Estate Planning FAQ

Answers to common questions about Wills, trusts, and health care documents

In short: A good Florida estate plan says who receives your property, who handles it, and who makes money and medical decisions for you if you cannot. This FAQ answers the questions we hear most often. It is general information; your own situation may call for something different.

Your Florida Estate Plan at a Glance

AT DEATH
Will or Trust
Says who receives your property and who handles it.

MONEY
Durable Power of Attorney
Lets your agent manage money and property if you cannot.

MEDICAL
Health Care Surrogate
Names the person who makes medical decisions for you.

END OF LIFE
Living Will
States your wishes about life-prolonging treatment.

IF COURT IS NEEDED
Preneed Guardian
Names your choice of guardian for you or your minor children.

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1 Estate Planning Basics

THE BIG PICTURE

QUICK TAKE An estate plan covers both your property at death and decisions during your life if you cannot make them.

What is estate planning?

Estate planning is deciding, in writing, who will receive your property when you die and who will make money and health care decisions for you if you cannot. A basic Florida plan usually includes a Will or a revocable trust (with a pour-over Will), a durable power of attorney, a health care surrogate designation, a living will, and a preneed guardian declaration.

Do I need an estate plan if I don't have much money?

Yes. An estate plan is not only about money. It names the people you trust to act for you if you become ill or injured, tells your doctors and family your wishes about end-of-life care, and names a guardian for young children. Without these documents, your family may have to go to court to get the authority to help you.

What happens if I die without a Will?

Florida law decides who receives your property, usually your spouse and children, or other relatives if you have none. The result may not be what you want, especially in blended families. A court also chooses who will handle your estate.

Does my Will control everything I own?

No. Property with a named beneficiary (life insurance, IRAs, 401(k)s, annuities, and POD or TOD accounts) goes to the person named on the company's form. Jointly owned property with right of survivorship goes to the surviving owner. Property titled in your trust is controlled by your trust. Keep your beneficiary forms up to date and consistent with your plan.

Does Florida have an estate or inheritance tax?

No. Florida has no state estate tax and no inheritance tax. The federal estate tax applies only to very large estates (over $15 million per person for deaths in 2026).

2 Wills

YOUR WILL

QUICK TAKE A Will directs who receives your property, but it must go through probate to work.

What does a Will do?

A Will says who receives your property at death, names a personal representative (Florida's term for an executor) to handle your estate, and can name a guardian for minor children. A Will takes effect only at death and must usually go through probate.

What makes a Will valid in Florida?

You must sign it at the end, in front of two witnesses, who also sign in front of you and each other. (Fla. Stat. § 732.502) We also add a notarized self-proving affidavit so the witnesses usually do not need to be found later. Florida does not accept oral Wills or handwritten Wills that were not properly witnessed.

Who can be my personal representative?

A Florida resident, or a nonresident who is a close relative, such as your spouse, child, parent, brother, sister, or certain other relatives by blood, adoption, or marriage. (Fla. Stat. § 733.304) A friend who lives in another state generally cannot serve.

How do I change my Will?

Sign a new Will. Our firm does not prepare codicils (amendments). A new Will replaces the old one and avoids confusion about which papers are current. Never write on or cross out parts of your signed Will.

Where should I keep my original Will?

Somewhere safe that your personal representative can reach, such as a fireproof box at home. Tell your personal representative where it is. The original matters; a copy can be much harder to use in court.

Is my Will from another state still good in Florida?

Generally yes, if it was valid in the state where you signed it, unless it was a handwritten or oral Will. (Fla. Stat. § 732.502) But out-of-state documents may name people who cannot serve here or use terms that do not fit Florida law, so a review after moving is a good idea.

Florida tip: A friend or relative who lives out of state may not be able to serve as your personal representative. Florida limits nonresidents to certain close family members.

3 Probate

THE COURT PROCESS

QUICK TAKE Probate is the court process for property in your name alone. Planning can often avoid it.

What is probate?

Probate is the court process for proving a Will, paying debts and taxes, and transferring property that was in the person's name alone. A Will does not avoid probate; it directs it.

How long does probate take, and what does it cost?

A simple Florida probate often takes six months to a year, and longer if there are disputes, real estate, or tax issues. Costs include court filing fees, attorney fees, and personal representative fees, which Florida law ties largely to the size of the estate. (Fla. Stat. § 733.617)

Is there a shorter option for small estates?

Yes. Florida offers summary administration, a faster process, for estates where the property subject to probate (not counting exempt property) is $75,000 or less, or where the person died more than two years ago. (Fla. Stat. § 735.201)

How can I avoid probate?

Common tools include a funded revocable living trust, beneficiary designations, POD and TOD accounts, joint ownership with right of survivorship, and, for Florida real estate, a Lady Bird deed. Each has advantages and drawbacks; see our guide **Florida Lady Bird Deeds** for that option's potential problems.

Remember: A Will does not avoid probate. Only property titled in a trust, held jointly with survivorship, or passing by beneficiary designation skips the court process.

4 Revocable Living Trusts

YOUR TRUST

QUICK TAKE A funded trust avoids probate and lets someone step in if you are incapacitated, while you keep control.

What is a revocable living trust?

It is a document that holds your property while you are alive and says what happens to it if you become incapacitated or die. You are usually the trustee, so you keep full control. You can change or cancel it at any time.

Why would I want a trust instead of only a Will?

A funded trust avoids probate, keeps your affairs more private, lets your chosen successor trustee step in right away if you become incapacitated, and can hold property for children or other beneficiaries over time instead of giving it all at once.

What does "funding" my trust mean?

Funding means putting your property into the trust, for example by signing a new deed or retitling bank and investment accounts in the name of your trust. A trust only controls property that is titled in it or that names it as beneficiary. See our guide **Funding Your Trust**.

If I have a trust, why do I also need a Will?

A pour-over Will catches any property you forgot to put into your trust and moves it into the trust. That property may still need probate, which is why funding matters.

Will a trust change my taxes?

Not while you are alive. A revocable trust uses your Social Security number, and you report its income on your own tax return as usual. You can also keep your Florida homestead exemption for your home in the trust.

Does a revocable trust protect my property from creditors or nursing home costs?

No. Because you control the trust, your property is treated as yours for creditors and Medicaid. Other planning is needed for those goals.

Can I put my home in my trust if I am married or have a minor child?

Usually, yes. But Florida homestead law limits who can receive your home at death if you leave a spouse or minor child, so the trust must be drafted with those rules in mind. (Fla. Stat. § 732.4015)

Will	Funded Revocable Trust
• Takes effect only at death • Must go through probate • Becomes a public court record • Does nothing if you are incapacitated • Simpler and less costly to prepare	• Works during life and at death • Avoids probate for trust property • Stays mostly private • Successor trustee steps in if you are incapacitated • Must be funded to work

5 Durable Power of Attorney

MONEY DECISIONS

QUICK TAKE Your agent handles your money and property if you cannot. It is effective when signed and ends at death.

What is a durable power of attorney?

It lets you name an agent to handle your money and property, such as paying bills, managing accounts, and dealing with real estate, if you cannot or do not want to. "Durable" means it keeps working if you become incapacitated.

When does it take effect?

Immediately when you sign it. Florida no longer allows new "springing" powers of attorney that start only when you become incapacitated. (Fla. Stat. § 709.2108) Choose an agent you trust completely.

What makes it valid?

You must sign it in front of two witnesses and a notary. (Fla. Stat. § 709.2105) Certain powers, such as making gifts, creating or changing a trust, or changing beneficiary designations, must be separately initialed or signed by you next to each one. (Fla. Stat. § 709.2202)

Does it still work after I die?

No. A power of attorney ends at death. After that, your personal representative or successor trustee takes over.

What if I don't have one?

If you become incapacitated, your family may need to ask a court to appoint a guardian of your property. Guardianship is costly, public, and requires ongoing court reports. A durable power of attorney can usually avoid it.

Florida tip: Your power of attorney is effective the day you sign it, so name only an agent you trust completely. Powers such as making gifts or changing your trust must be separately initialed.

6 Health Care Documents

MEDICAL DECISIONS

QUICK TAKE Your health care surrogate makes medical decisions for you; your living will states your end-of-life wishes.

What is a health care surrogate designation?

It names a person (your surrogate) to make medical decisions for you, and to talk with your doctors and see your records, if you cannot. You can also make it effective right away so your surrogate can help you now.

What is a living will?

A living will tells your doctors whether you want life-prolonging treatment if you have a terminal condition, an end-stage condition, or are in a persistent vegetative state, with no reasonable hope of recovery. (Fla. Stat. § 765.302) It speaks for you when you cannot speak for yourself.

What is the difference between the two?

Your living will states your wishes about end-of-life care. Your health care surrogate is the person who carries out those wishes and makes all other medical decisions for you. Most people should have both.

Who can witness my health care documents?

Two adult witnesses, at least one of whom is not your spouse or blood relative. The person you name as surrogate cannot be a witness. (Fla. Stat. § 765.202)

Is a living will the same as a Do Not Resuscitate Order?

No. A Do Not Resuscitate Order (DNRO) is a separate Florida form signed by your doctor, printed on yellow paper, that tells emergency workers not to perform CPR. If you want one, talk with your doctor.

What is a preneed guardian declaration?

It names the person you want the court to appoint as your guardian if a guardianship is ever needed for you. (Fla. Stat. § 744.3045) A separate declaration can name a guardian for your minor children if you die or become incapacitated. (Fla. Stat. § 744.3046)

Where should I keep my health care documents?

Give copies to your surrogate, your doctors, and your hospital. Keep the originals where your family can find them quickly. Do not keep them only in a safe-deposit box.

Health Care Surrogate	Living Will
• Names a **person** to decide for you • Covers all medical decisions • Lets them see your records and talk with your doctors • Can be effective right away	• States your **wishes** • Covers only life-prolonging treatment • Applies with a terminal or end-stage condition or persistent vegetative state • Your surrogate carries it out

7 Keeping Your Plan Up to Date

LIFE CHANGES

QUICK TAKE Review your plan every three to five years and after any major life event.

How often should I review my plan?

Every three to five years, and after any major change: marriage, divorce, a birth or death in the family, a move to or from Florida, a large change in your assets, or if someone you named can no longer serve.

What happens to my documents if I get divorced?

Florida law automatically cancels many provisions in favor of a former spouse in Wills, trusts, and powers of attorney. But do not rely on that; sign new documents and update your beneficiary forms after a divorce.

I just moved to Florida. Do I need new documents?

Your out-of-state documents may still be valid, but a review is wise. Florida has its own rules for personal representatives, homestead, and powers of attorney, and Florida banks and hospitals are more familiar with Florida forms.

8 Working With Our Firm

NEXT STEPS

QUICK TAKE We provide estate planning services only. Call 352-565-7737 for a free review of your documents.

What services does your firm provide?

Mazenko Law Firm provides estate planning services only. We typically do not provide any other legal services, including probate and trust administration, unless a signed fee agreement for those services is in place.

How do I meet with Attorney Mazenko or have my plan reviewed?

If you would like to discuss your estate plan or have your documents reviewed, please call the office at **352-565-7737** to set up a time to meet with Attorney Mazenko or to have him review your documents. Completing our **Estate Planning Questionnaire**, available on our website at **www.mazenkolaw.com**, before your meeting is helpful.

Is there a charge to review my documents?

No. Attorney Mazenko will review your existing estate planning documents free of charge. However, there is a charge for any new or revised documents he prepares for you.

When do you become my attorney?

Only after you sign a written fee agreement with Mazenko Law Firm. Until then, the firm does not represent you. Please do not send confidential information until you have signed.

What if my family needs help after I die?

Because we typically do not handle probate or trust administration, your family may need to hire an attorney for those services if they are needed. If your family needs a probate attorney, we can refer them to a trusted local attorney who can help. Our **Trust Administration Checklist** and **Successor Trustee FAQ** can help your successor trustee get started.

Good to Know

- Your beneficiary forms and how your property is titled can override your Will. Check them when you update your plan.
- Tell the people you named where your documents are. A plan no one can find cannot help you.
- To change a Will, sign a new one. Never write on your signed documents.
- Review your plan every three to five years and after any major life change.
- To discuss your plan or schedule a free document review, call the office at **352-565-7737**.

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