

Top 5 Reasons Families Need an Estate Plan

By Eric Kallio, Kallio Law Firm



Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

DISCLAIMER: *The information provided in this report is not legal advice. No attorney-client relationship is created as a result of this presentation. The content is intended to be a general overview of the subject matter covered and is educational and informational only.*

What is estate planning?

“Estate Planning” is the process of legally structuring a person’s property in such a way so as to create the most benefit for that person from applicable laws, while also taking into account that person’s individual wishes for the transfer of their property. The “Estate Plan” is the actual arrangement created in the estate planning process, which maximizes the conservation, investment, use, management, and transfer of a person’s property, both during the person’s lifetime and after the person’s death.

Depending on a person’s needs, estate planning includes planning for incapacity, reducing the uncertainties when one dies or becomes incapacitated, and maximizing the value of a person’s estate that is transferred to his or her beneficiaries. The ultimate goal of estate planning is determined by the specific goals for each client and may be as simple or complex as the client’s needs dictate.

Who can do Estate Planning?

Any person over the age of 18 can start Estate Planning. Persons who will see the greatest benefit are people who have property or a family they want to protect.

Top 5 Reason Why Families Need an Estate Plan

While there are multiple reasons to have an Estate Plan, here are what we believe are the top five:

1. Planning for Incapacity

People often assume, incorrectly, that spouses have automatic legal authority to make all medical decisions for each other, for example the authority to terminate life support. However, unless you have an advance directive (also known as a “living will” or an “advance health directive”), this is not true. Without an advance directive, the spouse of an incapacitated who cannot make his or her own medical decisions must look to the Court to make those decisions for them.

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

People put off making an advance directive because they think they are not old enough to need one or they think because they are healthy. However, people do not consider the possibility of acts beyond their control, such as an automobile accidents, biking or skiing accident, or a natural disaster.

Once you are incapacitated, you no longer have the ability to make an advance directive. In a real sense, there is no better time than the present to create an advance directive.

People do not consider the effect of a disability on their families or friends. An advance directive gives individuals the ability to state what their intentions are regarding such as organ donation, funeral arrangements, and their desires regarding life sustaining procedures. Putting your wishes in an advance directive not only helps ensure your intentions are honored and your desires are followed but relieves the pressure on your family and friends about what they should do and how they should care for you, if you need serious medical treatment.

2. Reducing Administration Costs

Administering a person's estate in Court can be costly, especially when contested, there are young children, or arguments among surviving heirs. Further, these proceedings are open to the public and can take up to a year or more to complete. All of this adds complexity, cost and time the assets are tied up in probate. A solid estate plan can help to streamline this process by designating executors and beneficiaries and providing for the estate to be administered without direct oversight of the court. A typical succession without a proper and well-developed estate plan often costs many times what the estate plan itself would have cost. Preparation pays off!

Since Court is open to the public, your Succession administration will be open to the public. Although Louisiana has made provisions to seal certain documents your personal financial information and your decisions regarding your family, will be open for public consumption, meaning a loss of privacy to you and your beneficiaries.

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

Lastly, administering an estate in Court takes much of the control out of your loved ones' hands, and gives it to the Court. Since an estate administration in Court can take up to a year or more to finish, your loved ones can be put in a vulnerable position while they are forced to wait.

3. Sharing Financial Information or Retirement Planning

In some marriages, one spouse may take on more of the responsibility of the family finances or retirement planning. In some marriages, one spouse may be managing the family business while the other is responsible for other aspects of the family. The point is information is not always equally shared. Problems can arise if the spouse handling the family's finances gets sick or dies, and the other spouse is not equipped to start making unfamiliar decisions. A good Estate Plan brings clarity to a couple's financial position and retirement plan. The Estate Planning process itself can create a comfortable space for couples to openly talk about and discuss their finances, retirement planning, and what they want for the future.

For a spouse who is managing a couple's finances or following a retirement plan, it is their responsibility to make sure all that information is explained or at least available to the other spouse. If death or disability happens, financial information and retirement planning information must be accessible to the other spouse, or at least be documented for a financial adviser or family member.

For spouses who do not spend their days handling family finances or a family business, it is their responsibility to insist all of the family's finances, retirement planning, and business information be documented so it can be accessed when needed.

4. Mixed Marriages

Mixed marriages, where one or both spouses have children from a previous marriage, can be difficult for both the spouses and their children. However, most parents of mixed marriages do not realize the best way to avoid conflict is to communicate with their children what their wishes really are. Even if a child is upset about a marriage to a second spouse

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

or is mad about how that parent plans to distribute his or her property, often that child will still accept the wishes of their parent if they know that is what the parent wants. Estate Planning tackles the difficult issues up front, creates a dialog about how property should be divided, and can reduce or eliminate conflicts with the children.

Parents in a mixed marriage can cause harm if they say nothing to their children about how they want their property distributed. Leaving it up to the non-parent spouse (i.e. a child's stepmother or stepfather) to explain their mother's or father's wishes, can make the children hurt or angry.

A well written Estate Plan clearly memorializes a parent's intentions to all who will be affected by their death or incapacity. Parents who clearly document and describe what their intentions are will prevent distrust and suspicion among their children.

5. Controlling How or When an Inheritance is Distributed

When both parents die, minor children may be given a guardian to manage his or her inheritances. When the minor becomes an "adult" at age 18, they must receive all of the property from their inheritance. The child may be an adult at age 18 but receiving large sums of money or property at a young age can actually do them harm. Adult children may not have the maturity or experience to deal with the responsibility of inherited wealth.

A good Estate Plan can push back the age which an adult child will inherit property. During that extra time, a family member or a trusted friend can be given the power to pay for that adult child's college education or medical needs.

This way the child is protected from himself or herself until they become older and are more mature, while at the same time they can receive the benefits of their inheritance as needed.

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

5 Tips When Preparing an Estate Plan

1. **Nominate alternate beneficiaries.** The future is impossible to know, which is why you should name an alternate beneficiary if primary beneficiary dies before you. If your primary beneficiary does die before you, and you fail to state who should receive that gift, state law will control where that gift goes and that might not be the person you intend. If it is important to you who should receive a gift if your primary beneficiary dies before you, expressly state so in your Estate Plan.
2. **Nominate at least one, preferably two successor Trustees and Succession Representatives.** If you name someone as your successor Trustee over a trust or a succession representative over your estate, they have the option to decline. For many different reasons the named successor might not be able to act. I recommend you nominate more than one successor Trustee and Succession Representative to act if the first one you name cannot. If possible, I recommend nominating two fiduciaries in any Estate Plan.
3. **When using a No-Contest clause consider giving the disinherited person a small gift.** A No-Contest clause states that if a person contests your will or trust in Court, that person will receive no property from the estate. This can be added if you are concerned that a person may contest distribution of the estate. However, if will or trust includes no gift to that person, there is nothing for that person to lose if they “contest” the trust. I recommend in this situation to give a potential contestant a small monetary gift. This may seem counterintuitive, but the gift often discourages that person from contesting the trust because they now risk losing the small gift if they contest the trust as a whole.
4. **Make sure each document is properly executed.** Estate Planning documents require different methods of execution. Some documents, such as Wills require an authentic act signed before a notary and 2 witnesses, other documents require merely notarizations. If a document is not properly executed, it may not be enforceable. Be sure you know the execution requirements for each document create.
5. **Discuss using Powers of Attorney that require incapacity.** Many times, your Powers of Attorney; called a power of Mandate in Louisiana (i.e. a Durable Power of Attorney for financial decisions, or a Medical Power of Attorney) is needed in an

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

emergency. Requiring that you be “incapacitated” means to use it you must find a doctor who will make that determination. If there is an emergency situation, this extra step might detrimentally delay your agent from acting on your behalf. It is important to understand these nuances and make an informed decision.

Estate Planning mis-conceptions

1) Estate planning is expensive.

Not necessarily. Estate plans vary in complexity and varies based on your needs. This is not a cookie cutter approach where every situation and every person’s needs are the same. Often estate plans are as simple as a will and powers of attorney which should be able to be done very cost-effectively. Some may require complex trusts that certainly add cost. But to get a solid product from an experienced attorney will give peace of mind.

2) An on-line will is just as good and cheaper.

Louisiana has very peculiar content and structure requirements not present in other states and jurisdiction these programs are designed for. All too often the unwitting customer executes an online will only to find it does not comply with the laws and standards required of Louisiana testaments and is ruled invalid by the court. In many ways you get what you pay for here. An experienced estate planning attorney will not only draft documents tailored to your needs, but that comply with Louisiana law. Further, an attorney will defend his documents in court. Will anyone from another source do so?

How to choose an Estate Attorney

Make sure any attorney you use is a member of the State Bar and licensed to practice law in the state you live in. In Louisiana, be sure to check any attorney’s disciplinary records at the state bar’s website at <https://www.lsba.org/MD321654/MembershipDirectory.aspx>

Estate Planning is a specialized area of the law. Ask your attorney about their experience drafting Estate Plans. Not all wills are created equal. Find an attorney whose focus is estate planning. Not an attorney who ‘also does wills’.

About the Author

Attorney Eric Kallio is the founder of Kallio Law, focusing his practice on estate planning, wills, successions, business law, tax law, aviation law, and veterans benefit law. Eric brings the depth of his professional and educational experience to bear for his clients, advocating passionately on their behalf.

Eric knows the value of hard work. He started out as a medic in the Army, enlisting after high

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com

school. Within five years, Eric began flight training and retired as a Chief Warrant Officer 4 after nearly 23 years of service and several deployments. Serving his community is also important to Eric, and he volunteered as a firefighter and EMT in his younger days and still looks to his time flying Blackhawk helicopters after hurricane Katrina as one of his most gratifying and rewarding experiences in his professional life.

For Eric, being an attorney is about helping people. "People come to me with problems they are facing, and I enjoy coming up with creative solutions to help. My diverse educational and professional background helps me see where my clients are coming from and develop logical and resourceful solutions for them. My military background drives me to give my all to help others."

While in the Army, Eric completed both a B.S. in Aeronautical Science and an M.A.S. in Aviation Management from Embry-Riddle Aeronautical University. He then went on to complete a Ph.D. in Business Administration at Northcentral University. After retiring from his distinguished Army career, Eric attended law school at Southern University Law School, graduating Cum Laude and earned a tax law certificate. He now focuses his practice on helping those he can resolve their legal needs.

Kallio Law Firm
16094 Louisiana Hwy 73, Suite 202
Prairieville, LA 70769
(225) 210-3653
Eric.kallio@kalliolawllc.com