

SMART
WOMEN
PROTECT
THEIR
ASSETS



Essential Information
for Every Woman About
Wills, Trusts, and More

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Introduction

Let's face it, none of us want to think about getting older. (Though one look in the mirror usually makes it hard not to!) And, we certainly don't want to think or talk about dying, especially when there's so much more living to do. At the same time, though, we all want some control over how we spend our final days, how we protect all we've worked for, and who gets our money and most prized possessions. But if you don't act *now*, while you're still alive and kicking, you could lose your opportunity to make those all-important choices.

I'll be the first to admit: The topic of estate planning isn't fun or sexy. Even I would rather sip a glass of Sauvignon Blanc and curl up with a good John Grisham book than sit around talking about Wills. But, it's necessary to do it if you want to have a say in what happens to you and your belongings in the event of a worst case scenario. That's where this book can really help.

Smart Women Protect Their Assets is written specifically for women like you, who are looking for straightforward advice tailored just for them. Because I know how intimidating and scary the subject matter can be, I'm here to make it understandable and approachable. And, with any luck, I might just get you to crack a smile now and again.

An effective estate plan isn't just writing a Will and calling it a day. It's making decisions today, while you still can, about your health care and finances—in case you lose the ability to manage them yourself. It's also about providing peace of mind to your loved ones by being organized and letting them know exactly what it is you want. It's about having the strength to discuss tough issues with your husband, partner, or significant other. It's understanding what's right for you and also what's right for your loved ones.

Estate planning involves asking one question after another. Each chapter in *Smart Women Protect Their Assets* answers each of these questions. You'll learn why estate planning is important in Chapter 1, "Why Should You Worry About Estate Planning?" and how to calculate your net worth in Chapter 2, "What Exactly Does Your Estate Include?" Taxes, taxes, taxes, and more taxes are explained in Chapter 3, "Is It Really *That* Important to Think About Taxes?" (and I promise, you'll stay awake while you read it!). We all know that as much as we think we can do it alone, we need help from friends and family. Chapter 4, "Who Makes Sure Everything You Want to Have Happen Happens When You're Gone?" outlines who does what when you're

gone to be sure what you want to have happen, well...happens.

Your heartstrings will be tugged in Chapter 5, “What Will Happen to Your Loved Ones?” as we discuss your loved ones and what you can do for them. Then, of course, there’s the meat and potatoes of our discussion, actually putting your plan into place, which is covered in Chapter 6, “What’s a Will? What’s a Trust? How Do You Use Them to Put Your Plan in Place?” Then, because we all love fancy things, you’ll learn how to dress up your planning in Chapter 7, “What If You Want to Get Fancy with Your Planning?”

It’s also important to select individuals to help you if you’re ever unable to act for yourself. You’ll learn why in Chapter 8, “What If You Get Sick and Can’t Make Decisions?” But your planning requires more than legal documents, which is explained in Chapter 9, “Is There Anything Else You Should Do to Be Prepared?” And, because it’s tough to even read about death, you’ll get ideas about how to talk about the subject with your family when you turn to Chapter 10, “How Do You Talk to Your Loved Ones About Your Death?”

In addition to comprehensive, easy-to-understand answers to your questions, *Smart Women Protect Their Assets* gives you creative solutions to common problems, such as a child who can’t manage money, kids who just can’t get along, or a disabled grandchild. Every single one of you has your own challenges and issues. Whether you’re a single mom, an unmarried 40-something, a recent divorcee, or a loving grandmother, you’ll find

information geared specifically toward you in Chapter 11, “What Should You Do in Special Situations?” You’ll learn what to do, but also what *not* to do. There’s a lot of misinformation out there—*Smart Women Protect Their Assets* lets you know what works, what doesn’t, and the scare tactics to dismiss. Because there may be a day you’re called upon to act as an Executor or Trustee, you’ll learn about your responsibilities in Chapter 12, “What Happens If You Are Appointed as a Fiduciary?” This book provides you with the information you need to create the best plan for you and your loved ones. And to help you get started, there’s a comprehensive checklist in the Conclusion to give you an easy to follow To Do list.

Keep in mind, though, that this book is designed to give you ideas about estate planning. It is not a substitute for hands-on legal and financial counsel. It is also not a book about elder law or planning for individuals with a disability who are concerned about eligibility for government benefits. Those areas are unique practices of law and are not addressed in this book. There’s a lot you can do on your own; but because your situation is unique, you need your own attorney to assist you in preparing legal documents that will help you accomplish your goals. By being informed and prepared before you step foot into your lawyer’s office, you can save yourself quite a bit of time (and maybe some legal fees as well).

Because the IRS loves to make my life complicated, as well as yours, please read the following disclaimer required by IRS Circular 230 before proceeding:

Unless otherwise expressly approved in advance by the author, any discussion of federal tax matters herein is not intended and cannot be used 1) to avoid penalties under the federal tax laws, or 2) to promote, market or recommend to another party any transaction or tax-related matter addressed herein.

I challenge each one of you to stop running from the issues and instead to tackle them head on. Have some fun making decisions. If fun just isn't going to happen, at least think about how great you'll feel knowing you've protected your assets!

Chapter 1

Why Should You Worry About Estate Planning?

Death. It isn't the kind of thing that anyone likes to think about, much less discuss. Even an episode of *Grey's Anatomy*, when its fictional character is "checking out," is enough to make many of us well up with tears or cover our eyes and shudder. Death is morbid and distressing; it's also a fact of life. We'll all die one day. And then what?

That's when things get really confusing and complicated. There's much to do: paperwork, taxes, retirement plan rollovers, insurance policies, and more paperwork—not to mention lots of legal and financial mumbo jumbo. True, you could do nothing and let your loved ones deal with the mess when you're gone. However, if you're like most women, that's the last thing you want to do. Whether you have a husband, children, siblings, or aging parents, chances are you spend a good deal of time caring for others. Why would you want to do any differently in death?

Women today aren't just caregivers. We're entrepreneurs, successful professionals, and savvy investors. (Remember, we can bring home the bacon and fry it up in a pan!) We control more than half the private wealth in the United States. We outlive our male partners, on average, by four to seven years. We need to be aware of what we have and what we want to do with it. We're in control of ourselves, our bodies, and our minds. We also need to be in control of our pocketbooks and what we do with them at the end of our lives.

Women and Property

For many centuries a woman's only legal possession was her dowry (the money and property that she brought to her husband in marriage—think fancy hope chest filled with silver and china!). Some women, depending on their social stature and place of residence, could control their dowry. In some European countries, the groom managed the dowry along with his assets. Often, a woman had no control over anything; she couldn't even sell her old hoop dress without her husband's consent! Thankfully, laws began to change in sixth-century Europe. A husband was able to administer, but not sell, his better half's property. Next, the concept of his and her separate estates soon took hold both in England and the United States. The legal right of *primogeniture*, which provided that only the eldest son inherited the family estate, was soon abolished. (That took long enough!) Soon, women were granted dower rights (different from her dowry), which guaranteed a bride some part of her groom's estate if he died first. For the first time, women could

be independent property owners, both during and after their husband's death. To protect widows from being *disinherited* (left no money or property) by their deceased husbands, dower rights remained in effect for many years, often providing that the widow receive one-half or one-third of his estate, depending upon whether there were children from the marriage, if she was "cut out" of the Will. Today, in many states in our country, women are protected from disinheritance with their right to an "elective share" of their husband's estate, often at least one-third of his estate. But don't think it's only us gals the law protects; husbands are entitled to the same elective share. Of course, if you've signed a pre- or ante-nuptial agreement, the elective share laws may not apply. No wonder the Donald Trump types always have pre-nups!

Why You Need to Plan

Unfortunately, you need more than good intentions to have your wishes carried out. When the law is involved, telling your loved ones what you want means nothing—and that doesn't even consider the miscommunications that can occur when you fail to put something in writing. I had the great honor of clerking for two distinguished jurists my first year after law school. The most important thing I learned was that there are always three versions of every event: yours, mine, and what actually happened. We all perceive and remember things differently. Why leave your intentions open to misinterpretations when you can record exactly what you want in an estate plan?

Why Wise Women Plan

My father died at my feet the day before my wedding. He was 58 years old. Fortunately, he had all his “ducks in order” as far as his Will and his Trust Fund, so I always felt it was the smartest thing to do to be prepared for one’s death.—*Anderson, age 50*

You need to identify your wishes ahead of time so in the event of death or catastrophic illness, your wishes are met.—*Julie, age 42*

My husband and I are working together with a professional financial planner and attorney to ensure that our assets, insurance, debt, etc., are properly managed so in the event of our deaths, our children will be able to continue in the best manner possible, as close to the standard of living they currently enjoy, without horrible tax repercussions.—*Missy, age 38*

A few years ago I walked alongside a dear friend who was dying of cancer at age 39. Literally, the last time he left the house was to go to the lawyers to make sure everything was updated, signed, and ready for his departure. The last time I saw him up on the computer was to type out advice to his wife about their financial assets and his ideas for her future investments. Once this was all “put to bed,” he was able to go to bed, and died a number of days later. Of course, I have learned from all this that it’s MUCH MUCH better to have all of this in place before a crisis comes.—*Jennie, age 41*

The federal government takes a huge percentage of estates that aren’t properly planned. I want to make

the decisions about where my money/things go, not the state or the federal government.—*Jill, age 43*

Estate planning is very important in order to care for one's family; it decreases emotional trauma following the death of a loved one by simplifying and clarifying issues, and it ensures that your personal assets go directly to your loved ones.—*Faye, age 32*

I've seen the effects that a lack of estate planning can bring, with my grandmother losing almost half of the value of her assets to the government.—*Addie, age 38*

What do I mean when I say telling your loved ones means nothing? We live in a society governed by laws. These laws are designed to protect us, which includes protecting our assets when we're no longer living. When you die, your loved ones can't simply walk up to your banker and say, "Mom has died. Can you divide the assets among the children?" If only it were that simple! Regulations and other rules require your local banker to prove that you are, in fact, deceased. To do this, your loved ones can simply provide a death certificate. But there's more. The banker must be sure that the person making the request has the legal authority to do so. This legal authority is usually conferred by a local court after your Will is admitted to probate (more on probate in Chapter 6, "What's a Will? What's a Trust? How Do You Use Them to Put Your Plan in Place?"). The person who receives the authority is the **Executor** or **Personal Representative** you've named in your Will. Or, maybe the banker needs a copy of an original Trust document

showing who serves as Trustee if your assets are titled in the name of a Trust. Regardless, you have the power to give this authority to act to someone after your passing. If you've left no Will, the Court will appoint an individual to be the Administrator or Personal Representative of your estate—and it won't necessarily be the person you would have chosen.

Intestacy 101

When you don't have a Will or Trust that spells out who should inherit your house, your car, your wedding ring, and all your other precious belongings, or when you have assets that don't pass by beneficiary designation or to a joint tenant, the laws of the state in which you live decide who receives your most prized possessions. Each state is different, with different determinations as to who receives what. If you have your own ideas in mind (which I guarantee almost all of you do!), you need to document them in a Will or Trust.

If none of your family members, friends, or other trusted associates is deemed to have the legal authority to act on your behalf, it's likely that you've died intestate. Dying **intestate** means that you've left no Will naming an Administrator or Personal Representative for your estate. If so, in most states, the law will determine who that individual should be. Often, the authority is granted to a surviving spouse, or, if you're

unmarried or widowed, to your children, or if you have no children, to a parent or sibling. Chances are, these are the individuals you'd want to carry out your final wishes and handle all the paperwork and legal whatnot. But what if you were on the brink of divorce from your husband? Or your kids can't balance a checkbook let alone file tax returns?

Equally important is what happens to your property if you die intestate. In the Sunshine State (Florida), if you're married and die without a Will—and you don't have any children, grandchildren, or great-grandchildren (otherwise known as descendants)—your husband would receive anything that doesn't have a beneficiary designation or isn't a survivorship account. If you're married and have descendants that are also your husband's, he'd receive the first \$60,000, plus half of your remaining estate; your descendants would receive the other half. If your descendants are *not* your husband's descendants, your descendants would receive half and your husband the other half. If you're not married, your assets pass to your descendants, and if you don't have any, to your parents. If your parents aren't living, your assets go to your siblings or their descendants, and if none, to your grandparents or their children (your aunts and uncles), then to your cousins, and then to the "kin of your last deceased spouse" (that means step-children or in-laws!). Finally, if you have no living relatives, your estate passes to the State of Florida to be used for the state's school fund.

In my home state, New Jersey, the laws of intestacy are a lot like Florida's, with several notable exceptions.

First, if you're a registered domestic partner in New Jersey (New Jersey allows homosexual couples and unmarried couples over the age of 62 to register as domestic partners), your domestic partner is treated as a spouse. Second, if you're survived by a husband and no descendants, your groom receives the first 25 percent of your estate (but not less than \$50,000 or more than \$200,000) plus three-quarters of the balance of your estate, with your mom and dad getting the rest. If your folks aren't living, your husband gets it all. Third, if you don't have any living relatives, then your step-children or their descendants will receive your estate. What some of you may find disturbing is that these step-children don't have to be your last husband's kids.

Here's an example: Remember your delinquent step-son from your first marriage to what's-his-name? You know, the one who has never held a steady job, used to sleep (and drool!) on your couch, and once spent time in the slammer for peddling drugs? Depending on where you live, he could technically get a slice of your pie if you died intestate and aren't survived by a husband, children, grandkids, parents, and other living blood relatives. While the scenario may sound far-fetched (especially if you have a big brood that's likely to survive you), it just goes to show that it's in your best interest to draw up the necessary documents so you can be absolutely certain of where your money will end up.

Escheat—Is That A New Expression for Internet Cheating?

Good guess, but no. **Escheat** refers to assets that are transferred to the state in which you reside when someone leaves behind unclaimed property. Unclaimed property can be an income tax refund that was returned to Uncle Sam as undeliverable or a bank account you forgot when you graduated college. Property can also escheat to your state when you die without a Will or Trust and have no living relatives.

Worse, for many people, than *who* receives your assets as a result of intestacy is *what* happens to the funds for your small children if you die without a Will or Trust. In New Jersey, the funds for a minor child are held by a local court in a minor's account. First, the court controls and invests the assets. They do a terrific job, but it seems to me an investment professional might be able to make those funds grow a little bit more because they have more flexibility in selecting investments. Second, and the most frightening of all, is that your children will receive their share of your estate *at age 18!* In all my years of estate planning, I've yet to meet a client who thinks her children would be able to handle large sums of money at 18. If you plan, you can have the money for your wee ones held in trust to any age or ages you would like. Talk about incentive to start your **estate planning** today!

The Worst Reasons Not to Think About Your Estate Plan

Trust me, I hear lots of excuses from women. Here are some of my favorites:

1. *As soon as I write my Will, something bad will happen.* Sorry, but in all my years of experience I've yet to see a client sign her Will and then drop dead. This excuse is just silly.
2. *My husband takes care of business things.* Hello??? Welcome to the twenty-first century! Your husband can't write a Will for you, and more importantly, these are important decisions that YOU need to make. It's time to step up to the plate and take charge of your own affairs.
3. *Nothing's going to happen to me; my grandmother lived to 108.* That's wonderful...but don't forget that terrible things happen every day. You can't count on Grandma Greta's golden years to be yours too.
4. *I don't own a house or anything of significant value, so why do I need a Will?* Even if your means are modest, I guarantee that there is something you have that you want to pass on in a particular way. Only estate planning will help you do that. If nothing else, you'll save your loved ones a lot of time and grief by putting your desires in writing.
5. *It's too sad. I just can't deal with it.* Please. As my favorite cocktail napkin says, "Put on your big girl pants and deal with it."

The key to all of this is you—what you want to do and what you want to have happen when you die. I thought about the best way to get this point across and decided that there is no sugar-coating my message: You need to be proactive to achieve *your* goals. And I repeat, *your* goals. As you continue to read this, remember that your estate plan is your plan. There is no need for guilt, angst, or any one of those other complexes we, as women, are particularly good at feeling. Create the plan that reflects what you want. Period.

We've all heard horror stories about greedy children denying proper care to an ailing parent so they can get their inheritances or ne'er-do-well in-laws circling the dying matriarch waiting for their share of the pot. While that still may happen, what actually happens is up to you. Let the vultures hover all they want. If you have a plan in place, your plan remains in place even if you become incapacitated. In the unfortunate event of crooks who trick unsuspecting, incapacitated women into changing their plan (it happens more than you can imagine), if you have a prior plan in place, a court should hold that the prior documents prevail.

Who You're Planning For

While I've talked (probably too much) about doing what you want, think about who you're planning for. It's not only for you. It's for your loved ones. You're

An inheritance is a gift, not an entitlement. Don't let anyone tell you otherwise.

working hard to be sure that they're taken care of. For some of you, your beneficiaries aren't people, but charitable institutions that you wish to support after your death. Regardless of whom or what you want to provide for, you need an estate plan that includes them. If you don't, your assets could end up being distributed according to state law. Chances are most of you wouldn't want someone else to decide who gets to keep your mother's wedding ring or your treasured teacup collection. Now, if that's not enough to scare you into action, I don't know what is! Chapter 5, "What Will Happen to Your Loved Ones?" discusses the many different beneficiaries and the planning options for each. You can be creative. I'll show you how to work your creativity into your plan to achieve your goals, protect your assets, and care for your loved ones.

How to Get Started

As my favorite song from *The Sound of Music* goes, "Let's start at the very beginning. A very good place to start." So, what is the very beginning of estate planning? It's finding a lawyer specializing in estate planning to implement your goals into an effective plan. Why do you need a specialist? You need a specialist for the same reason you don't see an orthopedic surgeon when you have a skin rash or a podiatrist when you have chronic headaches. Like medicine, the law is filled with experts in a multitude of different areas. You don't want a criminal lawyer who usually defends murderers to write your Trust or a patent attorney to plan your estate.

A very good place to start your search for an estate planning attorney is to ask your family, friends, financial planners, advisors, and other colleagues for a referral. Without a doubt, a word-of-mouth referral is extremely helpful. Another option is to call your state or local bar association to see if they have a referral service. Legal Aid offices are also available if you can't afford a private practice attorney. Not only should the attorney you select be a specialist in the area of estate planning, he or she should also be licensed to practice law in the state in which you reside because an expert in Pennsylvania isn't necessarily an expert in Idaho. Still can't find someone to help guide you through the planning process? Log onto one of these Web sites:

- **American Bar Association Lawyer Locator** (www.abanet.org/lawyerlocator/searchlawyer.html)—Search members of the ABA by specialty, including Trusts and estates.
- **American College of Trust and Estate Counsel** (www.actec.org)—Well-versed in all areas of estate planning, ACTEC fellows are accredited practitioners with at least ten years of experience in this area of the law.
- **Martindale-Hubbell Lawyer Locator** (www.martindale.com)—This database allows you to search by specialty, including searching by Trusts and estates and geographic area.
- **National Academy of Elder Law Attorneys** (www.naela.com)—NAELA members focus on the needs of elderly and disabled individuals.

When you call to make an appointment with a prospective counselor (hint, hint), inquire about costs, expertise, and availability. While I'm the first one to advise you that good planning is more than worth the money, and then some, you have to be comfortable with the likely fees. Preparing estate planning documents shouldn't be done on a flat fee basis—an estate plan is never cookie-cutter or boilerplate and shouldn't be priced as if it were an all-inclusive Caribbean vacation. Make sure your attorney can get your estate planning documents completed on a timely basis. The best lawyer in the world isn't the best if the work doesn't get finished. Make clear your expectations for completion. It's important to ask questions now, before you've invested in an attorney. If you don't like the answers or the responsiveness, get a second opinion.

When's Your Date with the Grim Reaper?

No, I'm not talking about my last blind date. (That's a story for another book!) Instead, I'm talking about life's uncertainties. You just don't know when the Grim Reaper will come calling. (Men—always so unpredictable!) I'm not trying to keep you from sleeping at night; I'm simply reminding you that life can be cruel, unfair, and inconvenient. We don't know when tragedy might strike, so it's best to plan for it today. Don't add to your already stressed and multitasked life by waiting until the day before you have surgery scheduled or an overseas business trip to put your affairs in order. The last thing you want to do is stop

by your lawyer's office on the way to the airport or to have your attorney visit you in the emergency room. (Believe me, I wouldn't want anyone who isn't my nearest and dearest to see me in one of those oh-so-attractive hospital gowns!)

Studies show that fewer than 30 percent of Americans have estate planning documents in place. We're an aging population. We need to think about these things and think about them today. I applaud you for taking the first step in taking control of your planning and protecting your assets. I hope I make the process less intimidating (with a little laughter here and there) to encourage you to get it done. Talking about estate planning and the end of life isn't exactly a walk in the park. But, control (at least for me!) provides the peace of mind to enjoy that walk in the park, and having an organized estate plan gives you that control.

What Should You Do Next?

1. Ask friends, family, professionals, and colleagues for an attorney referral.
2. Call and make an appointment!

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