

# Estate Planning

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## Who Needs to Develop an Estate Plan?

While many people mistakenly believe that estate planning is only for the elderly, the reality is that estate planning is for everyone. Whether you have sizable assets or are just starting out, developing a proper estate plan will help ensure that your wealth is distributed according to your wishes when you pass away. Estate planning also allows you to plan for the care of your minor children and protect you and the people you love when certain life events such as divorce or remarriage occur. Moreover, a good estate plan will also work to take tax implications into account and address many other issues, such as who will handle your affairs in the event you should become physically or mentally incapacitated.

## How Our Law Firm Approach Estate Planning

At Einhorn Barbarito, the attorneys in our Wills, Trusts & Estate Planning Practice work with individuals and families throughout New Jersey to develop comprehensive estate plans. Our lawyers understand that thinking about end-of-life decisions and how you want to distribute your assets can be a very uncomfortable process. When you work with our firm, you can trust that we will remain sensitive to your concerns at every stage of the process. Our lawyers will take the time to listen to you, and we will provide clear and straightforward answers to all of your questions. Our role is to make certain that you understand the available options so that together, we can design an estate plan that best reflects your goals and objectives.

Through our years of experience handling estate planning matters, we have come to know that every family situation is unique. We do not rely on standard or one-size-fits-all plans; rather, we work directly with our clients to develop customized estate planning documents that achieve our clients' desired results. Our New Jersey estate planning attorneys place great value on the interview process and will devote the time needed to get to know you and your values and intentions. While we will present you with the issues and options you may not have considered, we will only do so to the extent

that they are consistent with your objectives. If appropriate to your situation, we will also discuss and develop documents that protect assets from future events such as divorce, second-marriages and the potential future incapacity of a party.

Our attorneys utilize their knowledge and experience to design estate plans that incorporate the right tools and techniques for the individual client. While we always remain cognizant of tax liabilities and other potential risks and costs, we do not let these considerations alone dictate the design of the plan. We focus on the best interest of the family first and then weave tax savings techniques into the plan to accomplish your non-tax objectives efficiently.

## Preparing Living Wills and Other Directives for Medical Treatment

The preparation of your living will is an important component of the estate planning process at our firm. While discussing the types of medical treatments you would want at the end of life can be a difficult conversation, addressing the issue today can reduce the burdens and uncertainties family members often go through when a terminal illness or unexpected tragedy occurs. Even if you have talked about your preferences with your loved ones, it is crucial to have a proper living will in place – a legal, written document that directs the medical care you want to receive in the event that you are unable to communicate with your family and healthcare providers. It is also important to execute a document, known as a Durable Power of Attorney for Health Care, that designates a person who understands your values and wishes to serve as your health care representative when you cannot speak for yourself.

- Instructive Directive = Living Will in New Jersey

In New Jersey, a living will is generally referred to as an “advance directive.” The advance directive is a legal document that spells out your wishes in the event you are unable to make health care decisions on your own due to physical or mental incapacity. The document allows you to provide specific instructions regarding your future health care, including specifying the circumstances under which medical treatments, including life-sustaining measures, should be initiated, withheld or discontinued.

People often have many misconceptions when it comes to living wills. Some mistakenly believe that if they have a living will, that means they will not receive any medical care. A living will outline the type of medical care you would want to receive in certain circumstances. For instance, if you have a terminal illness or are in a persistent vegetative state, your living will specify that you do not want to be resuscitated. However, your living will also state that you want to receive all possible treatments available, including CPR, in these types of situations. A living will allow you to express both what you want and do not want when you are unable to communicate your wishes – your instructions can be as specific and detailed as you want.

- Proxy Directives in New Jersey

While a living will set forth your preferences regarding your medical care, a Durable Power of Attorney for Health Care (“proxy directive”) is a critical, separate legal document that can help ensure that you receive the medical treatments you would want if you are unable to speak for yourself. A proxy directive allows you to appoint a person who will have the legal authority to make health care decisions for you should there come a time when you can no longer direct your own medical care. Like a living will, a proxy directive can include very specific instructions concerning the types of decisions your health care representative is authorized to make on your behalf. Additionally, the proxy allows you to appoint alternative representatives in the event that the person you have designated is unwilling or unable to act as your health care representative.

Living wills and proxy directives are important legal documents that are best prepared by a qualified New Jersey estate planning attorney. The attorneys at Einhorn Barbarito are experienced in drafting these documents and can help you take the right steps to ensure that health care decisions will be made according to your wishes.

## The Power of Attorney – Another Critical Piece of the Estate Planning Process

The power of attorney is another crucial legal document that should also be included in your estate plan. Unfortunately, many people fail to consider how their affairs will be taken care of in the event

that they become incapacitated as a result of an illness or accident. Although no one likes to think about the worst-case scenario, it is important to plan ahead and appoint someone you trust to assume control of your affairs should tragedy strike.

- The New Jersey Durable Power of Attorney

A Power of Attorney is a written legal document that appoints another person, called the attorney-in-fact, to act as your agent and perform certain duties on your behalf. While there are several different types of powers of attorney, a durable power of attorney is most commonly used in connection with estate plans. A New Jersey durable power of attorney allows you to grant another person or institution the authority to assume certain duties should you become incompetent to think for yourself. The term “durable” means that the power of attorney will survive your incapacitation, whereas a “general” power of attorney will not.

It is important to understand that if you become incapacitated without naming an agent to handle your personal affairs, the legal system will generally act to appoint a person to serve as your agent. By taking the steps in advance to prepare a durable power of attorney, you can avoid court intervention and ensure that your actual wishes are carried out.

A power of attorney allows you to set forth the various powers that you are granting to your attorney-in-fact. These powers may, or may not, include the following:

- The authority to access your bank accounts and make financial decisions for you
  - The authority to pay for your healthcare, housing, food, and other bills
  - The authority to file taxes on your behalf
  - The authority to sign documents that require your signature
  - Specific limitations on the attorney-in-fact
  - Appointment of an alternate attorney-in-fact should the first person be unable to act on your behalf.
- We Can Help Ensure That You Have the Right Powers of Attorney in Place

It is always best to seek assistance from a qualified New Jersey estate planning attorney to prepare your power of attorney. When you work with our firm, an experienced lawyer will take the time to

learn about your personal and financial objectives to determine what types(s) of powers of attorney are best for your situation. While it is likely that your estate plan will include a durable power of attorney, there may be other powers of attorney that are appropriate for you, such as a limited power of attorney or a springing power of attorney. Our legal team will outline our recommendations so that you can make the best choices for you and your family. We will also discuss with you the specific powers that you want to grant to your agent and make certain that your wishes are properly set forth in your documents.

## Schedule a Consultation With a New Jersey Estate Planning Attorney at Our Firm

If you have questions about wills, trusts, powers of attorney, living wills or other estate planning documents, or need assistance in developing or revising your plan, the attorneys at Einhorn Barbarito can help. Contact us today at [973-627-7300](tel:973-627-7300) so that we can help you take the right steps to protect yourself and the people you care most about.