

# Estate Planning

White Paper 2025

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# Introduction to Last Wills & Testaments

In a world where uncertainties and unfortunate events are inevitable, the importance of planning for the future cannot be overstated. Preparing a last will and testament is one of the most crucial elements of comprehensive estate planning. However, despite its significance, many individuals fail to establish or properly update their wills, leaving their estates vulnerable to legal disputes, delays, and unintended consequences.

## Goal

By highlighting the importance of clear and well-drafted wills, we aim to provide individuals and legal professionals with valuable insights to facilitate more informed decision-making and, ultimately, greater peace of mind in estate planning.

The data findings within these bullet points will show the disparity between the groups.

## What is Estate Planning?

According to the American Bar Association, estate planning is entrusting professional advisors who are familiar with your goals and concerns, your assets and how they are owned, and your family structure.

In other words, estate planning aids in providing a secured financial legacy.

An estate plan should include:

- Last will and testament
- Living will
- Health care power of attorney
- Financial power of attorney
- Living trust

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# What is a Will?

A will, also known as a "last will and testament" outlines the distribution of your property at the time of your death, allowing you to allocate assets as you see fit. However, it is important to note that your ability to distribute property according to your wishes may be subject to forced heirship laws in many jurisdictions. These laws typically prevent you from disinherit a spouse and, in certain cases, children.

## Types of Wills

**Simple Will:** A simple will is also known as a basic will. This will is great for those under 50, in good health, do not owe estate taxes at the time of death, and probate is not of concern.

**Testamentary Trust:** A testamentary trust will is a trust created in a will to be effective upon the settlor's death.

**Holographic Will:** Handwritten, unwitnessed wills—often referred to as "holographic" wills—are considered valid in some states. For a will to be legally binding, it must be entirely written by hand.

## Roles and Responsibilities

In the context of a last will and testament, several key parties play distinct and vital role in ensuring the proper execution of the will:

- Testator
- Executor
- Beneficiaries

A testator is a person who makes a will.

- An executor is the individual designated to oversee the administration of the estate, typically responsible for managing the probate process. If the named executor is unable or unwilling to fulfill this role, a relative or another suitable party is often appointed to take on these responsibilities.
- The individual creating the will, known as the "testator," designates their beneficiaries and allocates specific assets to them, which may include money, real estate, or personal property. Alternatively, the testator may assign beneficiaries to receive a portion of the overall estate.

## Benefits of Having a Will

A will allows you to specify how your estate—comprising your assets and property—will be distributed upon your death. Without a will (dying intestate), your estate will be distributed by the laws of your state.

Having a will in place ensures the efficient administration of your estate, provides a clear expression of your wishes, and helps avoid costly and time-consuming disputes regarding the distribution of assets. A will is also the only legal means by which you can designate an executor to manage your estate and carry out your instructions. If no executor is named, the court will appoint one, typically selecting the first individual to request the role.

A carefully structured will help minimize estate taxes on larger estates. Additionally, if you have minor children, a will enables you to designate a guardian to care for them in the event that both you and the other parent pass away.

### Updating Your Will

When should you update your will?

- When you welcome a child into your family through birth or adoption
- If you are contemplating or have recently finalized a divorce
- When your child gets married
- If your executor or a beneficiary passes away
- If you experience a significant increase in assets
- If the original copy of your will cannot be located

## Probate Process

Probate is the legal procedure required to transfer or inherit property after the owner's death. It involves validating the deceased's will, settling any debts, and distributing the estate according to the will or state law.

Depending on the value and nature of the deceased individual's assets, court involvement may or may not be necessary to transfer or inherit the property. The totality of the property legally owned by the deceased is referred to as their "estate." If court proceedings are required, this process is commonly known as "probate." It is important to note that a person's estate may still need to go through probate, even if they have a valid will.

If the deceased person did not have a will or trust, a close relative typically assumes responsibility for managing the probate process. In cases where the deceased was married, the surviving spouse is often designated to handle the estate. If there are adult children, one of them may take on this role. It is advisable for relatives to communicate with one another to determine who will oversee the estate and how decisions will be made.

## Demographics

How many have a living trust in the United States?

Statistics show that only 33% of adults in the U.S. have estate planning documentation. Estate plans made in 2021, 75.12% were wills, 18.78% were trusts, and 6.1% of people nominated a guardian for their young children.

How many African Americans, White Americans, and Hispanic Americans have wills or living trust?

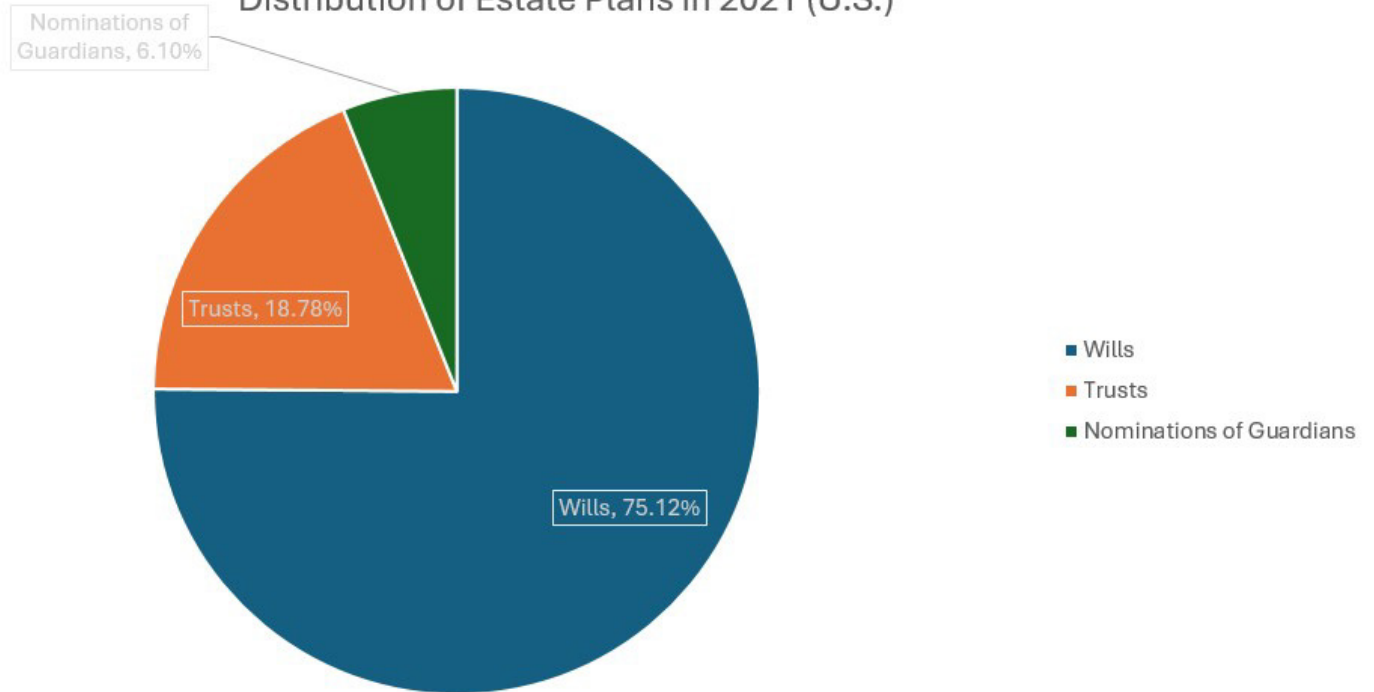
According to a nationally representative Consumer Reports survey of 2,224 U.S. adults on wills and estate planning conducted in April 2022, these percentages represent the number of Americans that do not have wills by Race/Ethnicity.

- African-Americans: 77 percent of Blacks
- White Americans: 61 percent of Whites
- Hispanic Americans: 82 percent of Hispanics

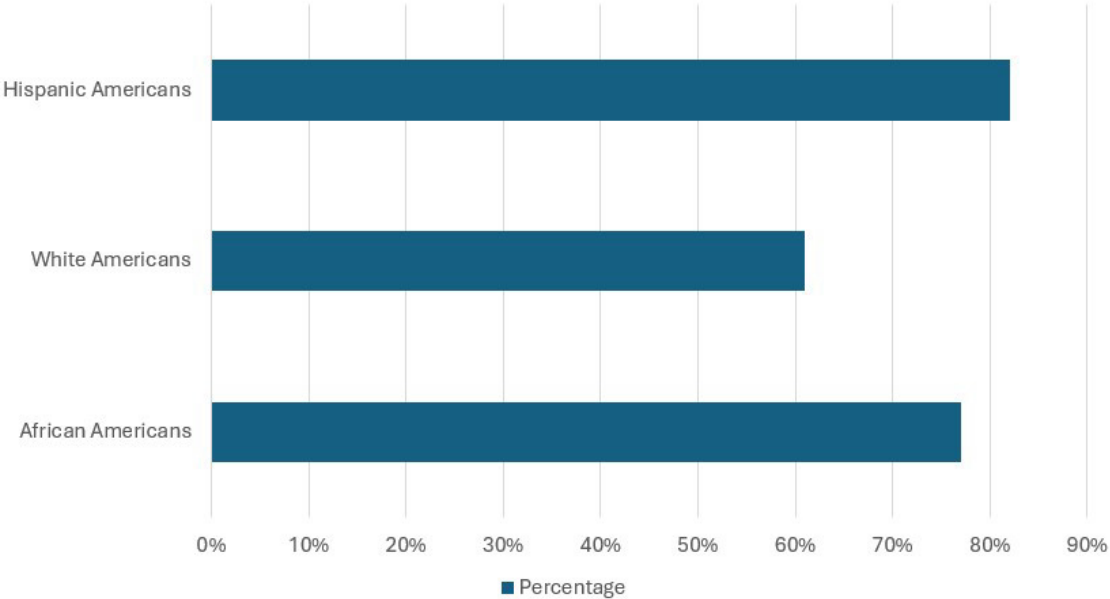
African Americans were more likely to identify a lack of sufficient assets as the primary reason for not establishing an estate plan.

The racial inequities in the Trusts and Estates field that occur due to the lack of estate planning is evident by the current racial wealth gap.

Distribution of Estate Plans in 2021 (U.S.)



Americans Without Wills by Race & Ethnicity



**Age groups of Americans with wills or living trusts.**

Individuals aged 60 and older were significantly more likely to have a will, with 63% reporting having one, compared to just 33% of the general population.

Adults aged 35 to 54 represent the largest demographic without estate planning documents. In contrast, the 18-34 age group, which has the strongest presence on TikTok, saw an uptick in estate planning participation, likely driven by TikTok partnerships promoting estate planning services in 2024.

**Income of individuals with wills or living trusts.**

According to a survey taken by LawDepot in 2023, 34% of respondents with an annual household income of more than \$150,000 had a documented estate plan. In contrast, only 8% of respondents with an annual household income of less than \$25,000 had a documented plan.

Over 75 percent of white households are headed by married couples with a spouse present, in contrast to fewer than half of Black households. This disparity is significant, as marriage often provides an opportunity for individuals to pool resources, generally contributing to greater wealth accumulation.

How many Americans die intestate (without wills).

How does intestate work?

The laws of intestacy establish a specific order of priority for the distribution of assets. Typically, a surviving spouse and children are given priority, followed by other close relatives, such as parents and siblings. If there are no surviving relatives, the assets may escheat to the state.

More than 60% or 3 out of 5 Americans will die without a will, a situation referred to as dying "intestate."



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## Resources and References

### Professional Assistance

If you are ready to ensure that your final wishes are clearly outlined and legally binding, we are here to assist you in creating a comprehensive and well-structured last will and testament. Our expert team can guide you through the process, ensuring peace of mind for you and your loved ones.

Contact us today to schedule a consultation and take the first step toward securing your legacy.

### Helpful Links

- [AARP](#)
- [ACTEC Law Journal](#)
- [American Bar Association](#)
- [California Courts](#)
- [Caring.com](#)
- [Consumer Reports](#)
- [Cornell Law](#)
- [Department of Homeland Security](#)
- [Department of Social Security](#)
- [FindLaw](#)
- [LawDepot](#)
- [LegalZoom](#)
- [NOLO](#)
- [Power Legal Docs & Notary Services](#)