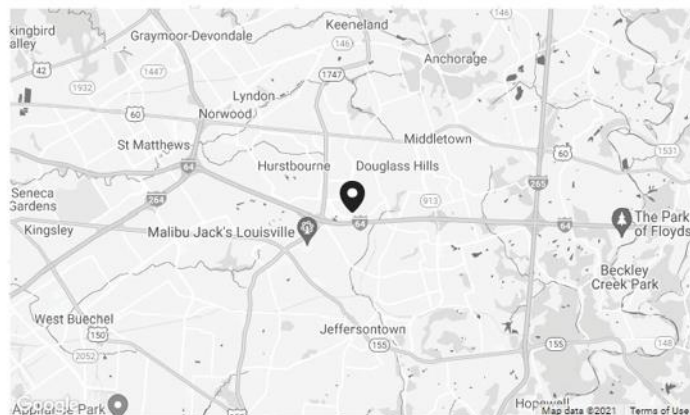
If you are ready to get started on your estate plan, the first thing we'll ask you to do is to gather some documents to help us evaluate your estate and determine your best strategy and flat rate estimate. We will then **meet for a consultation** to go over your needs and answer any questions. We know this process isn't easy or fun, but we are here to make it as painless as possible!

# Connect with Us



[thejohnsonlawgroup.com](http://thejohnsonlawgroup.com)

**The Johnson Law Group**  
1302 Clear Springs Trace, Suite 200  
Louisville, KY 40223  
(502) 230-1850



# About the Authors

## J. Brandon Johnson

Founder, The Johnson Law Group, PLLC

Brandon immediately began performing estate planning and probate work after law school. His client experience includes hundreds of estate plans and probate matters. He appreciates good estate plans because families almost always have an easier time coping with the emotions of loss when they have clear direction and better understanding. Understanding the complexities, difficulties, and expenses of Probate Administration — both with and without Wills — Brandon believes in simple and strategic estate plans.

At a baseline, we wanted to create a free guide on Estate Planning that answered some of the initial questions that we receive. Brandon has specifically attempted not to render legal advice in this guide but provide clarity on the process. If you would like a 100% free consult — with no obligations — there are MANY options to schedule that throughout this guide.

The firm's focus is on protecting individuals, families, and businesses. We do this in a variety of manners, but estate planning is a lynch pin in almost all plans. The basics are the basics. We work with folks in all stages and ages — from families having their first child to an 87-year-old couple that wanted to make the transition easier on the next generation for their anniversary.

Brandon loves providing quality and affordable estate plans that provides a small amount of certainty in an uncertain world.

## April Sain

Former Law Clerk The Johnson Law Group, PLLC

A recent graduate of the University of Louisville Brandeis School of Law, April served as Editor in Chief of the University of Louisville Law Review, Volume 59. Further, April was Chairperson of the Brandeis Student Bar Foundation and a Samuel L. Greenebaum Public Service Fellow. April also holds an M.A. in English Language and Literature from Belmont University in Nashville. After taking the bar exam, April will be clerking for the Honorable Regina S. Edwards, U.S. Magistrate Judge for the Western District of Kentucky, for the 2021-2022 term.



THE  
**JOHNSON**  
LAW GROUP