



ESTATE PLANNING ESSENTIALS

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Frame & Frame Attorneys at Law have served the community for over 70 years by providing skilled, knowledgeable, and dedicated legal services for estate planning, estate litigation, probate, elder law, special needs planning, and guardianship.

Choosing the right attorney to represent you and your family, for these very personal matters, is an important decision. Often, these decisions affect very intimate aspects of you and your loved ones' lives. Our entire practice is focused on providing solutions that make your life easier.

We understand that you want someone who will listen to your story and address your concerns. Our experienced attorneys

provide legal services with discretion, care, and compassion. This area of law is truly rewarding to each member of our team, since it provides us the opportunity to truly take the weight off your shoulders.

We believe in helping people with thoughtful planning, guidance during times of crises, and creating a clear path forward. By serving as your family's lawyer and trusted advisor, the attorneys at Frame & Frame can help you and your loved ones navigate the future, protect the present, and honor the past. We hope this guide helps answer your questions, make more informed choices, and understand the legal options that are available to you.

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ESTATE PLANNING ESSENTIALS

How everyone, young and old, can plan ahead for life's unexpected journeys.



Estate planning is a priceless gift that you can provide your loved ones to ensure that your wishes are carried out, that they have the important information they need, and the guidance to make wise decisions.

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Introduction

According to Forbes, over half of Americans do not have an estate plan in place, whether that is a simple will, a trust, or other legal provisions. While death is an unpleasant subject, beginning the conversation can save you and your family considerable anguish in the moment of grief or crisis.

Unfortunately, many people believe that having a simple will is adequate, especially if they do not have a large estate. However, nothing could be further from the truth! In addition, some people do not consider the tough decisions that must be made if you are incapacitated - such as a car accident, stroke, or dementia.

For many young families, death is “years away,” but this kind of thinking often leaves children, pets, and other loved family members with a lot of questions and turmoil, if the unexpected occurs.

Common misconceptions lead many Americans to avoid estate planning. Some of these misconceptions include:

- They believe that working with an estate planner is expensive;
- They think that a will is adequate to meet the needs of them and their family;
- They think that their family members will behave amicably and will sort out the estate by themselves without legal guidance; and



- They believe that they do not have enough assets to make estate planning worthwhile.

These misconceptions often leave family members with difficult and sometimes, controversial decisions.

Estate planning allows you to consider these decisions, long before an illness or injury occurs, so that there is clear direction for your family, and your wishes are carried out, exactly as you intended. More importantly, estate planning ensures who will care for any younger children and that they will have access to whatever financial resources are available. These are just a few reasons estate planning is important for young and old alike.

4 SIMPLE STEPS TO **YOUR** CUSTOMIZED ESTATE PLAN!

STEP **01**

DISCOVERY

Understand Your Needs

Identify Goals & Objectives

Analyze What-If Scenarios

Answer Questions



STEP **02**

STRATEGY

Interactive Process

Review Strategies/
Recommendations

Agree on Plan Design

We Begin Creating
Your Customized
Plan



STEP **03**

DELIVERY

Review & Sign
Documentation

Present
Family Binder

Set Up Access to
ePlan365™



STEP **04**

ONGOING SUPPORT

Trust Funding

Annual Review of
Life Events

Ongoing Access
to **ePlan365™**



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Who Needs Estate Planning?

Everyone

Everyone needs an estate plan regardless of age, marital status, economic bracket, good/poor health because accidents can happen to anyone. Although a will can serve some needs, the estate planning attorneys at Frame & Frame Attorneys at Law are able to help you consider a wider variety of possibilities that may arise and ensure your wishes are carried out, in the event of incapacitation or death.

In Maryland, there can be serious consequences, both financial and logistical, if these issues are not considered and properly addressed. Here are some examples:

- If you are incapacitated, your loved ones will require certain documentation to act on your behalf for financial matters,
- If medical decisions need to be made, Health Care Powers of Attorney ensure that your wishes are carried out and to help give your loved ones some direction when making important medical decisions to take the weight off their shoulders.
- After your death, the probate process, taxes, and other factors may absorb much of the inheritance you hoped to pass on to loved ones.



You can see why everyone in Maryland benefits by having an estate plan to address these issues.

There are also specific circumstances which make estate planning even more valuable such as:

Families with Children

Very simply stated, families with children can benefit from estate planning by ensuring that their children are cared for by the person you choose. More importantly, a well-thought-out plan will determine how your finances can be used to support your children's needs over the coming years for small expenses like clothing and camp, to larger expenses like college and weddings.

Families with Special Needs

Many people want to consider the special needs of a child or other family member. Unfortunately, naming these loved as a beneficiary could be more harmful than helpful. After receiving this, potentially large, one time lump sum inheritance, the special needs individual is no longer eligible for government services like Supplemental Security Income (SSI) and Medicaid health coverage. In this case, a Trust would serve their needs much more effectively, and of course, our attorneys can help you determine what is the best plan for your situation.

Families with Substantial Wealth

When a family has substantial assets, or family members are planning on passing on a large inheritance, there are a variety of tax and other implications that need to be considered. Trusts are often used to pass wealth from one generation to the next. But, in order to be effective, these Trusts must be properly funded and executed in accordance with Maryland law.

Blended Families

In today's society, many families are blended which can create unique complications when it comes to inheritance. How much should the spouse receive upon your death? Should his or her children receive some or an equal portion of the assets, upon his or her death? What if you only want your assets to go to your biological children? Without an effective estate plan, all of these questions could be open to challenge or left up to the Maryland court system to decide.

Single People, Unmarried Families & LGBTQ

More and more people are in non-traditional or non-marital relationships. If you or your partner are in a non-marital relationship and one of you dies, and you do not have a will, the deceased partner's assets will go straight to their biological family members, leaving their partner with nothing. Estate planning is key to ensuring your partner is cared for. As you can see, everyone benefits from a well-crafted and properly drafted estate plan in Maryland. We explore each of these scenarios later in this publication.

We discuss each of these scenarios in further detail later in this publication. Feel free to contact the attorneys at Frame & Frame with any specific questions or to set up a private consultation.

What An Estate Plan Includes

Estate planning helps to ensure that clients' wishes are carried out in the event of **incapacitation** (accident, coma, illness) and how best to protect and dispose of money and property, in the event of **death**. Everyone needs a basic estate plan, which includes:

- Last Will and Testament and/or Revocable Trust
- Financial Power of Attorney
- Appointment of Healthcare Agent (Healthcare Power of Attorney)
- Advanced Directives (also known as a Living Will)

For estate planning, most people have several common goals and often address concerns regarding what happens *after* death, including:

- Burial or end-of-life wishes,
- Leaving a legacy for loved one
- Distribution of assets
- Avoiding the probate process
- Limiting estate and death taxes

Setting Clear Goals

To successfully complete and execute your estate plan, we suggest that you begin with a clear idea of what you want to accomplish. Often, when you begin the estate planning process, additional questions or scenarios will be discussed. Our attorneys are there to guide you to your goal and considerations for:

- Ensuring financial support for your family,
- Naming guardians for any minor children and determining how assets will be used for their needs,
- Determining how a business will be maintained or liquidated,
- Outlining preferences for medical emergencies or incapacitation,
- Choosing the beneficiaries and the age at which they will receive their inheritance,
- Leaving assets to a charity

Frame and Frame Attorneys at Law have been helping members of our community with estate planning for over 65 years and we will help make the process easy to take the weight off your shoulders.



Powers of Attorney

What happens if you or your family member is suddenly incapacitated and unable to take care of routine affairs? Who will continue to pay your health care premiums, the mortgage, or other important expenses? If you own a business, who will work with your bank or payroll provider to pay your employees? Unfortunately, without certain documentation, you may be left in a lurch. Your estate plan incorporates important documents to help ensure that healthcare and financial decisions can be carried on and carried out, in accordance with your wishes.

When an adult family member is hospitalized or otherwise incapacitated, their family may not legally be able to take care of certain priorities and obligations on their behalf without Power of Attorney documents in place. There are several reasons why these documents are so important.

If you or your family member is incapacitated and needs to contact your financial or investment advisor, that advisor's hands are tied and cannot take any action on your behalf unless there is a legally valid Financial Power of Attorney in place. This could be catastrophic, especially if markets are volatile and you must urgently modify your investments. Another example, let's say that a husband and wife have separate bank accounts and the husband historically pays the mortgage from his bank account. If he becomes incapacitated, the bank is not authorized to work with anyone, on his behalf, in the event of a health crisis. Companies are prohibited from discussing your personal information, such as mortgage, insurance policies, banks accounts, credit card accounts, etc, without a Power of Attorney document.

Likewise, if medical treatment is necessary, the doctors will need to have Healthcare Power of Attorney, giving someone the power to make decisions regarding what medical treatment you will receive if you cannot make those decisions yourself. Unfortunately, the COVID-19 crisis is a classic example of why these documents are so important.

Powers of Attorney documentation vary, so don't rely on a standard template to ensure your specific needs are covered. Sometimes you may need enhanced provisions to give your Power of Attorney additional powers to act for you, which the Maryland statutory forms may not include. In many states, real estate transactions can not occur without a specific Power of Attorney.

A Power of Attorney Dies With You

A Power of Attorney is designed to help a loved one take care of certain medical and financial decisions while you are living and either unavailable, incompetent or otherwise incapacitated. After a person dies, the power of attorney is no longer valid; it dies with you and can no longer be used to manage your affairs. After you pass, your Will then takes effect and determines who will manage your estate and how assets should be distributed, All assets (cars, houses, bank accounts, etc.) owned by you are subject to the probate process, which can be lengthy and expensive. The probate process can be avoided with a Trust.

Healthcare Directives

As part of your estate planning process, Healthcare Directives will be discussed and documents provided for you and those you designate. Advanced healthcare directives go by many names: living wills, medical directives, advance directives, personal directives, and advance decisions.

These instruments provide legal instructions for your medical care if you are rendered incapable of giving instructions yourself. These legal instruments provide clear direction for your wishes in the event of an unexpected illness or long-term diagnosis.

Since Covid-19, more and more people are ensuring they have the documents necessary in case an **unexpected** crisis occurs. Pre-planning relieves your family of much of the burden associated with making decisions, during a crisis such as if you suffer from:

- Car Accident
- Sudden Illness
- Stroke
- Unconsciousness or coma
- Severe injury
- Complicated or failed surgeries

An advanced healthcare directive is also important for someone who has a terminal illness such as cancer or Alzheimer's but, as you can imagine, it's certainly not the best time or place for these discussions. That is why pre-planning is so important. You can carefully consider all the options, without time constraints and other stress factors.



What Does an Advanced Healthcare Directive Do?

Advanced healthcare directives provide your family and physicians with the following types of information so that there is no guess work if you become incapable of making decisions for yourself. According to the National Healthcare Decisions Day organization, studies have shown that less than half of severely or terminally ill patient participants had an advanced healthcare directive, which makes them subject to decisions that may or may not be aligned with their wishes, including:

- Do not resuscitate orders
- Use of breathing machines (ventilators), dialysis machines, and other life-supportive medical equipment
- Use of fluid IV or nutrition via stomach tube
- Palliative or comfort care
- Tissue or organ donation upon death

I Have Dementia. Can I Still Create an Advanced Healthcare Directive?

A person with dementia or Alzheimer's may be able to create an advanced healthcare directive provided it is created while they still have legal capacity. However, it is important to begin estate planning before you become terminally ill or lose your legal decision making capacity.

At Frame & Frame, we include healthcare powers of attorney and/or healthcare directives as part of our estate planning process.



The 3 Biggest Mistakes

1. Not Updating your Plan

Our lives change daily and your will should be updated with any life change - marriage, divorce, new child or grandchild, death, etc. As we age, our wishes change, as do our relationships, careers, finances, health and marriages, and these changes should be reviewed on a regular basis as they relate to your estate plan.

2. Failing to Take Minors or Young Adult Children Into Account

Will your 18-year-old child know what to do with a lump sum \$100,000 inheritance? If, after you pass, your 12-year-old child's other parent passes away, do you have a plan for guardianship? If your child is enrolled in college, will the funds you leave be enough to cover the rest of their tuition and living expenses? Parents and grandparents with minor or young adult children have all the more reason to update their wills regularly and work with experienced estate planners to ensure that they do not omit important aspects of their wishes.

3. Failing to Provide for Asset Protection

Having a revocable living trust is a great way to ensure that the assets you leave to your loved ones avoid the probate process, avoid possible excessive taxation, and are used for your intended purposes. In addition, it is important to properly fund the living so that it can provide the most benefit to your heirs. Trusts can also provide important asset protection for beneficiaries, by protecting the monies in trust from future divorce, bankruptcy, judgments and creditors, as well as for special needs beneficiaries, to preserve their rights to receive essential government benefits.

Should You Have a Will or Trust?

Let's start with the simple fact that every person should have either a Will or Trust to ensure that your wishes are carried out, your family is taken care of, and your assets and legacy are preserved. It doesn't matter how many assets you have or how many family members you have a will can provide a lot of guidance during a time of family crisis.

A Will is a mechanism to advise a probate court about how you want your property distributed. But will your Will do its job as intended? That depends upon how the Will was prepared and executed. When a Will is deemed not valid by a probate court, the court is forced to distribute property according to the laws of the state in which the deceased lived. This often leads to big surprises among the family left behind by the deceased person.

Far too often, we have seen families with handwritten, on-line, or fill-in-the-blank forms that don't provide proper protection and often raise more questions than answers. In Maryland, if you die without a legal will, the State will determine how your assets are distributed and who gets what, during the probate process. If you have step-children, estranged or divorced partners, or even a married spouse, they may or may not be entitled to everything or anything. This is where legal guidance and a legal will can be invaluable.

Services & Strategies	Will	Trust
Last Will and Testament	✓	✓
Financial Power of Attorney	✓	✓
Appointment of Health Care Agent (Healthcare Power of Attorney)	✓	✓
Advanced Directives	✓	✓
Distribute Assets Per Clients Wishes, After Death	✓	✓
Focuses on What Happens AFTER Death	✓	✓
Limit Estate and Death Taxes		✓
Avoid the Probate Process		✓
Provisions to Handle Your Affairs, While Living , or in the Event of Incapacitation		✓
Provide for specific distribution of inheritance over time and for special circumstances		✓
Protect the family home or other cherished assets from creditors		✓
Protect benefits of family members with special needs & government benefits		✓
Protect life-savings or other assets, to pass on to beneficiaries		✓
Protect privacy		✓
Handle unique circumstances (i.e. blended families, etc.)		✓
Protect Assets from Creditors, Predators, and Divorce		✓

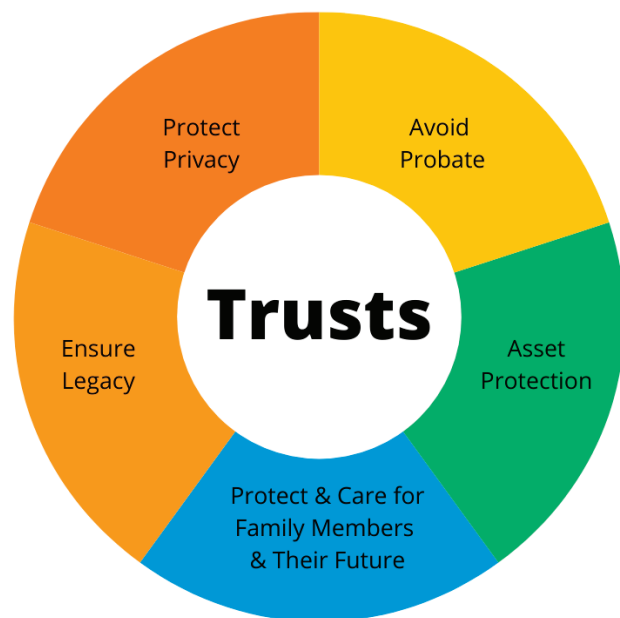
Some people *mistakenly* believe that having an attorney advise and prepare a will is expensive. However, for about the cost of a weekend get-away, you can have your personal situation evaluated, your wishes clearly outlined, and the legal documents needed to execute your wishes. This planning can serve as a truly priceless gift for your family, at a time when they need it most.

In some cases, it is determined that a trust may better serve your needs. We'll discuss those in the next section!

Why Trusts Can Be So Beneficial

There are many types of estate planning trusts. You and your loved ones do not need to be rich to benefit from a trust. Trusts are used by all socioeconomic classes of people to suit you and your family's specific circumstances.

A Trust is effective as soon as it is created and passes outside of probate court, in the event of your death. The advantage to this is two-fold. First of all, a Trust can be used to allow a Trustee to manage your affairs, while you are living, such as in the event you become incompetent or incapacitated. A simple Will does not allow for this and may require your loved ones to ask the court to appoint a guardian. With a Trust, after your death, your beneficiaries can avoid the probate process, saving considerable time and money. A Trust can also provide protection against certain creditors, like Medicaid, as well as asset protection for your beneficiaries' inheritance from future divorce, bankruptcy and their creditors. A Trust is also private, which is a great benefit to those who want to handle their financial matters discreetly. Listed below are some of the types of trusts that are commonly utilized.



Charitable Trust

If your estate is subject to estate taxes, there are many ways to reduce the tax burden. One of these is to set up a charitable trust, which can also help avoid the lifetime gift tax and can benefit your favorite charities, while minimizing your taxable estate.

Generation-Skipping Trust

Another way to reduce estate taxes is to set up a generation-skipping trust. Instead of leaving your property to your children, a generation-skipping trust passes down some or all of your assets property to your grandchildren, keeping the wealth in the family.

Irrevocable Trust

An irrevocable trust cannot be modified. An irrevocable trust can be used by a grantor with a taxable estate as a tax-reduction strategy. Assets in an irrevocable trust are no longer the grantor's property, although the grantor still has access to the funds in an irrevocable trust.

Living Trust aka Revocable Trust

A revocable trust is the most common type of trust for avoiding probate. A revocable trust, sometimes called a living trust, can be modified during your lifetime. A revocable trust will help you leave your property to your loved ones in the manner you best see fit, in a private manner outside the probate process. You can even leave property to be held in trust for several generations.

Marital Trust

When a spouse dies, co-owned assets can be moved into a marital trust. The income created by these assets is then transferred to the surviving spouse. When the surviving spouse dies, the property is then distributed to the couple's heirs.

Medicaid or Long-Term Care Planning Trust

This type of trust is for those concerned about paying for senior living, assisted living or nursing home care. The average cost of a one-bedroom assisted living apartment is \$3,900 per month in Maryland, not including other related costs such as meals and nursing. One might deplete their lifelong savings or the value of a family home paying for such care. A Medicaid trust or a long-term care trust allows you to put your assets in a trust while still qualifying for long-term care benefits.

Pet Trust

A pet trust details the care that should legally be given to a pet. It can also establish funds that can be used to take care of the animal after the owner's death. Another benefit of a pet trust over a will is that it can be used to keep an owner who is declining in health together with their pet, so that they do not get separated during a move to a nursing home or other health facility.

Special Needs Trust

If you leave a child or other relative with special needs a large sum of money (even as little as \$10,000 or so), you could ruin that person's ability to collect public benefits this person depends upon. A special needs trust allows your loved one to continue receiving these benefits, while at the same time, have access to the financial resources that you leave to him or her.

Spendthrift Trust

Assets in a spendthrift trust are protected from creditors while being managed by a trustee working in the beneficiary's best interests. This type of trust may be useful for a beneficiary who is unable to manage money properly since the trustee is in control of all of the assets.

There are many different types of trusts that offer advantages for long term care planning, estate planning, and to maximize what you leave behind for your loved ones. Our experienced trust attorneys can help you establish the best trust for each situation.

For Families With Children

During the estate planning process, we'll review your goals and your personal situation to determine the legal instruments that will meet your specific needs. For many families with children, this process evaluates whether a will is sufficient or if a trust would provide more options and protections. The cost to prepare a trust vs. a will is nominal, especially when compared to the benefits you may be able to provide your heirs. Families with children will begin by evaluating:

- Naming a guardian who will care for your children, day-in and day-out.
- Will the guardian have the financial means to care for your children without assistance?
- How can your assets be used to provide for your children's daily needs?
- How can assets be preserved for big expenses such as: college, weddings, buying their first home, etc?
- Can your estate avoid the probate process and potentially provide the most tax benefit and pass on more financial benefit to your children?
- At what age can your children access assets or funds in a trust and for what purpose?
- Can you protect a your child's inheritance from a future divorce?
- Can you ensure your child's inheritance goes to your grandchildren and not a spouse or the spouse's children from another marriage?



Client Stories



Rachel & Matt's Story: **Estate Planning:** **Single Adults with Young Family**

Rachel and Matt are both 28 years old. They have 2 children together (ages 1 and 3) but have decided not to get married. They own their home together but they each have assets acquired before they met. Rachel inherited a large sum of money from her grandparents when they passed. She has that money in a mutual fund solely in her name. Matt also has money that he received as a result of an auto accident settlement from when he was 21.

They recently met with a life insurance agent, who referred them to me for their estate planning, as neither had an estate plan in place. Neither Rachel nor Matt realized the ramifications of not having their plans in place.

One of the first issues to address was who would care for their 2 young children if something happened to both of them. They had not given this much thought and realized that this would be an issue if they passed, as they are both very close to their families

PERTINENT INFORMATION

Rachel and Matt are single adults, unmarried, with 2 children (ages 1 & 3).

Both Rachel & Matt have received large sums of money in recent years and want to ensure that, if anything happens to them, their assets can be used to provide for their children's care.

Client Stories

(Continued) Rachel & Matt's Story

and Matt's parents provide their daycare for the children 4 days per week. They most certainly want to avoid having the families fighting over custody of the children, so they would need to nominate a Guardian for the children. In this case, they felt that Matt's parents would provide the best day to day care, but we included provisions instructing that both families should have access to the children in order to maintain the children's relationships with both sets of grandparents, their aunts and uncles and cousins. They also needed to provide for a custodian or trustee for the children.

Although they felt that Matt's parents would be the best day to day caretakers, they recognize that they are not the best with money. They had also not previously thought about when they would want their children to gain access to their inheritance.

In Maryland, a child is considered an adult at age 18. Without a Will, all of the assets and money would be distributed directly to the children upon reaching the age of 18, unless they include provisions and conditions in their Will or Trust preventing that from happening.

Rachel and Matt decided that, at the age of 30, their children would be able to access the monies. Therefore, they named Rachel's sister, Kelly, as the trustee to hold the children's money in trust, until they reached the age of 30, respectively.

Kelly can pay the children's expenses and pay for all of their monthly needs, including first car, college tuition and expenses, down payment on first home, etc. Once the children turn 30, they will have direct access to and control over their own monies.



Summary: After careful consideration and a lot of 'what-if' scenarios were reviewed, Matt and Rachel now feel confident that their children will be well cared for emotionally and financially by establishing a trust.

Matt's parents will be the guardians for the children's day to day needs. Rachel's sister, Kelly, will oversee all assets and monies in the trust, for the benefit of the children.

For Families With Special Needs

As mentioned earlier, families who have children or family members with special needs must be extra careful **not to disqualify a family member from receiving important government benefits such as Social Security or Medicaid**. After all, these services are only available to those who have limited income. If you leave a large lump sum to a family member with special needs, they may no longer qualify and/or have trouble qualifying in the future for these benefits.

The attorneys at Frame & Frame are adept at evaluating your family's unique situation to create a strategy for ensuring your family members are provided for, and still able to receive the benefits they are entitled.

Often, a legal instrument like a trust, is an ideal way to accomplish these goals. As we explain in the "Trust vs. Wills" section of this guide, a trust owns the assets and ensures benefits are preserved for the family member. In this way, the inheritance can often be used to pay for ancillary services that may not be covered.

There are two different types of Special Needs Trusts (also referred to as "Supplemental Needs Trusts") that could be used. One is a First Party or Self-Settled Special Needs Trust that uses a disabled person's own funds - such as an inheritance or proceeds from a medical malpractice or car accident settlement. The other type is a Third-Party Special Needs Trust, where another person creates and funds the trust. With this type of trust, the creator can direct who gets the trust balance upon the disabled person's death. There are pros and cons to each type of trust and our Special Needs Planning attorney can be an invaluable guide, helping you determine which type of trust would serve your unique needs.



Blended Families

Our families change over time. Children and grandchildren are born. People get married, divorced and even remarry. During this time, bank accounts, IRAs, and real estate are bought and sold. For all of these reasons, it is important to establish an estate plan so the family's assets are protected during life and passed on to the heirs they choose, at death.

This is particularly true in blended families. When there are spouses, ex-spouses and children from different parents, the situation becomes complicated. When a person becomes a dependent of the family, or when someone passes away, the laws of the state come into play. Those laws may affect which family members inherit assets and which ones don't, even when the deceased intended otherwise.



Spousal Considerations

Some people think they don't need a will because they think that when they die, their assets will pass automatically to their surviving spouse. But that's not necessarily true. In Maryland, if a person dies without a will and has minor children, the surviving spouse receives 50% of the residuary estate and the minor children receive the other 50%. If there are no minor children but there are adult children, then the surviving spouse receives the first \$40,000 plus 50% of the

balance of the estate and the adult children receive the other 50% of the estate divided among them. If there is no surviving children but a surviving parent, and the surviving spouse and the decedent had been married for less than 5 years, the spousal share shall be the first \$40,000 plus one-half of the residue and the parents receive the other 50% divided between them. The problem can be compounded if the decedent has a minor child by a prior marriage. In that case, a court appointed guardian (who will probably be the parent of the minor – in other words, the ex-spouse) will be in charge of the minor child's share of the decedent's estate. Imagine owning your home with your deceased spouse's minor child whose share is controlled by your spouse's ex. This is not a situation anyone wants and can be avoided with thorough estate planning.

Theirs and Ours – Children from a Prior Marriage

It may be hard to include or exclude children from a prior marriage, simply with a will. This is where an estate plan allows you to take time and consider exactly what you intend and execute the legal instruments to ensure your wishes are carried out.

Former NFL quarterback, Steve McNair, did not have a will or a trust when he passed away. He left behind a wife and four children, two of whom were from a previous relationship. There was no estate plan, will, or trust to provide guidance for how his relatives were to receive their inheritance. This may have caused conflict among the surviving relatives at a time when they were surely grieving. Without a trust, the children may not receive all the money their father intended for them. However, if McNair had a living trust, and properly funded it during his life, he could have seen the wisdom of keeping his affairs private, an important factor for people in the public eye. Instead, his estate had to go through probate, a public process. If he had planned properly, he could have dictated what, when, and how much inheritance his surviving spouse and each of his children and other family members were to receive.

It may also be important for you to designate what happens when your spouse dies. Does all of her inheritance then go to her children, or will your children be able to receive their fair portion? Another recent example was a man who remarried and 3 years later, died suddenly. He had a will which stated that, upon his death, his assets would go to his current wife. However, three years later, the wife and his only daughter were not on the best of terms. So, without an estate plan in place, his daughter was excluded from her inheritance and the wife created a new will leaving all the remaining assets to her own children, in the event of her death. These sad situations can be avoided with proper guidance and planning.

Keeping Your Will Updated is as Important as Creating It

Life changes every day! Babies are born, people get married and divorced, new relationships are developed, old relationships may sour. If your will is not updated, your wishes may be a far cry from a document you drafted years ago.

It's important to update your will whenever your lifestyle, family members, relationships, and circumstances change. Far too often, a will is created but not updated. Although family members may be aware of your intentions, it serves no purpose because the legal document must guide all decisions.

Client Stories



PERTINENT INFORMATION

Bill & Susan are married.

- Both were previously divorced.
- Bill has 2 children
- Susan has 3 children

Their main concerns are:

1. To provide asset protection for their children,
2. To prevent the kids from accessing the funds until they reach a certain age of responsibility, as they all currently under the age of 18, and
3. To ensure that their respective children get their fair portion of the assets upon the death of one of them.

Bill & Susan's Story: Estate Planning: A Blended Family Strategy

Bill and Susan were both previously divorced, when they married. Bill has 2 children from his first marriage and Susan has 3. They have been married for 10 years now and want to plan their estate, as they are both turning 57 this year.

Their current plan includes Mirror Wills. Mirror Wills are almost identical, usually with a spouse leaving all or most of their estate to the other. A typical example might be a husband leaving his whole estate to his wife, with the added condition that if she dies first, his estate will go to their children equally. His wife then 'mirrors' his will, leaving her whole estate to him, or their children if he dies first. Unfortunately, this does not always work out as planned, as a surviving spouse can change his or her Will the day after their spouse passes.

Client Stories

(Continued) Bill & Susan's Story

In this case, if Bill dies first, the entire estate and all of the couple's assets go to Susan. She can then change her Will at any time to leave everything to her 3 children and effectively disinherit Bill's 2 children. This never leads to a happy family and usually will destroy the relationship between the surviving spouse and the stepchildren.

In this scenario, we recommended a trust plan, whereby a portion of the families' assets are held in the Wife's trust and the other portion of the assets are held in the Husband's trust. As Bill had inherited some assets from his parents and had assets prior marriage, we placed those assets in his trust. Susan also had some premarital assets, so we placed those in her trust.

When Bill passes, Susan has complete and unfettered access to the funds in **her** trust. Additionally, she will have access to the funds in her Husband's trust, but only for her health, education, maintenance, and support. Upon Susan's death, the entire balance of money held in Bill's trust will go to the beneficiaries that he named, presumably his 2 children. Once he passes, this trust becomes irrevocable, such that no one can change the terms of the trust. When Susan dies, everything in her trust will go to her beneficiaries, presumably her 3 children.

With a two trust revocable trust plan, we were able to address their biggest concerns. This plan protects the assets passed to the surviving spouse, children and grandchildren from future divorce, bankruptcy, creditors and judgments, prevents the children from accessing the trust funds until they are responsible enough to handle the money, and ensures that their respective children get their fair portion of the assets upon their deaths.



Summary:

This type of plan ensures asset protection of monies passed to the children from future divorce, bankruptcy, creditors and judgments, remains private, avoids the probate process, and ensures that the children each get their fair share of the premarital and the jointly acquired assets of Bill and Susan. The family knows how it will work and what will happen upon the death of a spouse, such that there are no surprises, and no one is left out.

Single Parents & LGBTQ Families

Single parents, unmarried parents, and members of the LGBTQ community often have special circumstances that must be considered during the estate planning process.

Often, only a single spouse or partner is a legal guardian for one reason or another. You may be the legal guardian of your adopted child, yet share the parenting responsibilities with your partner equally even if they are not a legal guardian. If your surviving spouse is not a legal guardian and you die without listing them in your will, it could spell disaster for them and the child. As such, it is important to list your spouse as the guardian in your will if that is your wish.

Many LGBTQ people who are in second marriages do have biological children from previous relationships. As such, a spouse with a biological child needs to create a will that provides for the continued involvement of their current spouse in their child's life after they, the testator, has passed away. In some cases, the court will even grant guardianship to a non-biological parent over the biological parent, but only in rare circumstances. It is important to consider:

- Will my child's birth parent have custody of my child?
- Will my partner have custody or visitation rights?
- Will my child have a choice about who they live with, and at what age?
- Who will be responsible for caring for my child, financially?
- Will my assets pass on to my child, or their birth parents?



Unmarried Partners

Many people are in non marital relationships. If one of the partners dies and does not have a will, State law determines that the deceased partner's assets go to their family members. This could leave their partner with nothing. This sad situation can be avoided with proper estate planning.

Families Who Have Accumulated Wealth

For families that have accrued substantial wealth, there are a wider variety of options and scenarios that should be considered. Some of the most important concerns are:

Privacy

Do you want a stranger to have access to you plan, to know who was included and who was not, and how much each person received? Families with substantial wealth may not want their affairs to be public record. A Will is filed with the court and all assets are appraised and reported to the court. All income and expenses are reported and a final distribution must be approved by the court. A Trust is completely private, is not recorded or filed with the Court, thereby protecting families and their heirs from people who may the opportunity to take advantage of children who have inherited large sums of money.

Avoiding Probate

If there are any assets that need to be distributed pursuant to a Will, then the Will must be probated in the court. This is the legal process of transferring assets to heirs. This is a public process that typically takes 6 months to 1 year. If there are real properties or businesses that must be sold, the probate process can get complicated and can take many years. There are also expenses involved with the probate process, such as probate fees, attorneys' fees, and appraisal fees. All assets in an estate are subject to creditors' claims and claims by the State of Maryland to recover nursing home or Medical Assistance benefits paid during the decedent's lifetime. Assets held in trust do not go through probate. There is seamless management and assets are not subject to creditors' claims as with a Will. The entire probate process can be avoided by having a trust in place.

Asset Protection

One the of biggest benefits of having a trust is that the funds passed on in trust to beneficiaries are protected from future divorce, bankruptcy, creditors, predators, and judgments. If a child gets married, as long as the funds are retained in the trust, a spouse cannot file for divorce and reach anything in the trust. The same is true with judgments and creditors, they could not get to the funds as long as the funds are retained in this trust.

Control After Death

Most people do not want their children receiving large sums of money by way of an inheritance. Families can set forth general or very specific instructions for the distribution of the trust monies. Parents can decide at what age the children will get distributions, how much, for what purposes, and when they can have some or all control over their own funds. Some people want their children to get percentages or certain amounts of money at certain intervals (e.g. 10% per year

for 10 years) or ages (e.g. 25% at age 30, 25% at age 35, and the balance at age 45). The trustee must follow the instructions as set forth in the trust agreement or be liable to the trust.

Protecting Disabled Children or Children with Substance Abuse Problems

Often a family is looking to provide for a disabled child but don't want them to lose their government benefits, such as Medical Assistance, or they may want to protect a child who suffers from substance abuse from themselves. We use special needs trust and family trusts with specific conditions and instructions to deal with these situations. We can make sure that a child has a place to live, with electric and food and prevent the child from accessing any monies directly for himself or herself. This is a huge concern for families dealing with substance abuse and a trust can ease the family's worries by ensuring adequate protection for the addicted child. In the case of a disabled child, we can protect the funds for their incidental needs and expenses while maintaining their eligibility for important government benefits.

Subsequent Marriages and Blended Families

Trust are often recommended for people on second or subsequent marriages who want to ensure that their biological children receive their fair portion of the assets, rather than risk the chance that their new spouse will change the estate plan to leave all of the assets to their own children and disinherit the deceased spouse's children. Unfortunately, this situation happens all too commonly and was not what the deceased spouse intended to happen.



Estate Planning Vs. Long-Term Care Planning

Creating an estate plan is not the same as long-term care or Medicaid planning. It's important to realize that estate planning attorneys provide estate plans, while elder law attorney's specialize in long term care and Medicaid planning. At Frame & Frame, our experienced estate planning and elder law attorneys can provide guidance and consideration for both of these needs, but it's important to understand that not all firms provide this dual approach. Be sure your estate plan is created and/or reviewed by an elder law attorney to ensure your long term care needs are considered.

Estate Planning

Very simply stated, estate planning helps to ensure that your wishes are carried out and plan for how best to protect and dispose of money and property, **after death**. Estate planning attorneys can help you create an estate plan but, unless they have received legal certification as an elder law attorney, they may not be qualified to ensure that your estate plan includes some type of long term care or Medicaid planning.

Long Term Care or Medicaid Planning

While estate planning reviews your wishes, **after passing**, long-term care planning reviews your wishes, **as you age, before passing**. This is an important additional step that some families choose to explore, as part of the estate planning process. This type of planning helps clients plan ahead, in case of incapacity or the need for long-term or nursing home costs.

This is such an important component, since 7 out of 10 people will require some type of long term care in their lives. With the costs of long term care averaging \$6,000-\$10,000 per month you can see how these services can quickly exhaust an elderly person's life savings. More importantly, most long-term care costs are not covered by Medicare. Some of the objectives of **long-term planning** include:

- Plan for incapacity and nursing home costs,
- Avoid spending entire life savings for nursing home care,
- Save the family home,
- Preserve assets to pass on to beneficiaries,
- Focus on care and costs while a person is alive, **before death**.

An estate planning attorney with elder law experience allows you to have one person guiding you through the planning process and serving as your family's trusted advisor in times of crisis.

Many people don't realize, until long after they have completed the estate planning process, that their estate plan lacks consideration for how the costs of long term care may impact their life savings or protect their legacy. It's important to have an estate planning attorney who also practices elder law.

Client Stories

Jack & Penny's Story: A Long Term Planning Strategy

As they get older, Jack is beginning to show signs of cognitive memory loss and they would like to ensure he has access to long-term care while preserving assets for Penny's future care.



Jack and Penny are citizens of the United States, and Maryland residents. They have been married for 42 years. They have two adult children, and 4 grandchildren.

Jack is just starting to show signs of cognitive memory loss. They are worried because his mother died of Alzheimer and all of the family money was spent on her nursing home costs before she eventually passed. Jack and Penny are worried that, if Jack needs long-term care, Penny would not have adequate resources with which to live on. They want to be able to maintain Penny's standard of living but also make sure that they can pay for nursing home care if Jack needs it in the future.

CREATING THE BEST STRATEGY

After Jack was diagnosed with early-onset Alzheimer's, Jack & Penny knew they would need some type of long-term care in the future. So, they immediately begin planning for this eventuality. We worked with them to create a strategy allowing them to spend-down their assets, in accordance with Medicaid guidelines, while consideration for providing Penny ample resources to care for herself. This strategy also allowed her to have the opportunity to leave money in her trust for her children, after she passes.

Without pre-planning, it is likely that Jack's admission into a long-term care program would have required the couple to exhaust their entire savings in approximately 19 months.

PERTINENT INFORMATION

Ages:	Jack, 82 & Penny, 78
Social Security: Jack	\$1,800/mo.
Penny	\$1200/mo.
Nursing Home Cost:	\$9,800/mo
Countable Assets:	\$375,000
Penny's CSRS:	\$125,000
Jack's Allowance	\$2,300
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"Spend Down"	\$247,700

Client Stories

Jack & Penny's Story

A long-term care planning strategy to provide long-term care while preserving family assets.



Step 1: Determine the Spend Down Amount

Under current Medicaid guidelines [2020], Penny was allowed to keep up to one-half of the couple's countable assets up to a maximum of \$128,640, also known as the Community Spouse Resource Allowance (CSRA). Just to make sure that we didn't go over the allowances, Penny kept \$125,000, and Jack kept \$2,300 as his Individual Resource Allowance. Therefore, we determined that the spend-down amount in this situation was \$247,700.

Step 2: Create a Plan

As part of the spend-down strategy, we recommended that Penny take care of some necessary expenses, in accordance with Medicaid guidelines. The itemized list for immediate spend-down included:

- Purchased pre-paid funeral plans for each spouse: \$ 20,000
- Made repairs to the home to accommodate healthy spouse: \$ 10,000
- Replaced their older vehicle: \$ 30,000
- Transferred to an Irrevocable Asset Protection Trust: \$187,700

Step 3: Implement the Plan

After Penny used funds to purchase the list above, we set up a trust and the balance of \$187,700 was placed into an irrevocable asset protection trust. Since the transfer occurred at least 5 years prior to either spouse applying for Medicaid, the money in the trust was 100% protected and the couple was able to qualify for Medicaid (assuming they did not accumulate additional assets). The money in the trust can be used to cover their incidental expenses and upon the death of both of them, the monies in trust will pass down to their children and/or grandchildren and be completely protected from creditors, predators and divorce.

Summary: By pre-planning, Jack and Penny were able to preserve much of their life savings, obtain Medicaid benefits for Jack (and potentially Penny), and create a protected trust. This allowed Penny to maintain her lifestyle for many years and leave any remaining funds to their children after they both pass on.



Long Term Care Insurance

Long term care insurance can be an excellent tool as part of your overall strategy. The younger and healthier you are when you purchase insurance, the more affordable your premiums will be. Your payout may also grow over time, so the sooner you decide to make the purchase, the better. However, long-term care insurance is not for everybody.

Long-term care insurance can be an important part of an estate plan, as it covers a wide variety of needs that traditional health insurance, including Medicare, does not cover. Long-term care insurance will cover in-home care, adult or elder daycare, or extended stays in a nursing home or similar facility. It offers added protection for people who need help with the basic activities of daily living, like toileting, dressing, transferring, eating, and bathing.

Unlike the traditional long-term care insurance policies, the more recent hybrid long-term care policies combine the benefits of life insurance with long-term care benefits. If it turns out that long-term care is not needed, the policy works much like a traditional life insurance policy, with a death benefit paid to beneficiaries upon the death of the insured.

There are many factors that go into the decision of whether to purchase long-term care insurance, and if so, how much to buy. As part of an overall estate plan, you should understand long-term care insurance and the role it may play in your long-term care planning. The benefits of long-term care insurance go beyond what your health insurance may cover by reimbursing you for services needed to help you maintain your lifestyle if age, injury, illness, or a cognitive impairment makes it challenging for you to take care of yourself. Long-term care may benefit:

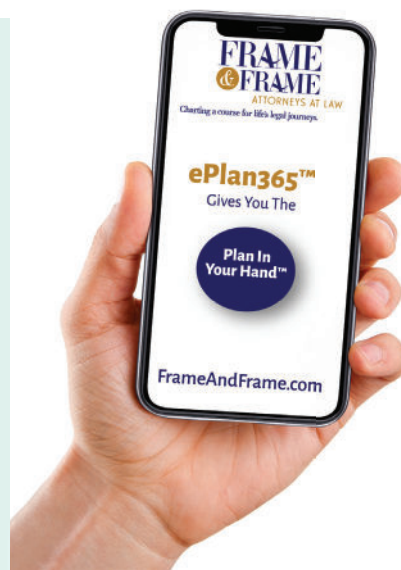
- **Individuals** who may not have someone to care for them or significant assets to pay for these costs.
- **Families** who want to help protect their loved ones, lifestyle and assets.
- **Retirees** and Pre-retirees wanting to preserve the money they have worked so hard to save.

An experienced attorney can provide you with a list of long-term care insurance providers.

ePlan365™

Puts The

Plan in Your Hand™



If an unexpected crisis or tragedy occurs, your loved ones will be focused on solving the challenges, making decisions, and dealing with the family's emotions.

There will likely be many questions and decisions to be made, depending upon the circumstances. The biggest question of all... "What's the plan?"

At Frame & Frame, we've helped people, for over 65 years, face the challenges and questions that arise. Today, we are one of the only estate planning firms that offers our clients a proprietary platform so that every decision, document, and resource is available to your loved ones **instantly**. Our **ePlan365™** gives you the Plan in Your Hand™.

The **ePlan365™** is a unique service we provide to clients that securely stores all of your documents and information in one

easy place that you (or your loved ones) can access anytime, anywhere. The platform can store:

- Your will, trust, or estate documents,
- Your powers of attorney and health care directives,
- Your medical history, doctors, prescriptions, allergies, and medical images,
- Passwords and logins for all of your critical financial information so that your bills can be paid,
- Personal notes and letters to family members.

All of this important information is encrypted and protected with industry-leading technology and security and can only be accessed by the people you choose, for the crisis or events you choose.

Your family will only access the information you pre-determine. Most importantly, they won't have to spend time searching for or wondering what the plan is, because your **ePlan365™** provides all the answers.

*Give your family all the information they need, at the moment they need it! Our **ePlan365™** platform gives you the Plan in Your Hand™.*

ePlan365™ gives you the Plan in your Hand™ and provides all of the information, in an easy to access platform that can be made available, to those you choose ahead of time, in the event of any crisis. It's an easy way to keep vital information securely stored in one place, with the ability to share it with friends or family members, on an *as-needed* basis.

Consider this common scenario:

Kim and Mike are a young couple. Kim became suddenly ill and was hospitalized. As a mom, she serves as the family's bookkeeper, education provider, medication dispenser, pet mobile, and Grandma's caretaker! So, when Kim became incapacitated, there were a lot of pieces to put together. Fortunately, she and her husband Mike had ePlan365™ so Mike was quickly able to find information on:

- Powers of attorney allowing Mike to communicate with the doctors, on Kim's behalf,
- Kim's primary care provider, medication information, and other health-related documents,
- Kim's health-care directives and wishes,
- Information needed to take care of Grandma while Kim was incapacitated,
- Logins for bank accounts and bill pay,
- Pets veterinarian and dietary issues,
- Logins for the kid's educational portal.



More importantly, when medical decisions had to be made quickly on Kim's behalf, Mike had everything he needed to provide to the doctors and caregivers, including a copy of the Healthcare Power of Attorney, list of Kim's allergies, her medical history, and more!

Before long, Kim was on the mend and back home to her family, making a full recovery. During her illness, Mike was able to access all of the information he needed. During her recovery, Kim didn't have to worry about anything because Frame & Frame's ePlan365™ was there to guide the way. Of course, Frame & Frame was also there to serve as Mike's legal guide, in any way. Make sure your estate plan is available to your loved ones, at a time when they need it most!

Summary



It is clear that everyone has unique needs and there are many strategies that can ensure your wishes, your future needs, and your family's needs, are considered and cared for, if an unexpected crisis occurs.

The most important thing to remember is that every strategy involves planning ahead. When your family is confronted with your incapacitation or even death, the most precious gift you can provide is the guidance they need during and after this type of family crisis.

The team at Frame & Frame has been serving

the legal needs of our community for over 65 years. We have served as a trusted advisor for thoughtful planning, and as the same go-to guide, during times of crisis. We have literally helped families pass down precious memories, wealth, and even provide guidance for children and grandchildren.

We are honored to continue this tradition today and are here to take the weight off your shoulders and make the process easy.

To learn more or to schedule a private consultation, please visit us at: FrameAndFrame.com

Navigating estate planning, long-term care planning, and Medicaid planning is not a DIY task. Frame & Frame provides legal guidance for thoughtful planning to protect you, your family, and your legacy.

Glossary

Below are some of the terms used in estate planning. This list is by no means all-inclusive, but provides insight into the various strategies and terms used throughout the process.

Allowed Gift Amount - The total original amount of the gift less the amount returned to the applicant equals the allowed gifted amount (the amount protected).

Annuity - An annuity is an insurance contract that provides regular income to the owner, in exchange for a lump sum investment.

Beneficiary - A person who derives advantage from something, especially a trust, will or life insurance policy.

Burn Rate - The amount of money that an applicant will “burn” through in one month of a plan. When dividing the spend-down amount by the burn rate, the resulting figure is the number of months the applicant can afford to privately pay throughout a penalty period.

Community Spouse - The spouse who remains at home or in an assisted living community and does not require Medicaid benefits.

Community Spouse Resource Allowance (CSRA) - The amount of countable assets the spouse is entitled to retain, in order for their spouse to obtain Medicaid benefits.

Countable Assets - The total assets (bank accounts, cash, stock, additional real estate beyond the primary residence, etc.) owned by the Medicaid applicant and/or spouse that the State Medicaid agency uses to determine financial eligibility for benefits.

Crisis Medicaid Planning - Financial and legal planning done to accelerate one’s eligibility for Medicaid benefits, particularly when no previous long-term strategy or planning has been performed.

Durable Power of Attorney - A legal document that is executed when a person is of sound mind, that designates an individual to carry out legal and financial responsibilities, on behalf of another.

Fiduciary Responsibility - Where one person places complete confidence in another in regard to a particular transaction or one’s general affairs or business.

Gift - A gift is when any money, property, items, or other assets are conveyed to another person for less than they are worth.

Gift Tax Exclusion - An IRS regulation that allows an individual to give away a certain amount of money each year, without incurring a tax. This exclusion is NOT applicable when planning for Medicaid benefits.

Guardian - a person who has been appointed by a judge to take care of a minor child or incompetent adult (both called “ward”) personally and/or manage that person’s affairs.

Grantor - the party who transfers title in real property (seller, giver) to another (buyer, recipient, donee) by grant deed or quitclaim deed.

Individual Resource Allowance - The amount of assets a Medicaid applicant can retain and still qualify for benefits, typically used for discretionary spending.

Institutionalized Spouse - The spouse who is in or requires nursing home facilities and is seeking Medicaid benefits.

Intestate - referring to a situation where a person dies without leaving a valid will.



Glossary

Last Will and Testament - a legal document that states in writing how the testator (the person preparing the documents) would like to have their estate distributed upon their death and who will carry out those duties. It must be by two (2) or more credible witnesses in the presence of the testator.

Long Term Care - The care provided to an individual who is in need of daily assistance with basic functions of daily life. It includes eating, bathing, dressing, transferring, toileting, medication management, and assistance with prosthetic devices. 70% of individuals over the age of 65 will require some type of long-term care during their lifetime.

Look Back Period - The lookback period is the 5-year period in which a state's Medicaid agency will "look back" to determine if a Medicaid applicant has made any transfer of assets. If the individual and/or spouse has made any uncompensated transfers, and the transfers are not cured/returned, the applicant will be subject to a penalty period of ineligibility.

Medicaid - A state and federal government program intended for people with low income or limited resources. Provides payment for the majority of long-term care services required by elderly citizens.

Medicare - A program directed by the federal government that functions primarily as a health insurance program for people over age 65. Medicare benefits are intended for short-term services, when the medical condition is expected to improve, and acute care. In most cases, Medicare does not pay for long-term care services.

Medical Requirements for Medicaid - Aged (meaning over the age of 65), blind or otherwise disabled.

Monthly Maintenance Needs Allowance (MMNA) - The amount of monthly income to which a community spouse is entitled. If the community spouse's income does not meet his or her MMNA, he or she is entitled to a shifting of income from the institutionalized spouse.

Mirror Wills - the wills of a husband and wife which are identical except that each leaves the same gifts to the other, and each names the other as executor.

Monthly Income Shortfall - The monthly cost of the nursing home minus the applicant's available income

Partial Cure - If an ineligible gift has been made during the look-back period, the gift can be returned to the Medicaid applicant, and potentially reduce the penalty period and/or eligibility for Medicaid benefits.

Penalty period - the period of ineligibility imposed by the State Medicaid agency if uncompensated transfers have occurred within the lookback period. The length of the penalty period is based on the amount transferred and the state's specific divestment penalty divisor.

Pre-Planning - When someone plans for long-term care costs and/or their estate is structured to allow them to qualify for Medicaid benefits with consideration for assets, income, gifts, look-back period, etc.

Probate - the entire process of administering a deceased person's estate. This involves organizing their money, assets and possessions and distributing them as inheritance, after paying any taxes and debts.

Testator - a person who has died leaving a will.

Trust - a legal instrument that holds property as its nominal owner for the good of one or more beneficiaries.

Trustee - a person or entity who holds the assets (corpus) of a trustee for the benefit of the beneficiaries and manages the trust and its assets under the terms of the trust stated in the declaration of trust which created it.

Trustor - the creator of a trust (who normally places the original assets into the trust), called a "settlor" or "donor" in many states.

For more resources, visit www.FrameAndFrame.com or schedule a private consultation.

Charting A Course for Life's Legal Journeys

Estate planning requires careful consideration and a trusted guide to protect you, your family, and your legacy.

Contact the experienced attorneys at Frame & Frame today. We can offer you a path to take the weight off your shoulders and can even serve as a guide for your family, during times of crisis.

Take the first step and ensure your family is prepared for any eventuality.

We offer a variety of ways to meet with you,
allowing you to take care of *your* business at *your* convenience.



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