STEADFAST

ESTATE PLANNING

# The 7 Mistakes

## Parents Should Avoid When Crafting Their Estate Plan

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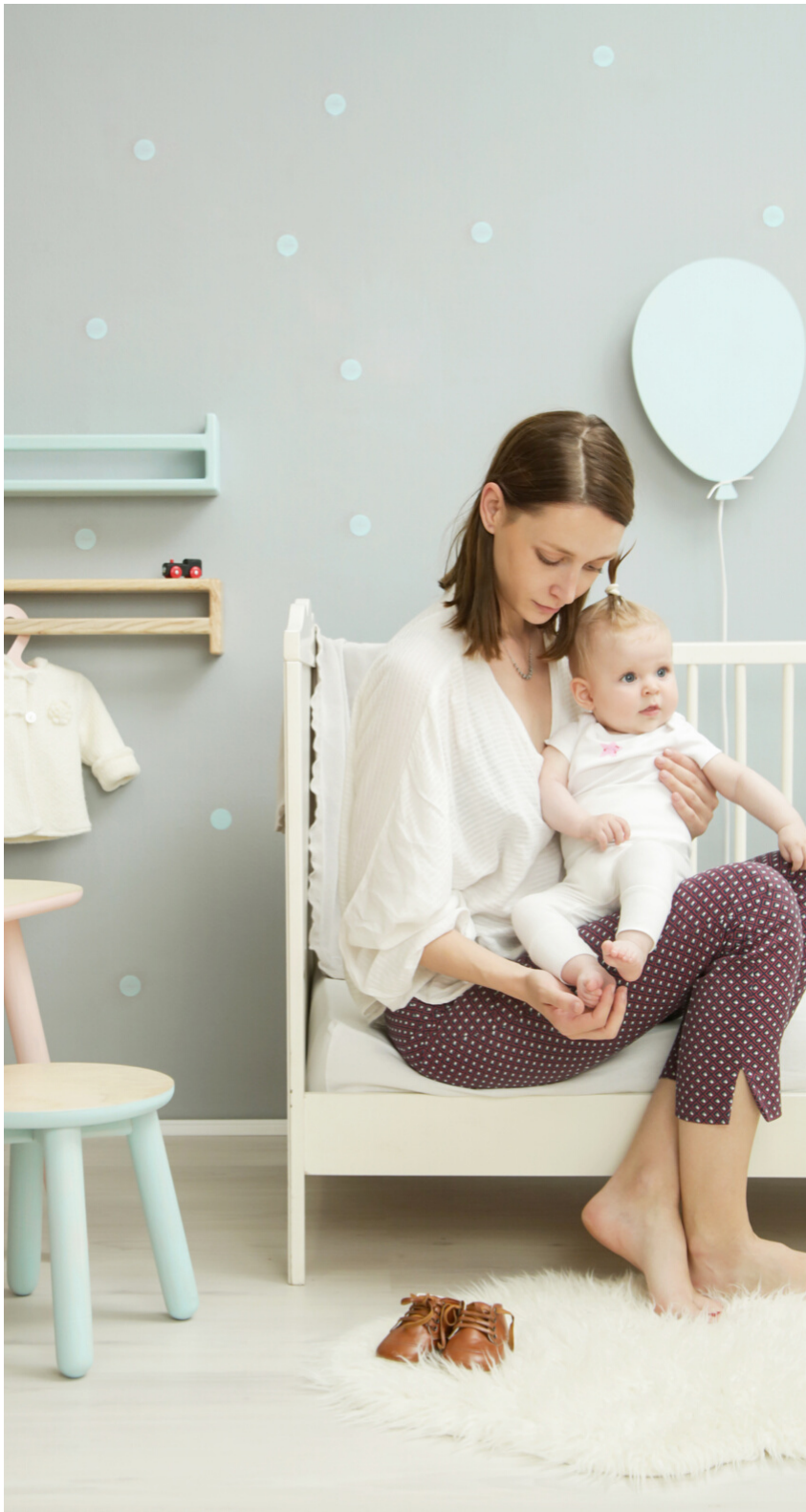
# 1. NOT HAVING AN EMERGENCY PLAN FOR THE BABYSITTER IN CASE SOMETHING UNEXPECTED HAPPENS.

When most parents think about choosing a guardian, they tend to focus on who would raise their children in the long- term if something happened—but **it's much more likely that you will become disabled or incapacitated** in your lifetime before passing away, and will need emergency care for your children, even if it's short-lived.

**The most immediate need for your children is what would happen in an emergency**, not who would ultimately be in charge of raising your them (this is important too— see Tip #2)

Let's say you're out on a nice date, and you told the babysitter you would be home at 10pm. Eleven o'clock rolls around, and you haven't made it home. Your babysitter is in a panic. What should she do? In an emergency, **you want your nanny or babysitter to call a trusted friend or loved one who lives close by before they call the police**. This will prevent your children from being placed in Child Protective Services by the authorities while they figure things out, and ensure your children are taken care of by the people you want, in the way you want –no matter what. Our firm names Short-Term Guardians in every single estate plan for families with minor children.



# 2. NOT CHOOSING THE RIGHT GUARDIAN FOR YOUR KIDS.

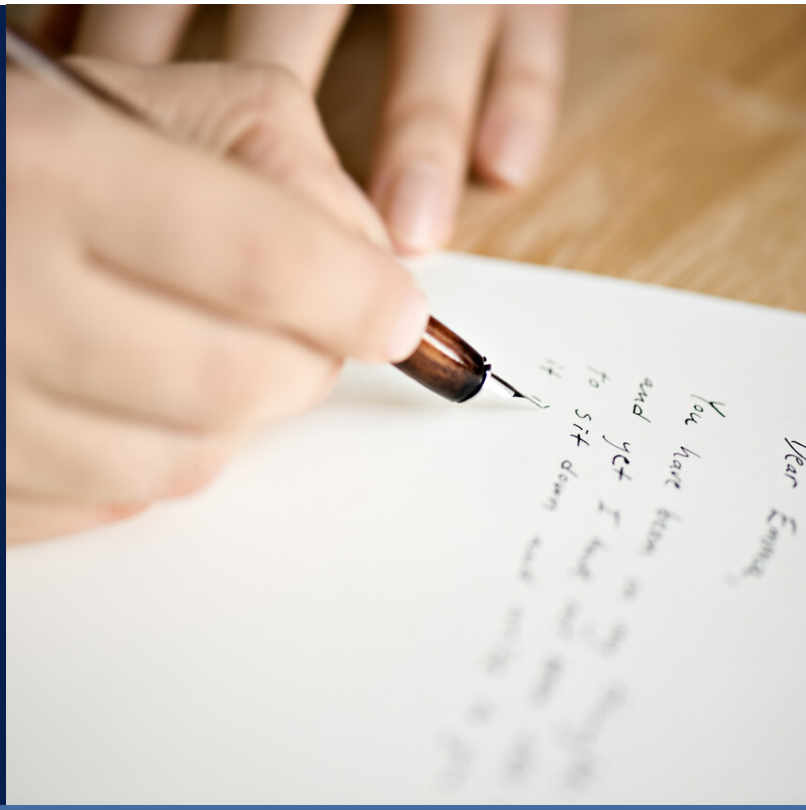
The best choice for who should raise your children depends on a variety of factors. Perhaps surprisingly, **one's financial resources should not be a consideration**; you as a parent should be sure you leave behind plenty of assets to pay for the raising of your children, with a life insurance policy, for example.

**The factors that matter most when choosing a guardian include your children's relationship with your chosen guardian and where they live**. If your children are in a situation when someone needs to step into your shoes as a parent, the transition should be as seamless and easy as possible given the circumstances. The better your children know their guardian, the easier it will be for them to accept them as a parent figure. And consider how comfortable your children are traveling so they aren't too confused or scared if they have to move out of town or out of state.

Other important factors include the guardian's age, religion or spirituality, parenting philosophy, personal values, and how they would discipline your children.

The best gift you can give your children and their guardian in a time like this is a written letter of your desires and wishes.

You should also keep a journal or letter of the major milestones in your life such as where you grew up and went to college, where you got married, and what your favorite family traditions are. **You can also include a simple letter of advice for the guardian and include your children's daily routines, favorite dishes, and cherished keepsakes**. This is called Legacy Planning, and it's just as important as the planning we do for our financial assets. We guide all of our clients through Legacy Planning to ensure they pass on their stories, insights, values, and experiences as well as their money.



# 3. THINKING THAT YOUR CHILDREN'S GUARDIAN HAS TO BE THE PERSON IN CHARGE OF YOUR CHILDREN'S INHERITANCE.

**The best person to raise your children if you can't may not be the best person to over-see the checkbook for your children**, and it's completely okay if this is the case. Who should step into your shoes to raise your children is an entirely different question than who should ensure your assets are properly invested and administered. The main factors to consider when choosing a "trustee" (the person in charge) of what you leave behind to your children include their penchant for proper and timely record keeping and your trust that they will ensure funds are spent on appropriate things, such as education and camp, and not inappropriate things, such as a brand new car or the latest electronic fad.

Your children's financial guardian should make the same decisions with your money that you would as your children's parent.

I**f you choose a different person as guardian and trustee, you want to be sure you can count on them to communicate with each other**. A decision the guardian makes for your children—such as where they go to school and what extracurricular activities they're involved in—necessarily involves expenditures, and this is where your trustee comes in. Leave behind your desires and wishes in writing so that both your guardian and trustee are on the same page about what you as a parent want for your children.

# 4. NOT SPECIFYING WHAT HAPPENS IF YOU CHOOSE A COUPLE AS GUARDIAN AND THERE IS AN ACCIDENT OR DIVORCE.

One of the most common mistakes in naming a guardian is to choose a happily married couple, but **not specify what happens if they get divorced or what happens if one gets into an accident**. Likely you would allow the children to stay with one of the two if they were a single parent, but not with the other.

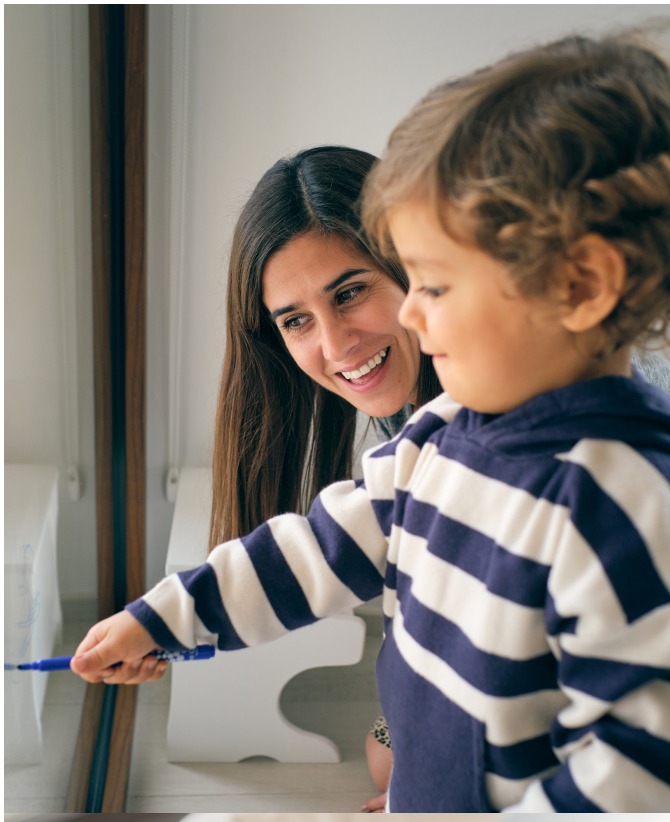
Here's an example: My husband and I have chosen his brother and sister-in-law as our children's guardians. They are happily married and have two kids around the same age as our children, and we can't imagine they would ever get divorced. If something happened to us as parents, the best home for our children is with them. But if they have to step into our shoes as guardians for our children, and then two years pass and they get a divorce, we would want our children to stay with my husband's brother as the sole guardian. However, if my husband's brother were to get into an accident, we might be ok with his wife being a single parent. It all depends on what you as a parent believe is in the best interest of your children.

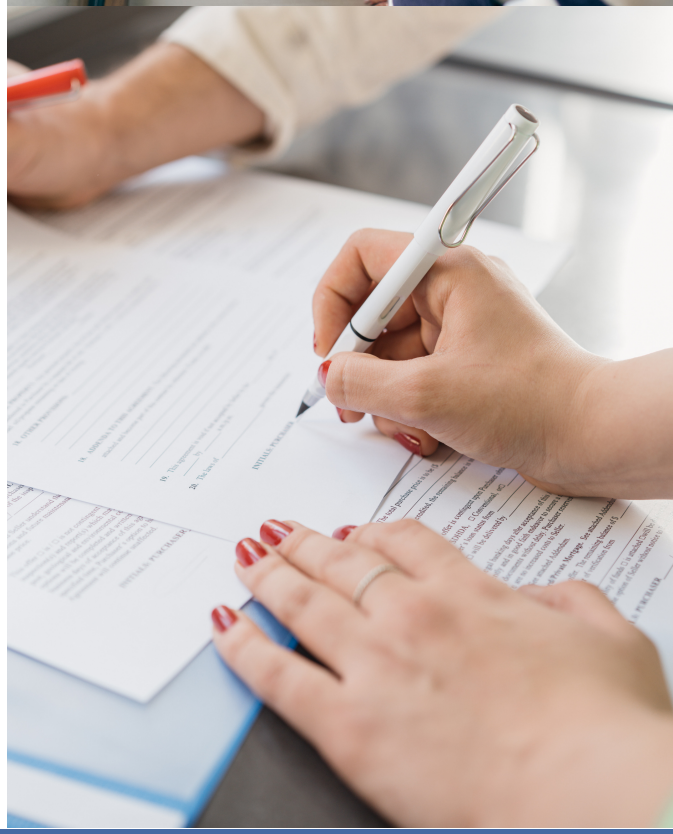
**If you don't put in writing what you prefer in the case of accident or divorce, nobody—not even a probate judge—knows your wishes**. You can easily avoid this difficult scenario by addressing this eventuality in your guardianship documents and Last Will & Testament.

# 5. NOT GIVING COPIES OF YOUR ESTATE PLAN TO YOUR KIDS' GUARDIAN AND TRUSTEE.

**You may have the most well-laid-out estate plan possible, but unless someone else knows it exists and how to find it, your desires may never actually play out**. Ensure your estate plan is accessible at the time it is most needed. The easiest way to ensure it is accessible is to give a copy to your children's guardian and trustee. One way to do this is to create electronic copies of your signed documents. Our firm prepares these PDFs for you in addition to a physical estate planning binder. Email the guardian and trustee with the electronic copies as attachments. Let them know this is your estate plan, and to keep it in a safe folder on their computer until it is needed. Copies work just as well as originals in an emergency (although only the original Last Will & Testament will be accepted by a probate court).

**Your originals should not be kept in a safe deposit box**. Generally, no one can access a safe deposit box outside of business hours, and even then, only the account owners can get in. You want your powers of attorney, guardian, and trustee to have the tools they need to make decisions on short notice and in an emergency, and they won't be able to do this if they can't access your documents. Instead, keep your original estate planning documents at home and **be sure someone else knows where the originals are**. If you have a safe at home this would be a great place to keep your documents as long as someone knows how to access the safe in case of emergency.

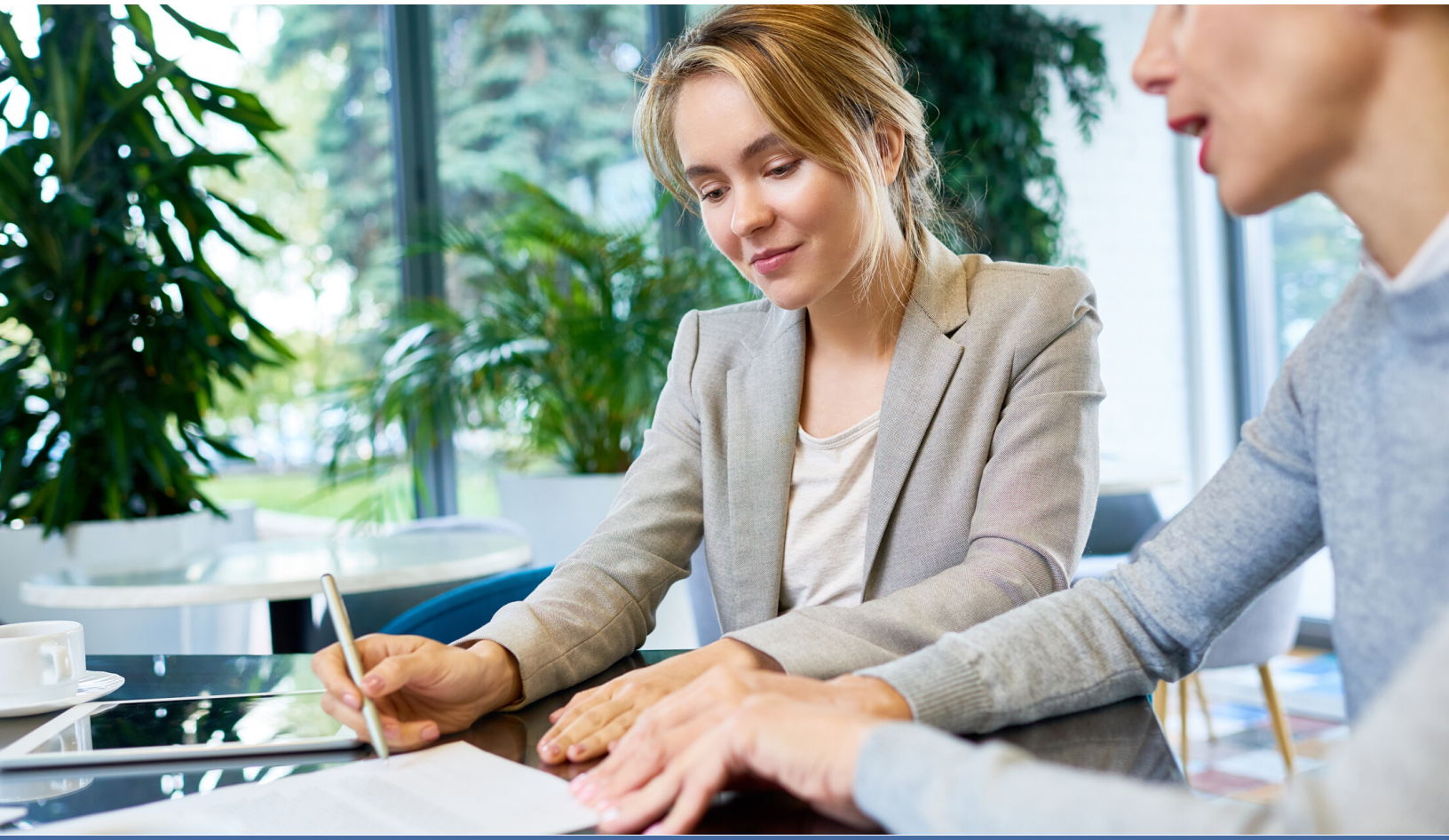




# 6. ONLY NAMING YOUR CHILDREN'S GUARDIANS IN YOUR WILL

It is very common—and a big mistake—to name a guardian only in your Last Will & Testament. **The problem with this is that a Will is only enforceable once you've passed away**. But what if you become incapacitated or disabled during your lifetime? This is a much more likely scenario than dying suddenly, especially as people are living and working longer than ever before. And if you're incapacitated, you can't parent your children. Who will step in? A judge will have to decide, and they won't be using your Will as a guide because your Will doesn't take effect until you pass away.

**Instead, name your guardian in a legal document called a "Declaration of Guardian" that is separate from your Will**. A probate judge will use this document as a guide during your lifetime should you become incapacitated and need a guardian named. Without this legal document, the judge must entertain all interested persons' viewpoints about who should be parent to your children, and your children could end up with someone you would have never chosen.



# 7. NOT USING A REVOCABLE LIVING TRUST SO THAT YOUR FAMILY AVOIDS THE COST AND DELAYS OF PROBATE COURT.

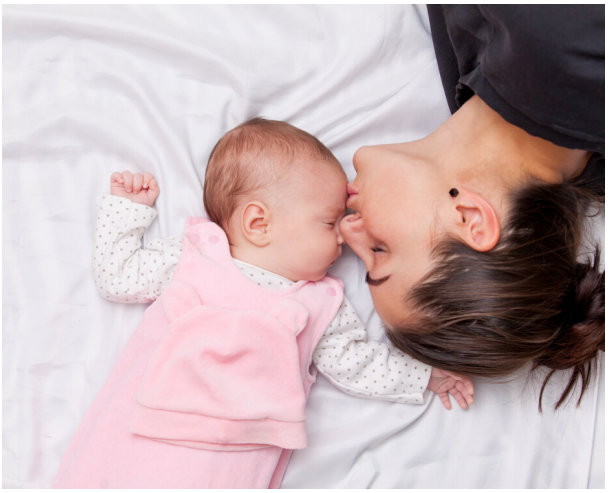
One of the biggest estate planning myths out there is that a Will avoids probate. Almost every client we meet with mistakenly believes this. Not so! **With or without a Will, your loved ones will land square in the middle of the probate court**. With a Last Will, you've told the probate judge who gets what; without a will, the probate judge looks at state law to see who gets what. Either way, probate is involved.

**The downside of probate is that it is expensive, time-consuming, and public**.

Imagine that you're carrying in your arms all of your "stuff" (your home, life insurance, bank accounts, and so on). If you're walking along a sidewalk and then trip and fall on a crack, all of your stuff is scattered about all over the sidewalk and street. Your loved ones must go to the probate court and pay expensive lawyer fees to get permission to pick everything up that has been strewn about.

**Probate can be avoided with a Revocable Living Trust**. Instead of carrying everything in yours arms, you carry it in a backpack. Your backpack holds all of your stuff. When you trip, your trustee steps in and immediately grabs onto the straps of the backpack—in other words, your trustee has immediate access to your assets to use them in the way you would have wanted. The trust "agreement" is the backpack itself: it tells your trustee exactly what to do, and they don't need a probate judge's permission to begin the process. The attorney fees involved will be significantly less, and, best of all, it's not public. Nobody knows what you owned or where it's going; everything happens in the privacy of an attorney's office.

**A trust is a very good choice even if you don't have many assets, because probate is an arduous process no matter how much (or little) money you have**. A trust is especially helpful if you have minor children. Once your trust is created, as you acquire things in the future, you simply put them in your backpack (i.e., in your trust) and you can be sure you've saved your family the time, expense, hassle, and publicity of the probate court.

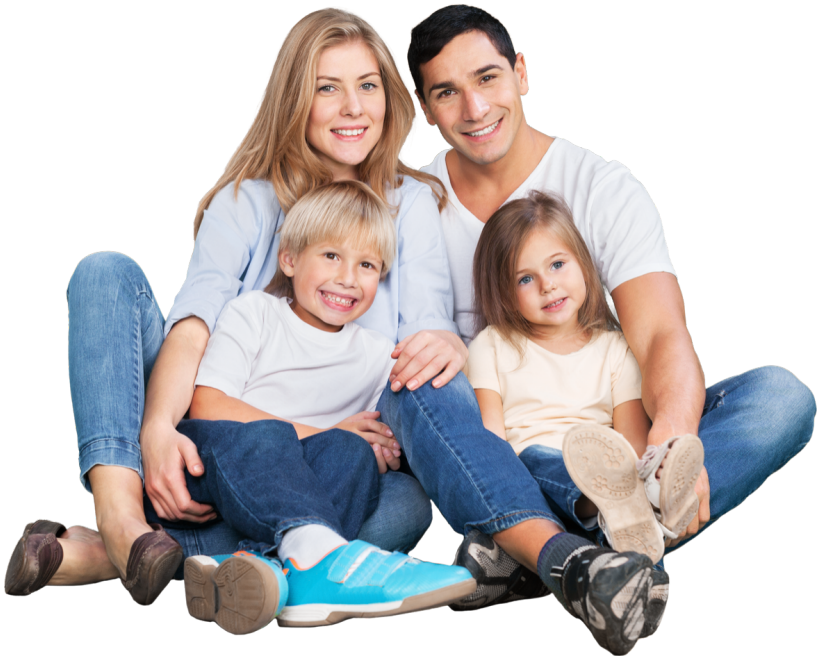


# Bonus Tip!

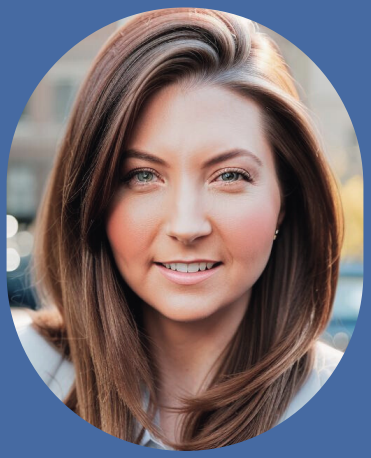
## Failing to Review and Update Your Estate Plan Throughout Your Lifetime!

Once parents put an estate plan in place, they often think, "Whew, that's done. Now I don't have to think about that anymore." **But creating an estate plan is more than just checking something off your bucket list**. Your powers of attorney, guardianship documents, trust, and other estate planning documents are living documents. Your estate plan should change as your circumstances change, your assets change, and your family grows. In addition, the law will change, and this alone could have a big impact on your estate plan.

**If you don't update your plan as things change, your loved ones will find out the hard way that your estate plan is out of date**. Your plan will fail just when you need it the most. Your estate plan consists of living documents that need to be **reviewed and updated throughout your lifetime**.



# Kathryn Clements



Kathryn is the founder of Steadfast Estate Planning, PLLC. Her practice is dedicated to assisting individuals and families in making critical decisions today in order to prevent avoidable distress and conflict in the future. Recognizing the complexities of the estate planning journey, she adeptly navigates her clients through the process, ensuring their loved ones are cared for and their final wishes are honored.

Kathryn received her Bachelor of Science in Business with an emphasis on Entrepreneurial Management from Texas Christian University's M.J. Neeley School of Business. She received her Juris Doctor from Louisiana State University obtaining an additional Degree in Comparative Law.

After working in a traditional law firm focused exclusively on estate planning, Kathryn identified a need in the market for busy families who know they need to get their affairs in order but who don't have the time to dedicate to multiple appointments requiring travel and childcare arrangements. She launched Steadfast Estate Planning in order to serve this demand and now helps families to be able to obtain peace of mind around planning for their families without disrupting their busy schedules and lives. She genuinely enjoys educating families and individuals in her community around this important topic.

Kathryn is licensed to practice law in Texas and Louisiana but is currently only accepting clients who are residents of Texas.

In her spare time, Kathryn enjoys cycling, traveling and spending time with her family including her 14 year old Yorkshire Terrier, Beignet.

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