

The 5 most

Frequently Asked Questions

about wills, trusts, and
Medicaid.

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Dear Reader,

If you're reading this, you're probably thinking about some complicated things. You might be a young couple worried about who would take care of your children if something happened to you. You might be retired and finally ready to get that will you've been putting off for years. Or you might be the son or daughter of an elderly parent, trying to figure out how in the world they are going to pay for a nursing home. In short, you need to navigate a labyrinth of laws, regulations, rights, finances, health care, institutions, and bureaucracy—all so you can make sure your loved ones are taken care of or your loved ones can take care of you.

This guide will get you started by answering the biggest questions I hear from my clients:

- Why should I get an estate plan?
- What is “probate,” and should I avoid it?
- Do I need a trust?
- What is “asset protection”? Can I protect my property from the nursing home?
- When does Medicaid pay for long-term care?

Knowing the answers to these questions will help you get your footing. You'll know what you need, what you don't, and when to get help. When you're ready for that help, that's the time to schedule a consultation.



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- *Note: This guide is about Wisconsin law only (I am also licensed in Minnesota). Nothing below is legal advice.*

1. Why should I get an estate plan?

Estate planning is how you can control what happens to your property, legal rights, and health care in the future. It's not just about who gets your money—it's about providing for your family and giving them the tools they might need to care for you.

[There are many different reasons you might get an estate plan.](#) Here are the most common ones I see. Chances are, at least one of these reasons applies to you.

Name guardians for your kids	If you have young children, you should name who will care for them if you can't—and who should <i>not</i> care for them.
Prevent a teenager from squandering the inheritance	A young beneficiary will get full control of their inheritance at age 18 unless you do something about it with a will or trust.
Avoid the second marriage property split	If you don't have a will and you have children from a prior relationship, your property will be split between your spouse and your children at your death.
Disinherit someone	If you want to make sure a certain family member does <i>not</i> get anything, you must act.
Provide for a disabled beneficiary	If your child is disabled, you need to plan who will manage their inheritance and how to avoid endangering their benefits.
Name someone to make financial, legal, and health care decisions for you	Your spouse does not automatically get legal authority to make decisions for you. Without planning, your family could be forced into court for guardianship—a costly and burdensome process.
Reduce the time and cost of settling your final affairs for your family	After a loved one dies, settling all the legal and financial affairs can be difficult. Estate planning can make it simpler, cheaper, and quicker.
Protect your assets	Your property can be vulnerable to creditors, lawsuits, and medical bills. If you need long-term care in your old age, it can deplete your savings quickly. It's possible to protect assets from these risks by using trusts.

2. What is “probate,” and should I avoid it?

Probate is the court-supervised process for paying your debts and transferring your property after you die. It’s designed to ensure everyone gets what they’re entitled to. A judge appoints your *personal representative* (a.k.a. *executor*) to administer your estate while the court supervises. But there are a couple of very important things to know about probate:

- Probate is the default process for transferring property, but it’s not the only way. Anything with a beneficiary designation—life insurance and retirement accounts, most commonly—will *not* go through probate. Instead, the beneficiary files a claim with the financial company and is paid directly.
- A will does *not* avoid probate; a will provides your instructions for probate. This means it only applies to property going through probate. Your will can’t control what happens to your life insurance or retirement account.

Probate isn’t a bad thing, but many people try to avoid it because they want to make their final affairs as simple, cheap, and quick as possible for their families. Here are the pros and cons:

Pro	Con
Settles all claims and cuts off liability forever	Takes 6-9 months, usually; distributions <i>no sooner</i> than 3 months
Judge can settle disputes	Easy for someone to bring up a dispute; everyone gets notice
Estate planning for probate is easier, simpler, and cheaper	0.2% of your estate filing fee 2.0% of your estate typical fee for your personal representative These fees can easily end up being \$5,000-15,000
A court supervises and ensures the job is done correctly	Attorney fees likely to be another \$1,000-5,000 Requires ancillary proceedings in other courts if you own property in multiple jurisdictions

If you want your beneficiaries to get paid faster than 3-9 months, avoid disputes, reduce fees, and make your estate administration simpler, then avoiding probate is a good goal.

3. Do I need a trust?

[A trust is a legal relationship you create between people and your property.](#) You name a *trustee* who manages the property and uses it for your *beneficiaries*. When you do that, you set the terms: what you trustee can and can't do, what your beneficiaries can and can't do, who gets the property, and when.

The trust most used for estate planning is the *revocable living trust*. With this trust, you are the trustee and retain complete control over the property—but after death, your trust controls what happens instead of a will. This means the property doesn't have to go through probate.

You **do not** need a trust if you're okay with your property and family going through probate. There's absolutely nothing wrong with that.

If you do want to avoid probate, you have two main options: use a trust, or use a combination of beneficiary designations, pay-on-death and transfer-on-death designations, and joint ownership.

Trust	Designations
Avoids probate	Avoids probate
One document to rule them all; changes easily made	Added to each account or property piecemeal; changes are a headache
Typically requires a lawyer	Does not require a lawyer
Estate plan w/trust costs \$1,500+	Estate plan w/o trust costs \$750-900
One person in charge of administration after your death	Each beneficiary must do their own paperwork and coordinate with others
Can put a responsible person in charge of distributions to beneficiaries who are young, disabled , or addicted	Distributions happen immediately and outright, even if a beneficiary is young, disabled, or addicted
Allows you to protect money for beneficiaries from their creditors, lawsuits, and divorce	No protection
Works for estates of all sizes	Best for estates that are smaller or that have a small number of accounts and beneficiaries

Few people truly *need* a trust. But if avoiding probate is important, you like the simplicity of having one document and one person governing your estate, and you're willing to pay more and work more now to save time and money for your family later, then you should consider a trust.

4. What is “asset protection”? Can I protect my property from the nursing home?

The greatest financial risk every retiree faces is the enormous cost of long-term care in assisted living, memory care, or a nursing home. These facilities can cost \$5,000-10,000 per month, and costs are always rising. [Nearly a third of all people turning age 65 will need long-term care, deplete their assets, and then need Medicaid to pay for it.](#) If you’ve spent all your resources on long-term care, nothing remains for your family. [Asset protection](#) ensures your property is preserved for your beneficiaries, rather than being spent on long-term care.

It’s important you understand a number of things about asset protection:

- You protect assets by putting them into a lawyer-drafted *irrevocable trust*. You must hire a lawyer to do this properly.
- To protect an asset, you must give up your access to it permanently and irrevocably. You cannot use a protected asset for your own support or general welfare.
- You do not need to protect assets for your spouse. The Medicaid laws already allow spouses to keep assets for their own needs.
- When you protect assets, you are relying on Medicaid to pay for any long-term care those assets would have paid for. This might limit your care options, complicate your care, and impose extra work on your family. If you have long-term care insurance, you probably do not need to worry about asset protection.
- Asset protection is best done at least 5 years before needing long-term care (*it’s possible* to do it last-minute, but costly).
- The law can change everything very suddenly. It has in the past. Keeping your asset protection plan up to date is essential.
- You cannot protect assets you already owe to a creditor.

Asset protection is not a magical solution. It guarantees that future generations will benefit from your property—a very big benefit. But you will pay for it in legal fees, in the complexity of your estate plan and care, and in a somewhat increased risk of errors when relying on Medicaid.

Given the benefits and costs, I think asset protection is appropriate if:

1. Passing on your hard-earned wealth to your descendants is very important to you. You hate the idea of leaving not a penny to your kids or grandkids.
2. You want to preserve specific, generational assets for your family, like the family cabin, farm, or business.

Note: Asset protection works particularly well for real estate, because you can continue to live in and use real property in an asset protection trust.

5. When does Medicaid pay for long-term care?

A common misconception about Medicaid is that it's only for poor people. In fact, Medicaid pays for [50](#) to [60%](#) of *all* long-term care in the United States; it's the de facto long-term care insurance plan for the middle class. [As AARP puts it:](#)

Medicaid provides a critical safety net not only for low-income people, but also for formerly middle-income people who have spent their life savings paying for long-term services and supports.

If you or your parents might need long-term care, you need to understand basic Medicaid eligibility. Many people are eligible sooner than they think; many others *would* be eligible if they had planned ahead.

Non-Financial Eligibility	
<ul style="list-style-type: none"> • Elderly (age 65+), blind, or disabled • U.S citizen (or, in some cases, a legal resident) • Wisconsin resident 	
Financial Eligibility if Single	Financial Eligibility if Married
Your unreimbursed medical expenses must exceed your income (rarely a problem!).	Your unreimbursed medical expenses must exceed your income (but not your spouse's).
Your assets must not exceed \$2,000, <i>not counting</i> income received this month, a home you intend to return to, and a car used for your transportation.	Your combined assets must not exceed \$52,000-130,640 (depending on your total assets), <i>not counting</i> income received this month, your home, a car, and your spouse's retirement accounts.

Most people are not eligible for Medicaid immediately upon admission to a long-term care facility; they must spend down their savings first. And the numbers above don't tell the whole story. You should also know that:

- It's often wise to spend your money on things like prepaid funeral arrangements, home improvements, or a new car. This can be a better use of your money than paying the long-term care bill and help you qualify for Medicaid sooner.
- You can use a *Medicaid-compliant annuity* to allow your spouse to keep *more* than the \$52,000-130,640 above. This planning requires a lawyer.
- Where you fall in that \$52,000-130,640 range depends on your total assets on a certain date. You can often get a higher number if you plan ahead with a lawyer.
- *Divestment*—any transfer of assets for less than fair market value—in the past 5 years will make you ineligible for Medicaid. The most common divestments are making gifts and paying relatives informally for care and other services. A lawyer can help you avoid or correct these divestments.

What's next?

In the previous five pages, you've learned a lot of information and had several important questions answered. I'm sure you now have even more. The biggest one is: *How much is this going to cost?*

I believe in being up front, so I'll tell you what I charge for my most common legal services.

Service	Cost
Will-based estate plan for one person (will, financial POA, health care POA)	\$750
Will-based estate plan for a couple (wills, financial POAs, and health care POAs)	\$900
Trust-based estate plan for one person (trust, will, financial POA, and health care POA)	\$1,500
Trust-based estate plan for a couple (trust, wills, financial POAs, and health care POAs)	\$1,800
2-hour Medicaid consultation to advise on eligibility and planning	\$300

These are all flat fees. I never bill by the hour; I don't want my clients to hesitate to call or ask for another meeting.

The next step, when you're ready, is to schedule a consultation. You can do that online by [clicking here](#) or you can call 715-575-5635. If meeting in person is difficult, I offer virtual or phone consultations as well.

If you're not ready for that yet, take a look at [my website](#) and peruse [my blog](#). Read about [why I do what I do](#). Check out my [Google reviews](#). Read my newsletter ([sign up here](#) if you haven't already). Give me a call or email ben@bswright.com if you have any questions.

I hope this guide has helped by answering some important questions for you. Please share it if you think it will help someone else, too.



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