

Ep. 207 | Dear Patti: 76% of Americans Have an Estate Plan They've Never Seen

The Patti Brennan Show

Editorial note: This transcript has been edited for clarity and readability.

Hi everybody, I'm Patti Brennan, CEO of Key Financial. Thanks so much for joining me. Whether you have \$20 or \$20 million, this show is for those of you who want to protect, grow, and use your assets to live your very best lives.

Today we're going to be talking about the default estate plan and why you don't want it. According to a 2025 study, 76% of Americans don't even have a will. If you're one of them, you might think you don't have an estate plan. Well, I'm here to tell you: you do. The state has one for you, and it may not be what you want. Today I'm going to walk you through what that default plan looks like, and then I want you to go to our website and download our checklist called "Beyond the Will." This does not have to be difficult. You just have to do something about it, and I'm here to nudge you along.

Why the Default Estate Plan Is Terrible

Let's start with a simple example. In Pennsylvania, if you are married with children and your spouse dies without a will, the surviving spouse receives \$30,000 and 50% of the remainder. Is that going to be enough? You need to understand what not having a will can do to your financial security. It is hard enough when children lose one parent. It becomes even harder when they lose the second, because that parent is left struggling financially.

The state also has no idea about your family dynamics. It does not know you are estranged from a sibling, that you have a child with special needs, or what your specific wishes are. The state does not care. It follows the formula and taxes accordingly.

By the end of this episode, you will understand exactly what the default plan looks like and what to do instead.

What a Will Actually Does

A will is simply a letter to your executor telling them what you want to have happen. Every state has its own laws of intestacy, which govern what happens when you die without one. It is far easier to write a will and lay it out yourself.

If you have children, your will is where you designate who will raise them if you are no longer here. Without that designation, a judge decides. The anxiety that puts on children is enormous. The infighting among family members over who is best suited can be devastating. You get to make that choice. Take it.

Keep in mind that your will only controls assets that do not already have a beneficiary designation. Retirement accounts, life insurance, and similar assets pass outside your estate entirely. We will come back to that.

Healthcare Power of Attorney: Don't Wait

You need a healthcare power of attorney. And so do your children, the moment they turn 18.

Many of you have heard the story about what happened with my own son when he suffered a traumatic brain injury. By the grace of God, he was 17 years and nine months old at the time. Had he been 18, I would have been just some woman on the phone. Because of HIPAA, the hospital would not have been able to give me any information or even confirm he was there, on a ventilator, in the ER. Nothing.

Do not wait until your child graduates from college. Do not wait until they get married. The moment they turn 18, get them a healthcare power of attorney. It is one of the most important things you can do for them.

You should also have an advanced directive, sometimes called a living will, that specifies exactly what you would and would not want to have happen in a medical emergency. I am a big believer in something called the Five Wishes, which I encourage everyone to look into.

Financial Power of Attorney: What Happens If You're Incapacitated

A will only applies if you are dead. What happens if you are in a coma?

Without a financial power of attorney, your bills do not get paid. Your credit rating could drop to 500 simply because you were in a car accident and could not act on your own behalf. Your spouse cannot access your retirement accounts. There is not a single financial institution in America that will speak to anyone but the account holder, and if that person cannot speak, those assets can be frozen.

A durable power of attorney is instantly effective. A springing power of attorney is different: it only takes effect once someone, typically a physician, certifies that you are unable to act. That process can slow things down significantly at exactly the wrong time. Think carefully about which one is right for your situation.

Whoever holds your financial power of attorney is a fiduciary. That means they are legally obligated to act in your interest only, not their own. At Key Financial, we work with powers of attorney regularly and take that responsibility very seriously.

Beneficiary Designations: They Override Everything

Your beneficiary designations supersede your will. Completely.

You could state in your will that your 401(k) should go to your four children. But if you named your spouse as the beneficiary on that account and never updated it, your spouse gets it all. The children get nothing. The will does not matter.

We have seen this go wrong in painful ways. People who divorced and never updated their beneficiary designations. People who named a trust, then dissolved the trust when tax laws changed, but forgot to update the beneficiary on their life insurance. We had one estate tied up for years because the insurance company refused to pay out the death benefit. That is a hard situation for a surviving spouse.

You can also name beneficiaries on individual bank accounts and brokerage accounts. A bank account with a named beneficiary is called a POD account, payable on death. A brokerage account is called a TOD, transfer on death. These are powerful tools, but use them carefully. If everything passes by beneficiary designation, there may be nothing left in the estate to cover inheritance taxes, funeral expenses, or outstanding bills.

Make things easy for the people you are leaving behind. Just be conscious of unintended consequences.

The Revocable Trust: What It Does and What It Doesn't

If you want to avoid the probate process entirely, you can establish a revocable trust. Think of it as a will substitute. Everything you would put in a will, you instead place in the name of the trust. It uses your Social Security number, so it is as if you own it outright. Upon your death, the distribution of assets is already outlined, and your executor does not need to go through the courthouse to carry it out.

One very important thing to understand: a revocable trust does not provide asset protection, and it does not save taxes. Set one up to avoid probate if that is your goal, but that is essentially all it will accomplish. Do not let anyone oversell it to you.

Advanced Planning Techniques: Proceed with Caution

There are more sophisticated estate planning tools available: Crummey trusts, spousal lifetime access trusts, qualified personal residence trusts, family limited partnerships. These can be incredibly effective in the right circumstances, and we do work with clients on these advanced strategies.

But proceed with caution. Do not over-complicate. Do not try to save on a tax that does not apply to you. The new estate tax law has significantly changed the landscape here, and what made sense five years ago may not make sense today.

Gifts and Charitable Giving: Smart Strategies Worth Knowing

In Pennsylvania, gifting is one of the most straightforward planning strategies available. Here is why: your surviving spouse pays no inheritance tax, but your children pay 12%. Non-relatives pay 15%. If you have a friend or someone outside the family you want to leave money to, consider doing it while you are still alive. Why let the state take 15% when you could give it with warm hands?

That said, gifting is irrevocable. Once it is done, it is done. Make sure you will not need that money before you give it away.

One of the most tax-efficient moves I see regularly overlooked: naming a charity as the beneficiary on your IRA. Charities do not pay income tax when they receive IRA funds.

Under the current inherited IRA rules, most non-spouse beneficiaries are required to fully distribute the account within ten years, paying ordinary income tax along the way. A charity faces none of that. If there are causes you care about, this is a cleaner, simpler, and far more tax-efficient way to honor them.

Think carefully about which buckets you are drawing from and who you are leaving them to. Pre-tax accounts, after-tax accounts, and tax-free accounts all have different implications for your heirs. Getting this right matters.

Closing Thoughts

The default estate plan is the pits. It does not know you. It does not know how hard you worked. It does not know what you want to have happen. It just follows the formula.

Here is the good news: you do not have to get fancy. In many states, a handwritten will, notarized and witnessed by two people, is legally enforceable. Write down what you want to have happen. Make one phone call. Have one conversation with your spouse. Just take the first step.

Visit keyfinancialinc.com. There are checklists on the website that walk you through all of this. People tell us these checklists have been genuinely helpful, and I hope they are helpful to you. Don't go by default. Take care.

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