



Estate Planning 101

A guide to Estate Planning

The Autonomy Group, PC.



Estate Planning 101

A guide to Estate Planning

The information provided is for informational and educational purposes only, it is not written or intended as specific tax or legal advice and may not be relied on for purposes of avoiding any federal or state tax penalties. Individuals are encouraged to seek advice from their own tax or legal counsel.

What is Estate Planning?



Estate Planning is more than a set of instructions that tells the government who your property should go to after your death. Estate Planning is the process of understanding your unique needs and goals and creating a plan to pass your wealth, wisdom and values to your loved ones.

Estate planning is primarily about how to pass your property on after your death to the recipients of your estate with a minimum of fuss, expense and taxes.

But it's about a lot more as well. Whether and how you plan your estate can mean that your children will or will not be on speaking terms after you're gone. It can determine whether they will be shortchanged by Medicaid claims or estate taxes, or will be less financially pressed due to what you are able to leave them.

Why plan your Estate?



The knowledge that we will eventually die is one of the things that seems to distinguish humans from other living beings. At the same time, no one likes to dwell on the

prospect of his or her own death. But if you postpone planning for your demise until it is too late, you run the risk that your intended beneficiaries -- those you love the most -- may not receive what you would want them to receive whether due to extra administration costs, unnecessary taxes or squabbling among your heirs.

This is why estate planning is so important, no matter how small your estate may be. It allows you, while you are still living, to ensure that your property will go to the people you want, in the way you want, and when you want.

This is why estate planning is so important, no matter how small your estate may be. It allows you, while you are still living, to ensure that your property will go to the people you want, in the way you want, and when you want. It permits you to save as much as possible on taxes, court costs and attorneys' fees; and it affords the comfort that your loved ones can mourn your loss without being simultaneously burdened with unnecessary red tape and financial confusion



Reasons to Create an Estate Plan

Many people think that estate plans are for someone else, not them. They may rationalize that they are too young or don't have enough money to reap the tax benefits of a plan. But as the following list makes clear, estate planning is for everyone, regardless of age or net worth

Dying without a will

Who will inherit your assets? Without a plan, your assets pass to your heirs according to your state's laws of intestacy (dying without a will). Your family members (and perhaps not the ones you would choose) will receive your assets without benefit of your direction or of trust protection. With a plan, you decide who gets your assets, and when and how they receive them



Loss of capacity

What if you become incompetent and unable to manage your own affairs? Without a plan the courts will select the person to manage your affairs. With a plan, you pick that person through a power of attorney.



Financial security

Will your spouse and children be able to survive financially? Without a plan and the income replacement provided by life insurance, your family may be unable to maintain its current living standard. With a plan, life insurance can mean that your family will enjoy financial security.



Avoiding probate

Without a plan, your estate may be subject to delays and excess fees (depending on the state), and your assets will be a matter of public record. With a plan, you can structure things so that probate can be avoided entirely.

Mistakes

If you're like most people, you have the best of intentions regarding how you want your estate distributed when you die or your affairs handled should you become incapacitated. Unfortunately, without proper planning, your best intentions may not be enough. Here are six of the most common estate planning mistakes people make.



1

Failing to plan. The biggest mistake is failing to create a plan in the first place. Without an estate plan, your assets will be distributed according to the law in the state where you live. Usually, if you are married, your spouse is entitled to a portion of



your estate and the rest is divided among other relatives. If you are single, your estate may go to your children, parents, or siblings. If you have absolutely no living relatives, then your estate will go to the state. This is probably not what you want to have happen to your assets.

Failing to fund a trust. Once you draft an estate plan, you aren't done. If your estate plan includes a trust, you need to actually fund the trust -- by retitling assets in the name of the trust -- or the trust will be useless

2

Mistakes

If you're like most people, you have the best of intentions regarding how you want your estate distributed when you die or your affairs handled should you become incapacitated. Unfortunately, without proper planning, your best intentions may not be enough. Here are six of the most common estate planning mistakes people make.



1

Failing to plan. The biggest mistake is failing to create a plan in the first place. Without an estate plan, your assets will be distributed according to the law in the state where you live. Usually, if you are married, your spouse is entitled to a portion of your estate and the rest is divided among other relatives. If you are single, your estate may go to your children, parents, or siblings. If you have absolutely no living relatives, then your estate will go to the state. This is probably not what you want to have happen to your assets.



Failing to fund a trust. Once you draft an estate plan, you aren't done. If your estate plan includes a trust, you need to actually fund the trust -- by retitling assets in the name of the trust -- or the trust will be useless

2

3

Doing it yourself. It is tempting to try to save money by using a do-it-yourself online will service or just writing something up yourself, but these poorly drafted documents may only cost you or your heirs additional money in the end. It is

impossible to know, without a legal education and years of experience, what the right legal solution is to any particular situation and what

planning opportunities are available. If there is anything about a family situation that's not commonplace, using a DIY estate planning program means taking a large risk that can affect one's family for generations to come. And only an

attorney can determine whether a particular situation qualifies as commonplace. The problems created by not getting competent legal advice probably won't be borne by the person creating the will, but they may well be shouldered by the person's children and grandchildren.



Not planning for disability. A properly drafted estate plan not only specifies what will happen to your assets when you die; it also spells out what happens if you become incapacitated. It is important to have documents, such as a power of

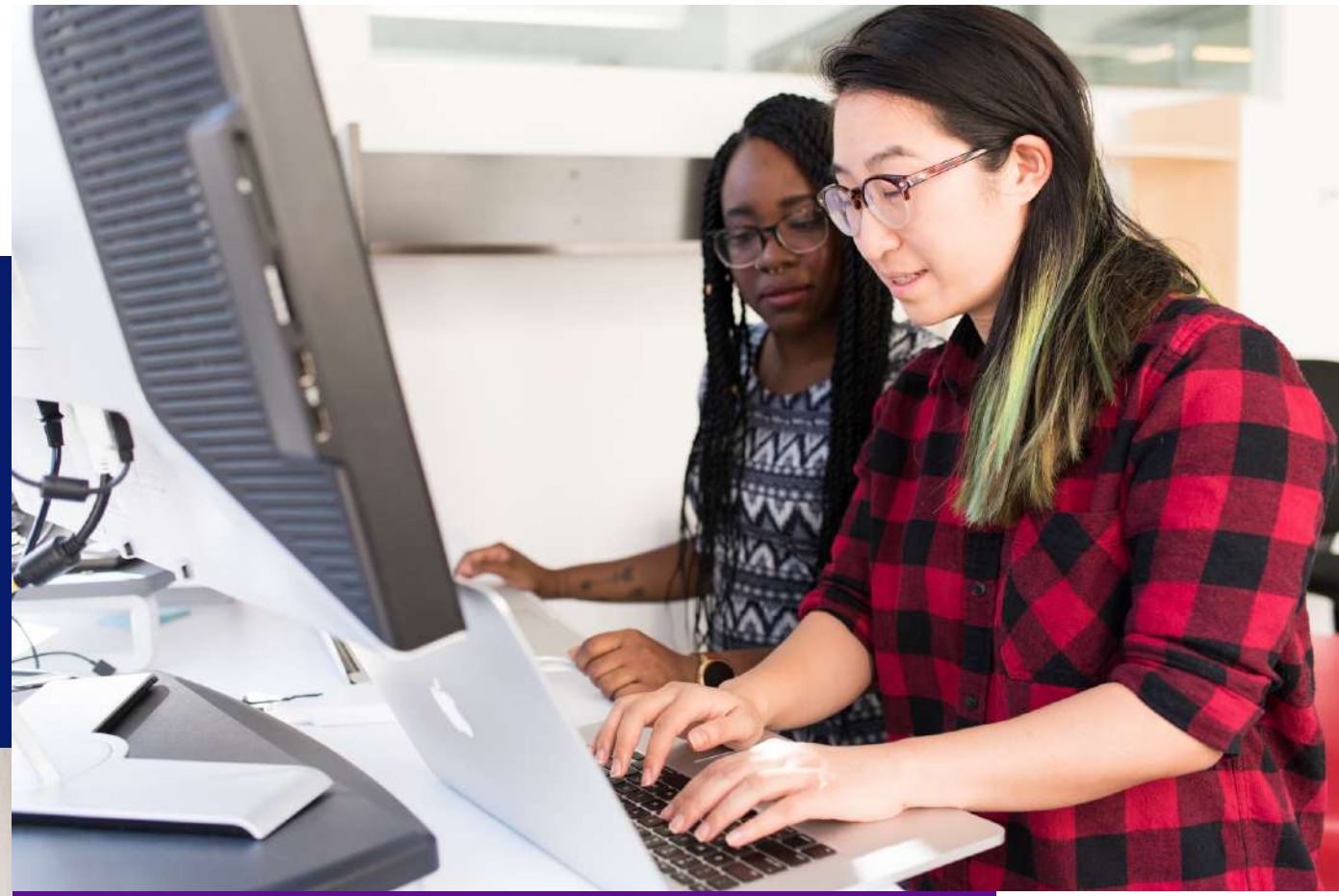
4

attorney and health care proxy, that appoint someone you trust to act on your behalf if you can't act for yourself.



5

Not checking your beneficiary designations. You should periodically review your retirement plan beneficiary designations to make sure they aren't outdated. Retirement accounts do not follow your will or trust—they are distributed according to the forms you fill out with the insurance company. You need to make sure you have named a beneficiary and the beneficiary is who you want it to be.



Not reviewing the plan. Once you've got an estate plan in place, it is important to keep it up to date. Circumstances change over time and your estate plan needs to keep up with these changes. Major changes that may affect your plan include getting married or divorced, having children, or experiencing an increase or decrease in assets. Even if you don't have any major changes, you should review your plan periodically to make sure it still expresses your wishes.

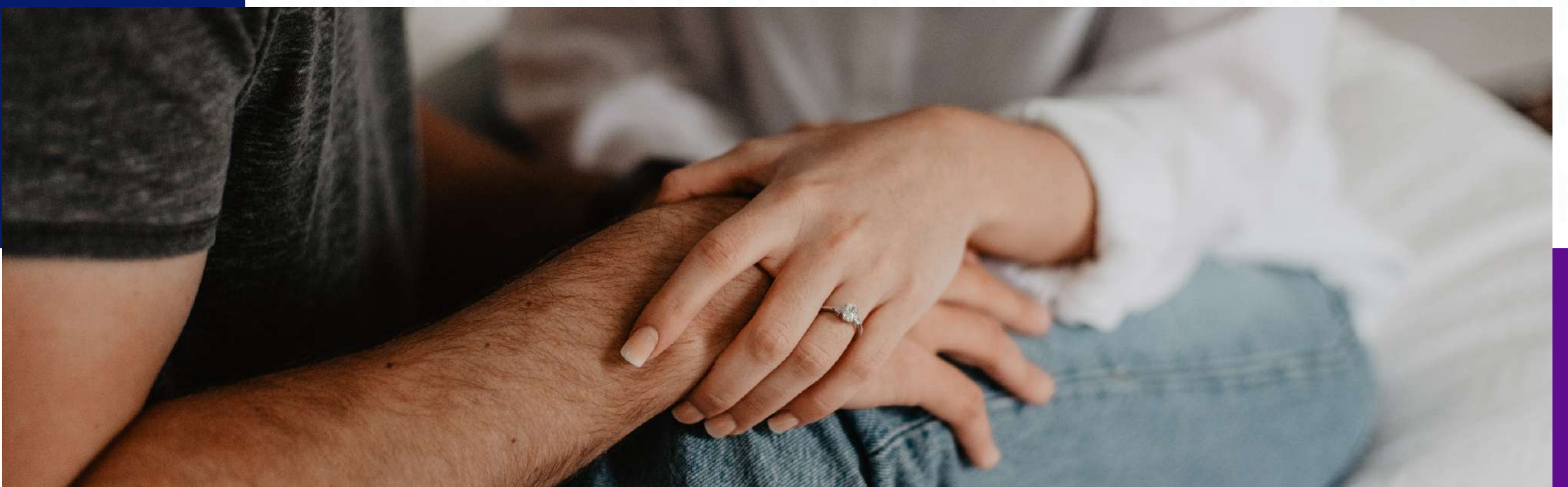
6

Components of a Good Estate Plan



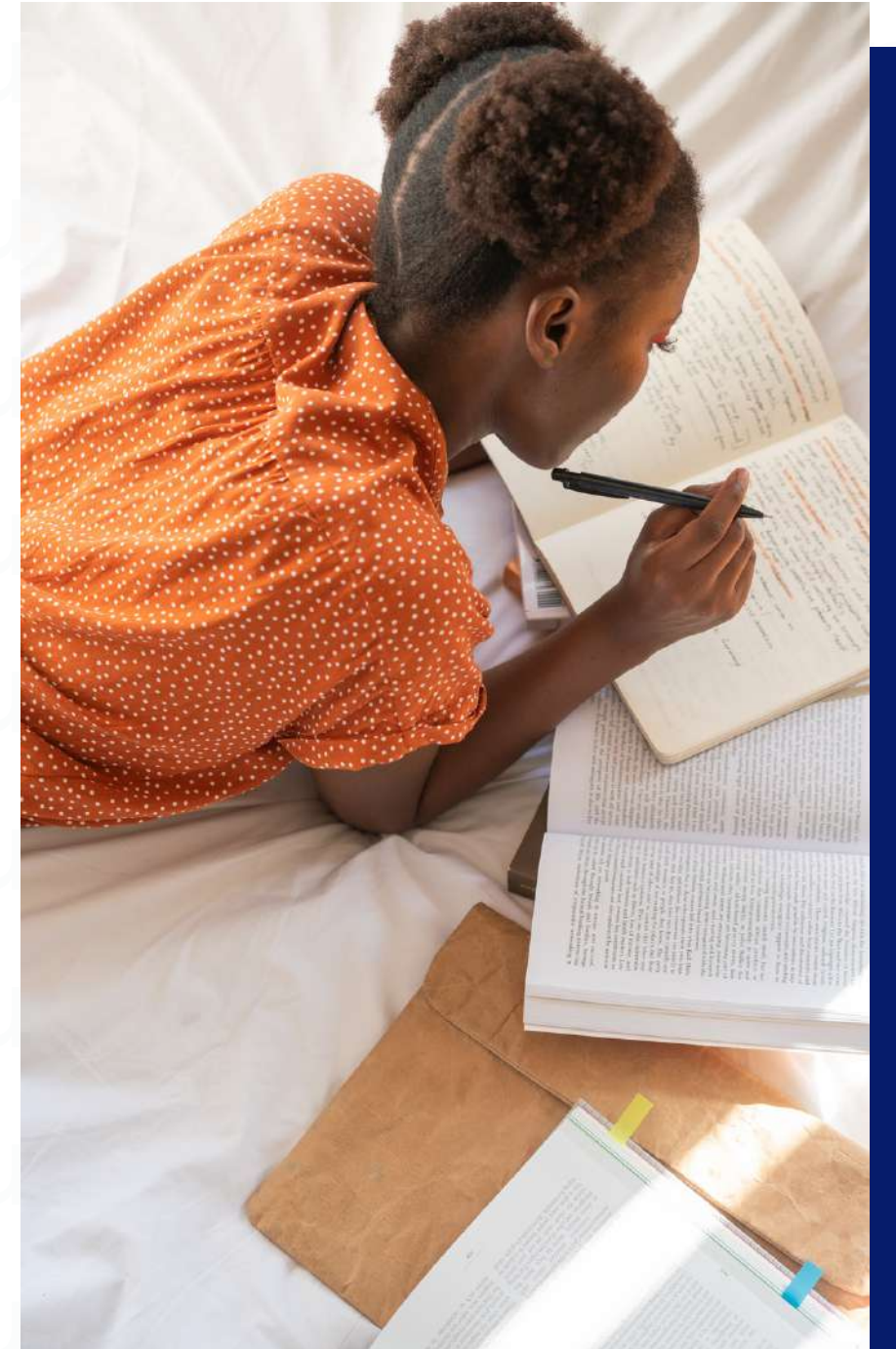
Many people believe that if they have a will, their estate planning is complete, but there is much more to a solid estate plan. A good plan should be designed to avoid probate, save on estate taxes, protect assets if you need to move into a nursing home, and appoint someone to act for you if you become disabled.

All estate plans should include, at minimum, two important estate planning instruments: a durable power of attorney and a will. A trust can also be useful to avoid probate and to manage your estate both during your life and after you are gone. In addition, medical directives allow you to appoint someone to make medical decisions on your behalf.



A complete estate plan should include:

1. A Last Will and Testament; *
2. A durable health care power of attorney naming an agent (and an alternate) responsible for medical decision-making;
3. A living will or other advance directive giving instructions concerning the type of care one wishes to receive (or avoid) in the event of a terminal illness or persistent vegetative state; and
4. A durable financial power of attorney naming an agent (and an alternate) responsible for asset and financial management.



Estate planning may also include the creation of trusts & recommendations about beneficiary designations.

*In some cases, trusts are used with or in place of wills.

Will

A will is a legally-binding statement directing who will receive your property at your death. If you do not have a will, the state will determine how your property is distributed. A will also appoints a legal representative (called an executor or a personal representative) to carry out your wishes. A will is especially important if you have minor children because it allows you to name a guardian for the children. However, a will covers only probate property. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate and aren't covered under a will.



Trust

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a "trustee," holds legal title to property for another person, called a "beneficiary." . There are several different reasons for setting up a trust. The most common reason is to avoid probate. If you establish a revocable living trust that terminates when you die, any property in the trust

passes immediately to the beneficiaries. This can save time and money for the beneficiaries.

Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.



Power of Attorney

A power of attorney allows a person you appoint -- your "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer.

In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

Medical Directives

A medical directive may encompass a number of different documents, including a health care proxy, a durable power of attorney for health care, a living will, and medical instructions.

The exact document or documents will depend on your state's laws and the choices you make.



Beneficiary Designations

Although not necessarily a part of your estate plan, at the same time you create an estate plan, you should make sure your retirement plan beneficiary designations are up to date.

If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan.

REMEMBER

When Planning Your Estate, Don't Let the Perfect Be the Enemy of the Good

There are many unknowns when planning an estate, but you can't let the uncertainties get in the way of creating any kind of plan.

When planning an estate you want to be able to consider all the angles, but there are inevitably a

number of "known unknowns" that can make planning difficult. These include:

- How long you will live
- How much money you will have left over, which can depend on longevity and potential need for care
- Your children's health
- Your children's financial stability, now and perhaps many decades into the future



Not having definitive answers to these questions can make it difficult to finalize a plan. However, before you get overwhelmed and give up on estate planning altogether, you need to consider the following:



- Any plan is much better than no plan
- We can't totally predict the future, but just have to do the best we can based on what we know today
- No plan is irrevocable; you can make changes as circumstances change or if you rethink what you want to do
- After age 60 or so, it's important to review your plan every five years in any case, since circumstances and laws change

The best way to approach estate planning is to think through all the questions and then create the best plan based on current circumstances.

What We Want to Avoid

- Leaving our loved ones unprotected
- Leaving hard earned assets to unsupportive/unknown family members
- Leaving the fate of our estate at the mercy of the probate process.

The Goal

- To protect our loved ones
- To make sure our wishes are followed
- To avoid family conflicts
- To take control over who will manage decisions if we are unable to and under what circumstances
- To leave the legacy WE choose!

The Next Step

If you or a loved one would like to discuss how to protect your valuables and loved ones, contact us or an Estate Planning Attorney of your choosing. We would be honored to serve you and your family!

The Autonomy Group, PC has developed an Elder Law practice focusing on the needs of Carolina seniors and their families.

Through our elder law planning process we can accomplish significant savings and financial independence through Medicaid benefits.





Plan for the *Unexpected*
and protect your *Valuables*



The Autonomy Group, PC

452 Lakeshore Parkway, Ste 120
Rock Hill, SC 29730

 (803)262-0442

 info@taglegacyplanning.com

 www.taglegacyplanning.com