



If Something Should Happen

How to Organize Your Financial and Legal Affairs

By Marla Brill



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AMERICAN INSTITUTE *for* ECONOMIC RESEARCH
Great Barrington, MA

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Preface

The purpose of this book is to help you organize your financial and legal affairs, so that your loved ones and others will be able to step in and help with minimal difficulty if you are not able to manage things yourself. It will also be helpful to anyone who wants to “get on track” by reviewing where they stand and bringing together key information on the financial and legal aspects of their lives into one centralized place.

The book includes a complete set of organization forms that provide an easy-to-use blueprint for doing this. The more organized you are, the easier it will be for others to help out during an emergency, an illness, or after your death. You will also achieve satisfaction and peace of mind from finally getting around to doing something that many of us put off until it is too late.

Planning and organizing will also help ensure that your wishes are followed. The plain fact is that we never know when decisions may have to be made on our behalf or about our estate. The question is who will make them and what guidance they will have. This book is designed to help you provide that guidance.

The author, Marla Brill, is an AIER research associate and the author of *How to Give Wisely* (AIER) and *Windfall: Managing Unexpected Money So It Doesn't Manage You* (Alpha Books), and a co-author of *How to Plan for Your Retirement Years* (AIER). An experienced financial journalist, she also has written numerous articles for AIER and other organizations.

Kerry A. Lynch
Senior Fellow

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Introduction

No one wants to think about what might happen if they become unable to handle their own affairs, either briefly or for a longer period. But illness and infirmity are unpredictable, and the uncomfortable truth is that no one can predict when illness will strike or what form it may take.

Acknowledging one's mortality is even more difficult, and many of us avoid addressing the issue altogether, or do so in a superficial manner. Even people who might reasonably be expected to know better are not exempt from this tendency. Warren Burger, former chief justice of the Supreme Court, left only a 176-word handwritten will bequeathing his entire estate to his two children. He did not grant any power to his executors and failed to make provisions for estate taxes—mistakes that probably left his heirs with only a vague idea of how to carry out his wishes and may have cost them thousands of dollars in unnecessary taxes.

This is far from an isolated example. Nearly everyone knows of friends or loved ones who have struggled to sort out the financial, legal, and personal records of someone who became sick or died (sometimes unexpectedly, sometimes not). And it is not uncommon for the handling of an estate to lead to family disagreements and outcomes that almost surely were not what the deceased desired.

Polls show that many people, including those with substantial wealth, have not made any plans. A surprisingly large number do not even have a simple will. The number one reason is procrastination. People say, “I plan to. I just haven't

gotten around to it yet.”

“Getting Around to It”

Your interest in this book indicates that you are taking a definitive step toward “getting around to it” by pulling the pieces of your financial puzzle together and organizing them in a manner that will help family members and loved ones if something happens to you.

An estate plan is only part of the puzzle. As you begin to consider ways to organize your finances, look at your total financial picture. This may include reviewing beneficiary designations and ownership arrangements and, if necessary, making appropriate changes. Evaluate the characters, strengths, and weaknesses of those closest to you to determine who should be given power of attorney or who should assume key roles such as executor, guardian for minor children, or trustee. Just because someone is the logical choice to assume a certain role does not necessarily mean he or she is the best-equipped to handle the challenge. Talk to the people to whom you wish to entrust health care or financial decisions to make sure they understand your wishes.

Also consider whether your health insurance will be adequate to cover medical needs or a nursing home stay. Coverage needs often change and may not keep pace with evolving personal or financial situations. You may also have insurance policies that you do not need, such as a life insurance that was important when your children were young, but that is no longer warranted.

Make organization a priority. Many people have inventories in their heads about

what they own, which accounts are worth how much, and where to find the keys to the safe deposit box. Others have only a vague idea of where everything is, but assume family members will be able to piece things together. In either case, if details are not committed to paper, the individuals you expect to help out or take over will have a difficult time gathering the information they need at what is likely to be a time of stress.

This book will help you devise a plan of action that loved ones can follow if you are unable to handle your affairs yourself. It is divided into three parts:

Chapter 1: Taking Stock addresses areas to review before delving into specifics of estate planning and financial organization. Topics include finding an attorney to craft or revise an estate plan, beneficiary and

ownership designations, health insurance coverage, and funeral planning.

Chapter 2: Planning reviews key estate planning documents and the roles of individuals involved in making decisions in the event of your disability or death.

Chapter 3: Organizing Your Records provides guidance to getting a handle on your finances as well as blank forms to help you get organized. You can use this as a master plan to share with the people you have chosen to assume various responsibilities. It may be a good idea to fill out these forms in pencil, or make copies of them before you fill them out, so that they can be updated periodically.

A section on Resources provides contact information for the various information sources, organizations, and websites mentioned throughout the book.

1: Taking Stock

Before organizing your estate plan and other finances, take some time to review your current situation. As you go through your financial checklist, determine the answers to the following questions:

Is My Estate Plan Up to Date?

If you already have an estate plan in place, it is a good idea to review it with your attorney if you have not done so within the past five years. This is particularly true if you have experienced a change in your financial circumstances or a significant change in your personal circumstances such as a move to another state, the death of a spouse or close family member, a marriage, a divorce, or the birth of a child.

Another reason to revisit your estate plan is changes in the law. The Economic Growth and Tax Relief Reconciliation Act of 2001 increased the amounts that qualified for a federal estate tax exemption on a schedule that grew yearly and ended with \$3.5 million in 2009. Starting January 1, 2010, the estate tax was actually repealed, but EGTRA also provided for the tax to reappear January 1, 2011, with a \$1 million maximum exemption and a top tax rate of 55 percent (compared to 45 percent in effect in 2009.) As of this writing, Congress has not managed to pass a new law.

The bad news about this 365-day repeal of the estate tax is that thousands of people are expected to be negatively affected by a little discussed aspect of it: A new income tax on capital gains of property inherited and later sold. In light of this, everyone should review their estate plans, but in particular, married people with estates over \$3.5 million.

If you have not addressed the issue of estate planning at all, you should write your will, despite uncertainties in the law. If you die without a will, the estate is deemed intestate, and a probate court will step in to administer the handling of the estate. If this happens, legal fees and lengthy delays may well prevent heirs from receiving their full inheritances in a timely manner, and your wishes regarding your estate may not be carried out.

Assets that have a named beneficiary (such as a 401(k)) or are jointly owned may transfer fairly simply without a will. But assets that do not have a beneficiary or co-owner will be included in the intestate estate, and state laws usually require that intestate estates be distributed along blood lines according to strict rules. It is virtually impossible to generalize about how any given estate would be distributed. It depends on the situation and the laws of the state in which the deceased resided. The primary question you face is not whether you will have a plan for the distribution of your wealth, but whether the plan will be of your own design or one imposed by law.

There are a number of do-it-yourself resources available to those wishing to devise their own estate plans, such as the publications and WillMaker software from Nolo Press (www.nolo.com). As a rule, this approach is suitable only for small and simple estates. If you use an attorney—and you should definitely do so if your estate may be subject to federal or state estate taxes—you can expect to pay anywhere from a few hundred dollars to a few thousand dollars, depending on the complexity of the situation. But it is money well spent if it avoids

complications, misunderstandings, and potentially costly tax consequences to heirs down the road.

Friends and family members are often a good source of estate attorney referrals, as are other professionals you may use, including accountants or financial advisors. A few resources on the Internet can help you find an attorney and check out credentials. Lawyers.com (www.lawyers.com) is part of Martindale-Hubbell, a major publisher of legal directories. The site has biographies and other background information on more than 400,000 attorneys in its database. The National Elder Law Foundation (www.nelf.org) provides referrals to attorneys specializing in a variety of elder law issues, including nursing home funding and placement, estate planning, and long-term care insurance.

When interviewing candidates, be sure to ask the following questions:

- How long have you been in practice? For a simple will, an attorney with a couple of years of experience or a general practitioner can be a cost-effective choice. However, for a complex estate plan, you may need someone with substantial specific experience in estate planning. Several situations, not all of them strictly financial, can require a more complex approach. These can include divorce, remarriage, and blended families; the presence of special needs children; or the existence of a family business.
- How much of your practice is in estate planning? A specialist should devote at least 70 percent of his or her practice to estate planning.
- What professional associations do you belong to? Look for memberships in such groups as the American Bar As-

sociations' Trust and Estate Division, the National Academy of Elder Law Attorneys, or local estate planning councils. Publication on issues relating to estate planning is another indicator of a specialist in the field.

- Can you provide me with references from professionals and clients you work with?
- Can you give me an idea of how much this will cost? Do you charge by the document? If so, how much? If you charge by the hour, what is your hourly rate? (It is a good idea to ask for a written fee agreement that states the hourly rate, an estimate of the number of hours that will be needed to complete the work, and billing dates.)
- What hours will you be available for meetings? Can you meet after work, make house calls, or visit a nursing home if necessary?

Is My Health Insurance Coverage Adequate?

Even the most well-thought out estate plan could be derailed by a health crisis that could decimate the assets you were planning to use to fund a comfortable retirement or to pass on to your heirs. One of the most serious threats to retirees' finances is the need for extended nursing or home health care. According to a 2009 MetLife Mature Market Survey, the average cost for a nursing home is \$80,000 per year for a private room (\$219 a day) and \$72,000 for a semi-private room. The costs vary widely depending on the facility and the location. In major metropolitan areas such as New York City, the costs can exceed \$100,000 per year.

Arranging for care at home can cost more or less than this, depending on the amount and type of care. Home aides typi-

cally cost \$10 to \$20 per hour. At \$15 per hour, four hours of care each day would cost \$60 a day, or \$22,000 per year. Round-the-clock care at this hourly rate would cost \$360 a day, or about \$130,000 per year.

Medicare does not cover long-term custodial care in nursing homes, in assisted living facilities, or at home. Medicaid, the government health program for the poor, does cover nursing home care, but has strict eligibility requirements that include income and asset limitations. Although some people with substantial assets were able to give money away or hide assets to qualify for coverage in the past, the stringent Medicaid asset transfer rules enacted by Congress in 2006 make it much more difficult to appear impoverished in order to qualify for coverage.

To answer the need for meeting the cost of an extended nursing home stay or care at home, many insurers sell long-term care insurance. These policies promise to pay benefits for a combination of skilled and custodial care in a nursing facility and home health care. Many of the early long-term care policies offered very limited coverage for very high prices. In the past few years, some of the most objectionable features of earlier policies, such as those requiring prior hospitalization before admission to a nursing home or exclusions for Alzheimer's disease, have been eliminated from newer policies. If you hold one of those older policies, review its provisions and obtain modifications if necessary.

Despite improvements, long-term care insurance is still complex and expensive, and underwriting standards are strict. If you wait until you have serious health problems to apply, you will probably be rejected. On the other hand, if you buy a policy when you are in your 50s or 60s, over the years, you may pay tens of thousands of dollars

for a policy that you might never use, that you might eventually drop if the premiums become unaffordable, and that might not provide enough coverage.

If you are considering buying long-term care insurance, or are reviewing a policy you already own, you may wish to consult a helpful booklet titled "A Shopper's Guide to Long-Term Care Insurance." Published by the National Association of Insurance Commissioners, it is available at the organization's web site at www.naic.org.

Long-term care insurance does not answer the need for coverage while you are still relatively healthy. If you are working, it is likely that your employer (or if you are self-employed, your business) pays some or all of your health insurance premiums. But what if you retire or change jobs before Medicare kicks in at age 65? If you are one of the many people whose employer does not offer continued health benefits after retirement or upon leaving a job, you should line up alternative coverage before you leave. You can try to obtain individual coverage, although you may need to go through medical underwriting.

Basically, this means you give the insurance company information on your health that they can use to estimate the likelihood of your filing a claim (some states allow this kind of screening, others do not). Premiums will vary widely and depend on a number of factors, including your age, health, the policy's deductible, and your state's regulations. If you have health issues, even minor ones, you might be turned down for coverage or find the premiums unaffordable.

Keep in mind that your options are likely to change over the next few years if Congress acts on health care reform. Any new rules will probably be complex and be phased in over time, so try to get the latest information before making any major decisions.

Employers are required to offer certain employees continued access to their health plans under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Qualified individuals may still be required to pay the entire premium for coverage, which can be quite expensive, and employers are only required to continue the insurance for a limited period.

Some would-be early retirees look at their limited health insurance options and decide not to retire early after all or to work part-time to receive health benefits. Such jobs may not pay as much as a former full-time position, but they may be worth considering as a way to obtain group coverage.

Health insurance options change markedly at age 65, when anyone eligible to receive Social Security benefits becomes eligible for coverage under the federal Medicare program. Although it is fairly comprehensive, Medicare does not cover some medical expenses, including dental care, eye care, co-insurance and deductibles, and many tests. Policies that are supposed to fill in where Medicare leaves off are known as Medigap policies, and coverage offered under these policies is closely regulated by statute. As Medicare coverage changes, you will need to check your Medigap policies to be sure coverage continues to dovetail in a meaningful fashion.

Even after attempts at simplification by the National Association of Insurance Commissioners, Medigap policies remain confusing to many people, and a policy that may be a good value to one individual may not be particularly useful to another. For information that can help you evaluate your options, see the free government guide, *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*, available at www.medicare.gov or by calling 1-800-MEDICARE. (1-800-

633-4227).

The next step is to consider whether any changes in your circumstances warrant a change in life insurance coverage. The need for life insurance is greatest upon the birth of children. It gradually diminishes as those children grow older. If you have a large mortgage and heavy debts, family members might have trouble paying off those debts without life insurance. If no one is financially dependent on you and you have a relatively light debt load, you may no longer need to be paying life insurance premiums.

Do My Beneficiary Designations and Ownership Arrangements Reflect My Wishes?

Assets that are designated as jointly owned with rights of survivorship, the most common form of joint tenancy, become the property of the surviving joint owner, not the decedent's heirs. If more than two individuals share a tenancy, the joint tenancy continues until it descends to the last joint tenant.

The ease with which jointly held property passes to survivors, as well as estate tax planning considerations, makes it critical to review the names on all jointly held accounts. Here is a hypothetical example of what can happen when a joint ownership arrangement results in unintended consequences:

Joyce, a widow of two years, wanted her two children to inherit her estate. But after she remarried, her new husband convinced her to place all her assets in joint ownership with him. When she died a year later, her husband became the sole owner of the property and her children received nothing from the estate.

In addition to joint ownerships, assets with a named beneficiary provide a way

to transfer property smoothly and conveniently. These assets usually pass directly to beneficiaries outside of the terms of your will. Review IRAs, 401(k) plans, life insurance policies, property titles, pension plans, and other assets. Make sure that 1. you have named beneficiaries, if appropriate, and, 2. old beneficiary designations have not been affected by divorce, remarriage, death, or other circumstances.

Retirement plans and other financial accounts are a particular concern. Unfortunately, people sometimes name beneficiaries when they first enroll in a plan or open an account, perhaps thinking of it more as a convenience than a major estate-planning decision, and then they forget about it. Or, they neglect to name anyone at all. If the accounts are small, it may not matter much. But over time the value of these assets may

grow substantially; they may eventually comprise the major portion of your estate. You should regularly review these beneficiary designations as your financial and family circumstances change.

When naming beneficiaries, consider some “what if” scenarios. What if the beneficiary predeceases you? What if you name two beneficiaries and one predeceases you? Who will get that person’s share—the other beneficiary, your estate, or someone else? With some accounts, you can address this by naming a “contingent beneficiary.” Some beneficiary forms clearly spell out your options; if they do not, ask for clarification.

Assets without a beneficiary designation may cause complications for heirs. Without written instructions in a will, family members will have to rely on state laws to determine how assets will be distributed and

Be Careful About Burial Insurance

There is an alternative to prepaid funeral arrangements that can achieve many of the same goals—namely, to save your survivors the expense of your funeral—but provide some flexibility that is not available when you contract far ahead of time with a particular funeral provider. Very simply, you can pre-fund your own funeral, to be carried out according to your instructions, by purchasing a life insurance policy with a death benefit adequate to cover the costs of the funeral you desire.

While insurance is usually portable, you may get less back than you paid in if you change your mind and cash out, warns the Funeral Consumers Alliance (FCA), a non-profit organization that supports increased funeral consumer protections. Insurance plans can have all sorts of restrictions, too. Many will not pay the full benefit—or anything at all—during the first few years you pay premiums.

To help ensure money is available for your funeral, the FCA recommends, as an alternative to burial insurance or pre-paid funerals, setting up a bank account that is payable on death to a beneficiary. Sometimes known as a Totten Trust, this is an account you set up at the bank by filling out a few simple forms. You can choose the beneficiary and deposit any amount of money you wish. When you die, the money does not have to go through probate and is immediately released to the beneficiary upon confirmation of their identity and presentation of a death certificate.

Until then, however, only you, and not the beneficiary, can access the account. The funds remain in your name, they are portable, and the interest accrues in your account. You can get more information on Totten Trusts and other funeral arrangements at the FCA’s website (www.funerals.org).

which ones will be used to pay expenses for the estate.

Will Those Responsible for Handling My Affairs Have Access to Money to Pay Bills?

It is often advisable to have an easily accessible source of funds that heirs can use to pay immediate expenses, such as burial or cremation costs. This is often accomplished by filling out a payable-on-death (POD) or transfer-on-death (TOD) form provided by a bank or other custodian.

Setting up a joint account with a close friend or family member you trust would give that person easy access to funds they may need to pay bills should you become ill or incapacitated. Alternatively, you can use a power of attorney document to give someone legal authority to access your account if you become ill. The different kinds of power of attorney are outlined in Chapter 2. A lawyer can craft one that best suits your situation.

However, some banks (and other financial institutions) require you to complete their own power-of-attorney forms. Check on this now, so that your designated agent will not have trouble accessing your account later on.

Do I Know Who Will Make Decisions on My Behalf?

This is the time to give serious thought to the people whom you trust to make decisions on your behalf, both before and after your death. Should you become incapacitated, you will need to rely on someone with a power of attorney to make health care and financial decisions for you. Depending on the provisions of your will, an executor, trustee, or guardian may have to step in to help oversee and distribute assets in the estate or assume responsibility for minor chil-

dren. Chapter 2, “Planning,” reviews these roles and responsibilities in more detail.

Have I Conveyed My Wishes Regarding Funeral Options?

The disposition of a person’s physical remains often is one of the least-planned of his or her affairs. Fears about death understandably may make all concerned, especially family members, reluctant to discuss or plan funeral arrangements much in advance of actual need. However, last minute arrangements made in hastened or anguished circumstances can be far more costly—sometimes onerously so to survivors—than informed decisions reached before death stares one in the face.

There are more funeral options available than many may realize. For many people, knowing that after they die they will be celebrated by a funeral that spares no expense and is attended by a host of friends and family is an important source of comfort during their remaining lifetime. For others, a private modest funeral that does not pose a financial burden to survivors or deplete the estate that will pass to heirs is desirable. Still others prefer that no funeral service be held, and that their remains be disposed of in the least costly fashion. The important thing to realize is this: Your own wishes probably will not be fulfilled unless you make them known—and unless you review the options that are available for a particular type of funeral arrangement.

Whatever those wishes may be, a variety of state and federal laws regulate funeral practice. It is in your interest and the interest of your survivors to be familiar with the principal laws governing the disposition of human remains and funeral industry operations. The Federal Trade Commission’s Funeral Rule enables consumers to obtain information about funeral costs. Among

other provisions, the Funeral Rule requires that funeral providers give price information over the telephone (which relieves buyers of funeral services of subtle pressure tactics that may be employed in a face-to-face meeting with funeral personnel). It also requires them to supply, on request, a general price list of all items and services offered.

One of the most costly items in most funerals is the casket. However, in some circumstances a casket may not be appropriate. For consumers who select direct cremation, an inexpensive alternative container or unfinished wood box that will be destroyed during cremation may suffice. Under the Funeral Rule, funeral directors who offer cremation services are prohibited from telling you that state or local law requires a casket for direct cremations and must make an unfinished wood box or alternative container available.

The variety of options available for conventional funerals could bewilder your survivors. It is not much trouble to telephone one or more funeral providers in your locality, listed under “Funeral Homes” in the Yellow Pages, to request a general price list of funeral items and services. Such lists are yours to keep, and you may wish to discuss them with whomever you expect to be in charge of funeral arrangements when the time comes—and to indicate on the price list exactly what you want. A copy of this list, with your written instructions, ought to be kept in a readily available location in the event of your death (but not in a safe deposit box), and be made known ahead of time to your spouse or anyone else who may require such information upon your death.

Many funeral directors urge consumers to pay for their own funerals in advance—termed pre-need—which they say will not only save grief-stricken survivors the

trouble of making funeral arrangements, but also will save money by locking in the current price for funeral goods and services.

In principle, this may seem prudent. In practice, it requires that consumers take a number of precautions to ensure that they actually get the funeral they purchased. In a number of instances, prepaid funeral funds have not gone into a separate escrow account, but rather into a managed-money account to which the funeral director may have direct access. In several instances, the funeral director has used the funds for other purposes or the managed accounts have gone bankrupt.

There are other alternatives that allow you to provide in advance for your funeral. Some people who would rather not give money ahead of time to a funeral home allocate specific life insurance proceeds to go toward the cost of a funeral. Others set up a simple trust in which they put money for a funeral. This is often done as part of Medicaid planning because the regulations allow the funds in the trust to be excluded from countable assets in determining Medicaid eligibility.

If you are considering prepaid funeral arrangements, you should determine how your funds will be held. If they are not placed in an escrow account to which the funeral firm does not have access, do not do business with that firm.

No matter what arrangement you have made, make sure that you can get a refund if you change your mind. You might move, or you might decide that you want to be buried, after all, instead of cremated. When funds are held in a deposit fund or trust account at a financial institution, you should be able to receive a refund in accordance with the terms of the written contract (there probably will be a penalty for early withdrawal). If the funds are poured into a life

insurance or annuity contract, the terms of the prepaid arrangement should permit you to receive the cash surrender value of the contract.

If you are thinking about prepaying for funeral goods and services, consider these issues before putting down any money:

- What are you are paying for? Are you buying only merchandise, such as a casket and vault, or are you purchasing funeral services as well? These prepaid arrangements can vary widely depending on people's wishes. Make sure you are getting—and paying for—what you want.
- What happens to the money you've prepaid? States have different requirements for handling funds paid for pre-arranged funeral services. But for your own protection, your money should be segregated in an escrow account.
- What happens to the interest income on money that is prepaid and put into a trust account? In general, the funeral home will keep this interest, which serves as protection against cost increases.
- Are you protected if the firm you dealt with goes out of business? The best way to protect yourself is to make sure your prepayment is kept in a separate escrow account.
- Can you cancel the contract and get a full refund if you change your mind? You should be able to receive at least a partial refund according to terms written in your contract.

- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost.

Be sure to tell your family about the plans you have made; let them know where the documents are filed. If your family is not aware that you have made plans, your wishes may not be carried out. And if family members do not know that you have prepaid the funeral costs, they could end up paying for the same arrangements. You may wish to consult an attorney on the best way to ensure that your wishes are followed.

For those who do not want a conventional funeral, there are legal non-funeral options. There are four legal methods of disposition of human remains: burial, entombment, cremation, or donation for scientific study.

Many large medical centers accept donations of human remains for purposes of teaching or research. In most instances the facility will pay a donation fee upon receipt of the remains. In many states, such donations are regulated by a state Anatomical Board that pays the fees to the donor's estate, which then can either be retained as part of the estate or donated to a charity of one's choosing. Arrangements should be made in advance. For information about the forms you must complete and the procedures that must be followed, contact the medical facility to which you wish to donate your remains. All such donations are revocable by alternate instructions prior to death.

2: Planning

The preparation of family members or close friends to take control of your health care or your estate is facilitated by a number of key documents. You will also need to name individuals to take control of health care, legal, and financial matters when you are not able to do so. This chapter outlines the important documents you should know about, as well as the responsibilities of those charged with carrying out your wishes.

Will

A will is a legal document that spells out who gets what from the estate, and names individuals or institutions that fill key roles in carrying out its terms. If someone dies without a will, the estate is deemed intestate. That means a probate court will step in to administer the handling of the estate, which may result in legal fees and lengthy delays.

Even a well-drawn will must be reviewed in probate court to be validated. Before the assets covered by the will can be distributed to one's heirs, the will has to be found to be genuine, and it has to withstand challenges, such as an earlier will with different terms. For this reason, a will should include a statement to the effect that it supersedes any previous wills you may have drawn up.

Trust

A trust is a legal and financial arrangement between the creator of the trust, or grantor, and the person or institution designated under the trust to control and manage any assets. Although the trust beneficiary benefits from the use of the assets, he or she does not legally own them—the trust does.

A trust can be classified as either a living trust or a testamentary trust, depending upon when it is created.

A testamentary trust is one created by a will. It does not take effect until the creator's death and exists as long as the trust document stipulates. Very few trusts are made this way because, unlike a living trust, a testamentary trust is not private and confidential. Rather since it is part of a will, a testamentary trust is public record. These trusts also are subject to annual accountings that must be filed in the probate court, which make them more expensive to maintain than living trusts. They are most commonly used to allow someone to leave money to his or her surviving spouse in a way that avoids being counted to determine Medicaid eligibility.

A living trust is one that is created to take effect during the lifetime of the person who created it. It may be further classified by the rights reserved by the trust's creator.

Irrevocable living trusts are completed gifts for gift and estate tax purposes. The assets in the trust are not part of the taxable estate of the person who set up the trust. Generally people create an irrevocable trust to shift ownership of assets so that they will not be subject to estate taxes. With irrevocable trusts, the creator does not reserve the right to dissolve the trust. He or she may reserve specific rights regarding administration, such as the right to be consulted on investments.

If estate taxes are not an issue, a revocable living trust will give the person setting up the trust greater flexibility in controlling the assets, even to the extent of taking them back. Revocable trusts also are used by

people to set up a trust for themselves during their lifetimes that, after they die, will pass the trust's assets to someone else, such as children or grandchildren. The benefit is that property contained in a trust is not subject to probate court jurisdiction. Although subject to estate taxes, the property in the trust would pass quickly and privately to whomever the maker of the trust designated.

Living Will

Many people address the possibility of a health care crisis as they craft their estate plans. To that end, most states now have a living will statute. Even in states without such a statute, living wills may be recognized in practice. A living will allows you to declare your wishes with respect to the kind of medical treatment you wish to receive in the event you become unable to make your own decisions. It may or may not appoint a person to make medical decisions on your behalf. For that, you may need to use a separate form (discussed in the next section) that assigns durable power of attorney for health care to a person you appoint as your health care agent.

A living will serves as a guide for your health care agent or anyone else, such as doctors and family members, who may be making decisions about your treatment. Even if you think your family knows what you would want done if you become incapacitated, a living will provides a written record of your preferences. This is valuable from both a legal perspective and, for loved ones making difficult decisions, a personal one.

In some states it is not necessary to have a lawyer draw up a living will. However, you must use the form that has been approved for use in your state. To obtain a copy of a living will form for your state, see your attorney or contact Caring Connections, a

program of the National Hospice and Palliative Care Organization. (See the "Resources" section of this book for contact information.) This national nonprofit organization provides the information, instructions, and forms you need to ensure that your preferences are followed at the end of life.

After completing a state-specific living will and health care proxy, you should always speak to your doctors about your wishes. They can also provide you with any additional forms they may require in order to honor your instructions.

All living wills must be signed and witnessed, and it is prudent (and may be required by law) to have such documents notarized as well. Witnesses to a living will should not be anyone who would benefit from your death through an inheritance or otherwise. Usually the following individuals are specifically prohibited by statute from witnessing a living will: anyone related to the declarant by blood or marriage; any heir or claimant to any part of the declarant's estate, including creditors; the declarant's physician or physician's employee; any employee of the patient's health facility; or any other person responsible for the patient's health care. Such prohibitions vary from state to state.

Once the living will is prepared, you should keep the original with your personal papers. Give copies to your doctors, members of your family, and your health care agent. Some states require that a living will be updated periodically. Even if your state does not, you should review yours periodically to make sure it still accurately states your wishes, and initial and date it to so indicate.

Health Care Proxy

Most medical and legal experts advise that a durable power of attorney for health care

(also known as a health care proxy) should accompany the living will. The specified living will forms in some states include such a health care proxy and should be used when available. In other states, the health care proxy is a separate form.

A durable power of attorney for health care empowers someone of your choosing to act in your behalf should you become unable to communicate or make decisions for yourself. This health care agent will be able to make decisions only if you are unable to do so. As long as you have the capacity to make decisions, your consent will be required for medical treatment.

You should choose your health care agent carefully and thoroughly discuss with him or her your wishes as expressed in your living will. That probably will require going into specific detail about precise procedures, under precisely which circumstances you do or do not wish them to be used, and, if you choose, for what length of time these procedures should be performed. In most states, health care agents are permitted to make medical decisions specifically including decisions to withdraw or withhold life support.

In some states the force of health care proxies is limited to one degree or another. Nevertheless, if you have a health care proxy that is supported by a properly drafted living will declaration, and you have had the appropriate discussion of your wishes with your agent and your doctors, you are in a strong position to see that your wishes are carried out.

As with living wills, the legal forms for health care proxies vary from state to state. These forms are available at no cost through Caring Connections (see “Resources” later in this book).

These forms are also available in the Five Wishes booklet, published by the nonprofit

Aging With Dignity organization. The booklet asks you to indicate five wishes regarding how you would like to be treated if you become seriously ill: 1. the person you want to make health care decisions for you; 2. the kind of medical treatment you want or don’t want; 3. how comfortable you want to be; 4. how you want people to treat you; and 5. what you want your loved ones to know, including what kind of funeral you want. Some people may find the booklet’s more personal, sympathetic tone helpful for prompting family conversations about these difficult issues. Properly signed, witnessed, and (in some states) notarized, the Five Wishes document is legally valid in more than 40 states, according to Aging With Dignity.

Power of Attorney for Finances: Durable and Springing

If something happens to you and you are unable to make decisions or manage your financial affairs, you should have arrangements in place for someone to act on your behalf. Many people assume that their spouse or child will automatically be able to do this. Legally, however, this assumption is often wrong. To minimize problems and delays, you should have a power of attorney document in place ahead of time. Do not wait until you cannot handle your affairs; by then, it is too late. You need to make the arrangements in advance, when you are legally competent and capable of making decisions.

A power of attorney is a legal instrument that confers on another person (or persons) the authority to perform as your agent and to make decisions and conduct transactions on your behalf. The scope of authority is specifically described in the document, and can be very narrow or very broad, according to your wishes. Examples of the powers

that can be included in a power of attorney include the power to access bank accounts and safe deposit boxes, write checks, pay bills, buy and sell securities, and sign tax returns.

A durable power of attorney can take effect immediately and will remain in effect for your lifetime. A springing power of attorney becomes active only when you become incapacitated in the way specified in the document. For the springing power of attorney, the document should list specific conditions (such as a notarized statement from a doctor confirming your disability) for the power to take effect. If you prefer to manage your finances while you are physically and mentally able, the springing power of attorney may be the best choice for you.

When appointing someone to act on your behalf through a power of attorney, have the document drawn up by a lawyer and send certified copies to your bank, brokers, and others. Note that in many situations, an original or a certified copy must be provided—a simple photo copy may not suffice. Also, some banks, brokerages, and other institutions additionally require your designated agent to submit notarized copies of their own forms. Ask them about their policies when you set up the power of attorney.

You can choose to revoke a power of attorney at any time for any reason. If you do, your financial institutions and other affected parties should be notified. It is also possible for a court to revoke this power if the judge concludes that you were incapacitated when you granted it. Such actions can be motivated by a disgruntled loved one who is unhappy with your choice.

Be careful whom you trust! A power of attorney can be abused, and dishonest agents have used powers of attorney to

transfer the principal's assets to themselves and others. That is why it is so important to appoint an agent who is completely trustworthy and to require the agent to provide complete and periodic accountings to you or to a third party.

A power of attorney remains in force only for your lifetime. It ends with the grantor's death. Thus you should not view it as a substitute for preparing a will, choosing an executor, and other aspects of estate planning. The primary responsibility for administering and handling an estate plan rests primarily with several parties, as discussed below.

Executor

The executor carries out the terms of the will. Also called a personal representative, the executor may choose to consult with an attorney to verify what the duties are. Depending on the size and complexity of the estate, the executor's responsibilities may include meeting with family members, the attorney, and other interested persons to discuss the will's provisions, arranging for probate, assembling, inventorying, and taking custody of assets, administering the estate, assuming responsibly for final income tax returns and estate taxes, and distributing the estate.

The role of the executor can range from a simple one to a complex nightmare, depending on the estate. The executor can be an attorney, bank, trust department, or individual. In many cases, an individual working with the appropriate professionals such as accountants or attorneys can get the job done. Although an executor need not be someone with specialized knowledge of taxes or estate law, it should be an individual who isn't afraid to admit what he or she does not know, who will seek outside help from professionals when necessary and who

will be able to arbitrate disputes and carry out the terms set forth in the estate plan honestly and effectively.

Guardian

Guardians oversee care and custody of minor children or disabled individuals and administer their assets. It is important to name a guardian because if parents die without a will or with a will that does not address the issue of guardianship, the decision regarding where to place children will be left up to the state. Issues surrounding guardianship often revolve around where the child will live, medical care, education, and other care-centered matters. Make sure to choose someone you trust to raise your children in a loving, nurturing, and stable environment. This is one of those decisions you should make with your heart as well as your head.

Trustee

This is someone who carries out the terms of a trust. The trustee may be a relative, family friend, a lawyer, a bank, a trust company, or another organization. In the case of

a living trust (one created to take effect during the lifetime of the creator), the creator, himself, may be the trustee or co-trustee

The trustee's role in an estate plan can be more encompassing and long-lasting than the executor's. An executor's duties might typically last for several months, perhaps for a year, while the trustee's responsibilities can extend through someone's lifetime. Trustees fulfill a particularly difficult role because they have enormous discretion in deciding how to distribute money. With that in mind, the individual you name as trustee should be someone who is not afraid to make appropriate judgments about when to dole out money from the trust. Do not choose someone who is likely to write checks whenever beneficiaries make a request. On the other hand, some trustees use their authority to gain control over family members. Naming more than one trustee might be a solution for someone who wants checks-and-balances. A common arrangement is to name an institution, such as a trust company, and an individual, often a family member, to act as co-trustees.

3: Organizing Your Records

Even the most well-thought-out and effective financial and estate plans will have little value if those charged with carrying them out do not know where to find key documents and other critical information. The following pages, including an extensive section with fill-in-the-blank forms, are intended to serve as a guide to organizing the information that others will need to carry out your wishes.

Where to Keep Your Records

Plainly, you should avoid having key documents so scattered about in desk drawers or bookshelves that no one, including yourself, knows where to find them. Develop a system that is easy for you and family members to use and maintain. Organize records in a file cabinet, a covered box with folders, or whatever works best for you. If you have online access to financial records, update your information regularly and tell household members where to find your user name and passwords.

There is no perfect filing system that works for everyone. Generally, most people will find it easiest to divide their personal and financial records into three areas:

Current active records. These may include current bills, papers to file, bank statements, loan statements, recent cancelled or duplicate checks, tax receipts, and business expenses. Some active records, such as a driver's license, credit cards, and health insurance cards are usually carried in one's wallet.

Permanent records. These records typically comprise the bulk of what will go into a file cabinet or a home safe. Since you may need to refer to the information for tax or investment purposes throughout the year, it should be kept in a place that is easily acces-

sible. Documents might include information on employee benefits, bank and brokerage statements, credit card statements, Social Security cards, and insurance documents.

Safe deposit box. Important documentation or items that you do not need on a regular basis, or items that are vulnerable to theft, should be stored here. These include original birth and marriage certificates, stock and bond certificates, military service records, real estate and vehicle titles, family heirlooms, and collectibles. (Keep copies of original papers in a more accessible place in your home.)

Do *not* keep here original copies of papers that your family will need immediately upon your death, such as a will or life insurance policies. Safe deposit boxes are often sealed as soon as the bank learns of the owner's death, until a representative of the state tax department has opened and listed the contents and has given the bank authority to deliver the contents to the surviving owner of the box (if there is one) or the executor of the estate. If the box is held in more than one name, any tangible personal property kept in it should be labeled to indicate ownership; any such property that is determined to belong to you will be included in your estate.

Make sure a trusted family member or friend, and your executor, know where the safe deposit box and the key are. If you have prepared a power of attorney, notify your designated agent as well, so that he or she can access the box if you become incapacitated. Keep in mind that telling people where the box and key are does not mean they will be able to legally access it. Only legally authorized persons, whose authority is recognized by the bank, will be able to do so. Ask the bank about how to arrange this.

Resources

Inheritance

Yellow Pie Plate

The University of Minnesota Extension Service's website, "Who Gets Grandma's Yellow Pie Plate?," provides guidance on the sensitive issue of how to distribute personal belongings to heirs. Whether these decisions are made by you or your executor, they can be difficult and lead to family disagreements. Planning ahead can help avoid problems.

 www.yellowpieplate.umn.edu

Living Wills and Advance Directives

Five Wishes

The *Five Wishes* booklet includes forms that serve as living wills and advance directives that are legally valid in more than 40 states. For information on the Five Wishes Project, contact Aging with Dignity.

 www.agingwithdignity.org

 P.O. Box 1661, Tallahassee, FL 32302-1661

 1-888-5WISHES (1-888-594-7437)

Caring Connections

Caring Connections, a program of the National Hospice and Palliative Care Organization, provides state-specific forms on advance directives.


 www.caringinfo.org

 1700 Diagonal Road, Suite #625, Alexandria, Virginia 22314


 1-800-658-8898

National Academy of Elder Law Attorneys

NAELA is an association of attorneys who deal with legal issues affecting the elderly and disabled. There are about 4,000 members. The only requirement for membership is a fee.

 www.naela.org


 1877 Spring Hill Road, Ste. 220, Vienna, VA, 22182


 1-703-942-5711

The National Elder Law Foundation

NELF operates an elder law certification program for attorneys. Applicants must pass a one-day written exam and show that they have experience in the field. Successful applicants receive the Certified Elder Law Attorney designation.

 www.nelf.org

 6336 N. Oracle Road, Ste. 326, #136, Tucson, AZ, 84704

 1-520-881-1076

Organ Donation

National Donor List

With more than 100,000 people on the national waiting list for organ donations, the Health Resources and Services Administration has information on how it works, what can be donated, and how to ensure that your donation wishes are carried out.

 www.organdonor.gov

 1-888-ASK-HRSA (1-888-275-4772).

Funeral Planning

Funeral Consumers Alliance

FCA provides information intended to help people plan a "meaningful, dignified, and affordable" funeral. Particularly if you prefer simple arrangements, you will find their information on services, caskets, embalming, and cremation helpful.

 www.funerals.org

 33 Patchen Road, South Burlington, VT 05403

 1-800-765-0107

Federal Trade Commission

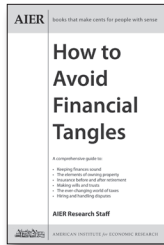
FTC's Consumer Response Center offers a free copy of "Funerals: A Consumer Guide" and additional information concerning the Funeral Rule on its website.

 www.ftc.gov/funerals/

 600 Pennsylvania, NW, Room H-130, Washington, DC, 20580-0001

 1-877-FTC-HELP (1-877-382-4357)

Relevant AIER Publications



How to Avoid Financial Tangles

By AIER Research Staff

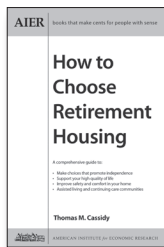
How to Avoid Financial Tangles provides information and advice on how to save money, organize your finances, and avoid costly mistakes. It contains valuable information about income, estate planning, inheritance, trusts and real estate. (2009)



How to Plan for Your Retirement Years

By AIER Research Staff

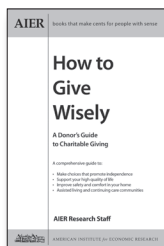
Whether you want to estimate your retirement savings goal, understand what Social Security means to you and your family or understand your options for retirement investing, you can benefit from the advice available in this book. (2007)



How to Choose Retirement Housing

By Thomas M. Cassidy

A practical guide to sorting out the options. Includes useful forms and worksheets. If you are thinking about your retirement living options, or know someone who is, you will find this book an invaluable resource. (2006)



How to Give Wisely

By AIER Research Staff

Learn the tax and financial advantages of charitable donations and planned gifts. Tips on minimizing taxes, investigating charitable organizations, and the best ways to donate. Combine your good intentions with practical business sense. (2006)

Download the digital edition of *If Something Should Happen* from www.aier.org for only \$5! You can fill in the worksheets and print them from your computer using Adobe Reader. For more information on AIER publications, please call us toll-free at (888) 528-1216 or visit our website, www.aier.org.

People to Contact if Something Happens to Me

Family member or friend:

Name _____ Phone _____

Relationship _____

Address _____

Email _____

Other family members or friends:

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

My doctors:

Name _____ Phone _____

Notes: (address, cell phone, email address, comments, etc.)

Name _____ Phone _____

Notes:

Name _____ Phone _____

Notes:

My employer:

Name of business _____

Contact person _____

Phone _____

Address _____

Family member or friend authorized to act as my health care agent with a health care power of attorney:

Name _____ Phone _____

Notes:

Others to contact:

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Name _____ Phone _____

Relationship _____

Location of my address book:

Additional Contact Information

My attorney:

Name _____ Phone _____

Notes: _____

Family member or friend authorized to act as my legal agent with power of attorney:

Name _____ Phone _____

Relationship _____

Address _____

Notes: _____

My accountant:

Name _____ Phone _____

Notes: _____

My insurance agent:

Name _____ Phone _____

Notes: _____

My financial advisor/stockbroker:

Name _____ Phone _____

Notes: _____

Executor named in my will:

Name _____ Phone _____

Notes: _____

Guardian named in my will:

Name _____ Phone _____

Notes: _____

Other key person:

Name _____ Phone _____

Notes: _____

My Personal Information

(May be needed for hospitalization, to request benefits, or to complete other forms)

Full name _____

Address _____

Home phone _____

Cell phone _____

Work phone _____

Email _____

Social Security number _____

Date of birth _____

Place of birth _____

Father's name _____

Father's place of birth _____

Mother's name _____

Mother's maiden name _____

Mother's place of birth _____

My military service _____

My employment history (for benefits; include name of company, location of key documents, and contact information)

Key Medical Information

Primary doctor:

Name _____ Phone _____

Hospital _____

Health insurance:

Policy _____

Policy number _____

Customer service phone number _____

Location of Medicare and/or health insurance cards _____

Blood type _____

Medications and location _____

Allergies _____

Past treatments or surgeries _____

Conditions you should be aware of _____

Location of my medical records _____

Location of organ donor information _____

Where to Find Personal Papers and Records

Birth certificate _____

Marriage certificate _____

Divorce decree or settlement _____

Will:

Copy _____ Original _____

Last updated on _____ by (lawyer) _____

Power of attorney document (for financial decisions) _____

Power of attorney document (for health care decisions) _____

Living will _____

Burial arrangements _____

Social Security card _____

Naturalization papers _____

Passport _____

Military records _____

Tax records:

Latest tax returns _____

Older tax returns _____

Tax preparer _____

Post office box:

Address of post office _____

Location of key (or combination to box) _____

Safe deposit box:

Address of bank _____

Location of key _____

Name(s) on box _____

Keys to house and vehicles:

Username and passwords:

Home voicemail _____ Password _____

Cell voicemail _____ Password _____

Computer name _____

Username _____ Password _____

Website name _____

Username _____ Password _____

Website name _____

Username _____ Password _____

Website name _____

Username _____ Password _____

Website name _____

Username _____ Password _____

Other important records and their location:

My Assets

(List location of files, statements, titles, or other documents; name of bank or company, its address, and contact information; approximate value; and co-owners and/or beneficiaries)

Checking accounts:

Savings accounts:

Certificates of deposit:

Savings bonds:

Retirement accounts (IRAs, 401(k)s, etc.):

Brokerage accounts:

Other financial accounts:

Directly-held stocks or bonds:

(Attach a list if necessary, and/or note location of statements)

Home:

Cars (note location of service records):

Money is owed to me by (include location of records, amount, payment terms, and contact information):

Other financial assets, personal property, or real property:

My Liabilities

(List location of files, statements, or other documents; name of lender and contact information; approximate value; and other names on accounts)

Primary mortgage:

Second mortgage:

Home equity loan or line of credit:

Car loans:

Credit cards:

Credit cards: *(continued)* _____

Student loans:

Personal loans:

Life insurance loans:

Outstanding bills:

Other liabilities:

Insurance and Benefits

(List company, name, and contact information for agent, policy number, and location of files; if provided through an employer, organization, or the military, list name and contact information)

Life insurance (list beneficiaries and face amount):

Homeowner’s insurance:

Auto insurance:

Disability insurance (note whether you receive benefits):

Long-term care insurance (note whether you receive benefits):

Health insurance:

Other insurance:

Pension benefits (for each benefit, list employer, contact information, any beneficiaries, whether you now receive a benefit, the approximate amount, where it is directly deposited, and location of records):

Pension benefits: *(continued)* _____

Social Security (note whether you now receive a benefit, the approximate amount, and where it is directly deposited):

Other benefits I receive or expect to receive:

Funeral and Burial Arrangements

Name, address, and contact information for funeral home:

I have pre-paid burial costs: Yes No

If yes, indicate location of documents:

Cemetery (include plot number and location of documents):

I have a gravestone or other marker: Yes No

I am entitled to a military marker: Yes No

(Indicate where to find a copy of your discharge papers):

I do *I do not* wish to be cremated.

Crematory _____

Location _____

My preferences for a funeral or memorial service:

I have written a description of what I would like. (Note below the location of the document, along with names and contact information for anyone who has a copy.)

I have not written this down elsewhere, but my preferences are shown below.

I would like to have a service conducted here:

I would like to have this person lead the service:

I would like the following people to speak (name, address, and phone number):

I would like the following people to serve as pall bearers (name, address, and phone number):

I would like the service to include the following hymns, favorite flowers, poems, or other readings:

I would like the following military rites at my service: (Note: Funeral directors will require a copy of your discharge papers to establish your eligibility. Where are the papers?)

About AIER

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How to Cover the Gaps in Medicare: Health Insurance and Long-Term Care Options for the Retired
How to Plan for Your Retirement Years
How to Produce Savings in the Administration of an Estate
What You Need to Know about Social Security

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Gold and Liberty
Money: Its Origins, Development, Debasement, and Prospects
The Pocket Money Book: A Monetary Chronology of the United States
Prospects for a Resumption of the Gold Standard

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Forecasting Business Trends
The Future of the Dollar
The Global Warming Debate: Science, Economics, and Policy
On the Gap between the Rich and the Poor
Progress and Property Rights: From the Greeks to Magna Carta to the Constitution
Property Rights: The Essential Ingredient for Liberty and Progress
Prospects for Reforming the IMF and the World Bank
Reconstruction of Economics
The United States Constitution: From Limited Government to Leviathan

If Something Should Happen

How to Organize Your Financial and Legal Affairs

"This publication helps devise a 'master plan' to handle your estate."

Kiplinger's Retirement Report

Should debilitating illness strike or worse, your loved ones and trusted friends need be able to help with your legal and financial affairs. *If Something Should Happen* allows them to step in with minimal difficulty by bringing together the go-to documents the people closest to you need to consult during an emergency.

The common sense organizational forms are easy-to-follow and create a blueprint for essential information. Entries range from the location of critical papers to the names of charities that should receive memorial donations in your name. Straight-forward introductory chapters outline the basics of estate planning and organizing your affairs.

If Something Should Happen is no substitute for legal documents such as a will, living will, or health care proxy. But the book provides a much-needed adjunct to these well-known legal documents. More than a mere organizer, *If Something Should Happen* brings together key financial, legal, and personal information into one centralized place.

Besides helping loved ones during a stressful time, planning and organizing your affairs helps ensure that your wishes are followed. We never can know exactly what decisions may have to be made on our behalf, but this book will provide the guidance that is needed in making those decisions.

Whether you are a retiree with an estate plan in place, a young person starting out in life, or a parent of a growing family, *If Something Should Happen* can help ensure peace of mind for yourself and the people you love.

"This publication can help you pull all your information together in one place. It is surprisingly comprehensive for its low price and small size."

David Uffington
Syndicated personal finance columnist



Marla Brill is a research associate with the American Institute for Economic Research (AIER). She is the author of *Windfall: Managing Unexpected Money So It Doesn't Manage You* and the AIER book *How to Give Wisely*. Brill is co-author of *How to Plan for Your Retirement Years*, also from AIER. An experienced financial journalist, she also has written numerous articles for AIER and other organizations.

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250 Division Street, PO Box 1000, Great Barrington, MA 01230-1000
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