

A Family Lawyer's Guide to Estate Planning



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by profitsolv

On the face of it, family law and estate planning are very different types of law.

Family law helps clients navigate through changes in family relationships—not just divorce, but child custody and support, division of assets, marital agreements, and more. Estate planning, on the other hand, allows individuals to look ahead and consider what kind of legacy they'd like to leave behind, how they want their assets to be distributed among loved ones, and how they'll ensure their own long-term care needs.

Circumstances change, though, and many events in family law can significantly recalibrate estate planning needs.

When clients reach out looking for support with divorce, child support, adoption, or other family law services, it's important to be well-versed in how the decisions made during estate planning influence the course of family law proceedings.

Keep reading to learn how to help your family clients through estate planning in common scenarios.



When to Discuss Estate Planning

At times, your clients will need to adjust their estate planning documents or create new ones. Here are some situations to be on the lookout for to start those conversations:

- Negotiating distribution of assets in a divorce settlement
- Establishing a prenuptial agreement
- Addressing child support requirements for a family member with special needs
- Navigating inheritance issues in a blended family

These situations can be fraught with concern about protecting one's future or the future of a loved one. And while family law attorneys often choose to collaborate with estate planning professionals in matters involving complex estate planning needs, they can gain a leg up by familiarizing themselves with key documents their clients might have, as well as the dictates of state law.



Estate Planning Documents for Family Lawyers: An Overview

Estate plans come in all shapes and sizes, making use of a variety of documents to establish a client's wishes. As a family law attorney, you don't necessarily have to do a deep dive into the differences between types of charitable trusts or be able to pontificate about estate tax compliance, but you do need to be aware of the different documents that impact your clients.

Some of the most common estate planning documents include:

- Trusts
 - Irrevocable trusts
 - Living trusts
- Wills
- Powers of attorney
- Selection of guardianship

Whether your client comes to you with estate planning documents in hand or you recognize the need for them as you are working together, estate plans need to be clearly worded and leave little room for interpretation.



No matter what kind of estate planning documents your clients have, don't rely on default state laws to protect their intentions. If a family law matter has been started, help your clients identify what to update so their estate plan reflects their circumstances.



TRUSTS

Trusts are widely used in estate planning, helping clients protect their assets and their legacy. You can put any number of assets into a trust, from antique cars to heirlooms to retirement accounts, and establish the beneficiary of your choosing under the conditions of your choosing.

If your client has endowed assets to a trust, there are considerations you need to make as a family law attorney before assessing how to support your client.

What are the terms of the trust and who are the beneficiaries?

Depending on how the trust is structured, assets added may or may not be considered community property. Who the trust names as beneficiary also matters—if it's the divorcing spouse, then the trust may be subject to distribution.

When and where was the trust established?

Was the trust established before the marriage? During the marriage? What state laws apply to the assets within the trust? The answer to these questions can determine whether or not a trust can be shielded from divorce claims.

What are your client's goals for the trust?

Does your client want to simply change the beneficiaries of the trust? Or do they want to terminate it, change the terms, or divide the assets? There are several ways to approach trusts when reaching a divorce agreement, but the right approach should always keep your client's goals top of mind.



Trust accounting can be incredibly complex, so work with practice management software that has **robust trust accounting tools** to ensure that you stay compliant.



REVOCABLE? IRREVOCABLE? THE DIFFERENCE BETWEEN TRUST TYPES

Your options for how to proceed with helping your client also depend on what type of trust you are working with. The two most common categories of trusts are:

LIVING TRUSTS

Living trusts are the most frequently used type of trust in estate planning. Flexible and customizable, the terms of a living trust can be crafted to fit the goals of the estate planning client. Living trusts can be changed over time depending on circumstances—for example, the grantor can add or remove beneficiaries, update assets, and more.

A couple can place both community and separate property into a living trust, so a family lawyer must have the document that certifies which category the assets fall into. Even property that is listed as separate may be considered community property if evidence suggests it's shared. For example, if there is a dispute over who gets the family home in a divorce, a family court may reclassify property from separate to community if the deed specifies that both parties can claim ownership.

IRREVOCABLE TRUSTS

An irrevocable trust's terms can't be changed, at least quickly or easily. They're often used to minimize estate tax burdens, help disabled beneficiaries qualify for government benefits, and shield assets from lawsuits.

Irrevocable trusts are generally less common than living trusts, but they still play a role in estate planning—and are an important consideration during a divorce. If your client created an irrevocable trust during their marriage, those assets aren't community property. Instead, they belong to the trust and aren't subject to divorce claims.

That being said, there are exceptions, such as if an irrevocable trust was created by using community property but the spouse hadn't consented, or if a spouse was named a beneficiary of the irrevocable trust. In these types of situations, the progression of the matter would depend on the verbiage of the trust itself.



Rocket Matter's trust accounting tools keep your clients' trust accounts compliant and generate invoices that comply with industry regulations.

WILLS

A last will and testament details your client's wishes for how their assets will be distributed when they die—and as long as it's considered valid, it's legally binding.

But depending on the state in which the will was drafted, the terms of the will may or may not apply during or following a divorce. For example, in the state of North Carolina, a legal separation between spouses will not impact the provisions of the will, but once a divorce is finalized, all provisions regarding the former spouse are revoked.

POWERS OF ATTORNEY

Powers of attorney (POA) allow a client to designate an individual to make financial and healthcare decisions if they are unable to. These are powerful tools to ensure that the client's wishes are followed in cases of incapacity or end-of-life care.

Each marriage—and divorce—is unique, so your client may or may not wish to revisit their POA. Depending on state law, your client's POA may automatically revoke their partner's designation as a healthcare representative. Your client may wish to retain their former spouse as their POA, but it's common to update these designations.



SELECTION OF GUARDIANSHIP

Guardianship questions arise in several different contexts for estate planning:

- Selecting a guardian for a minor child
- Selecting a guardian for a family member who cannot legally make decisions for themselves
- Selecting a guardian for yourself if you become incapacitated

Making these arrangements allows a client to make their wishes clear and guarantee that the child or family member in question will have sufficient care and support in the future. These conversations can be emotional, but they provide clients with reassurance that even if the worst happens, their loved ones will be cared for.

It's also common to revisit guardianship decisions following a divorce. A client may have initially selected their spouse to be their guardian in case of incapacitation, but after their marriage is dissolved, they could understandably wish to update this arrangement. If a divorce occurred following a domestic violence situation, a parent may wish to change their guardianship selection for their minor child.

All these different estate planning documents can be tedious to complete. To make the most of your time in your workday, implement legal software that helps you [create legal documents online](#). Often available in legal practice management software, helpful items like document creators let you merge legal templates and custom fields with data stored in your practice management system. This way, you don't have to spend tons of time filling in your client's data yourself.



Rocket Matter's document creator identifies your merge fields and notifies you of errors or missing information before your document is finalized.

How Family Law Attorneys Can Help Clients Navigate Estate Planning Decisions

PRENUPTIAL AGREEMENTS

Clients don't have to own significant wealth to benefit from prenuptial agreements (or estate planning, for that matter!) A prenuptial agreement allows clients to discuss their marriage in practical financial terms so that they can reduce the chance of conflict if a divorce happens.

Setting up a prenup for a client can work alongside an estate plan to protect their assets. Whether in divorce or death, a prenup can ensure that estate plans are clearly established in the context of the marriage. Let's say your client comes to a prenuptial discussion with an inheritance and several retirement accounts. You can work with them to decide how they would like those assets to be accounted for in a prenuptial agreement, but also provide guidance on how the assets should be addressed from an estate planning perspective.

If a client has children from previous marriages, they may use a prenup to protect assets they want to be passed down to those children in case of divorce or death. A prenup can specifically state terms so that children are required to be provided for if anything happens. If your client doesn't sign a prenup, their children could be left empty-handed.

It's helpful if your [legal practice management software](#) integrates with helpful tools like LawToolBox, which is [a courtroom rules and deadline management provider](#). When working on documents like prenuptial agreements with strict deadlines, LawToolBox can instantly calculate deadlines and important dates in your calendar.



CHILDREN WITH SPECIAL NEEDS

If clients have a child with special needs, it's important that they consider how they'd like their child cared for in their absence. This goes beyond establishing guardianship and leaving financial support. Children with special needs have more extensive healthcare and caretaking requirements, but through careful planning, they can set up trusts to provide ongoing support of the exact type desired.

SPECIAL NEEDS TRUST

A special needs trust, a type of irrevocable trust, is a legally-binding arrangement that provides income to a person with mental or physical disabilities or a chronic illness without making them ineligible for public assistance like SSI or Medicaid.

A special needs trust lets a client choose how they want their money to be given to their special needs child after they die. The creator of the trust (the grantor) chooses a trusted party (the trustee) to manage and disperse the funds to the special needs person on the grantor's behalf after they have passed.

SUPPLEMENTAL NEEDS TRUST

Another type of trust that can help a special needs child is a supplemental needs trust. This third-party trust has assets that don't belong to the beneficiary, and this fund can include money from a life insurance policy, gifts, or an inheritance.

To solidify a special needs or supplemental needs trust, assign power of attorney to choose who will step in and regulate outside assets that are not listed in the trust itself. This builds in greater protection for children with special needs.



How to Handle Estate Planning with a Blended Family

When you're dealing with a blended family, both spouses want to make sure that their children from previous marriages retain their right to new property. Any community property from a new marriage will need to be divided fairly among the children with the correct estate planning document to ensure that they receive what they're owed.

You'll want to consider putting shared property into an irrevocable trust with a third-party trustee, like a bank. This ensures that the living spouse can't make changes to the trust after the deceased spouse is gone.

Or, if you set up a trust for a younger spouse, there may not be much left for their kids once the other spouse dies. A client can ask a lawyer to set aside their life insurance policy or retirement accounts for their children to make sure they're provided for.

A final consideration for a blended family is child support. A deceased spouse may have to continue providing child support even after they've passed, possibly leaving a large burden on their living spouse. A great way to handle this is to write terms in their trust to set aside the child support money for as long as it's owed.



Simplify Estate Planning with Rocket Matter

Rocket Matter's robust legal practice management software simplifies the difficulties of estate planning. When dealing with creating detailed estate planning documents, you need software that can catch errors and inaccuracies for you. [Rocket Matter's document assembly lets you:](#)

- Merge legal templates and custom fields with client and matter data stored in Rocket Matter
- Identify your merge fields and notify you instantly of any errors or missing information before your document is finalized
- Add billable time to your documents as you work

Plus, [Rocket Matter's secure file sharing and e-signature tools](#) make it easy to share important documents with clients and receive their signatures in minutes instead of days. Our powerful [legal trust accounting software](#) keeps your created trusts compliant for all your clients.

If you're a family lawyer who needs to better manage their estate planning, [schedule a demo](#) with Rocket Matter today.



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