

WHAT IS ESTATE PLANNING?

Estate Planning is the development of a plan for managing your affairs in case you die or become incapacitated. Your estate contains all assets you own, including real property, business interests, investments, retirement benefits, insurance and personal property.

Your Estate Plan should be tailored to achieve your personal Estate Planning goals. Our clients often desire to:

- Provide for Loved Ones
- Avoid Medicaid "Spend Down"
- Avoid Probate Court
- Minimize Estate Taxes
- Maintain Asset Control

WHAT ARE YOUR OPTIONS?

Do Nothing

If you die or become incapacitated without an estate plan, the Probate Court will decide: 1) who will inherit your assets; 2) who will raise your minor children; and 3) who will handle your medical and financial affairs. Your wishes will not be considered.

Probating the estate of a deceased person usually takes one to two years. Probate costs typically consume 5% to 10% of the estate. Property owned in another state must be probated there as well. Probate proceedings are a matter of public record for anyone to see, and are sometimes used by solicitors to sell services and products.

Joint Property

Joint Ownership (with rights of survivorship) arises where two or more people own an asset

or property together. When one of the owners dies, the entire ownership passes automatically to the surviving joint owner without going through probate. Because joint property avoids probate, some people use it as an estate plan. Unfortunately, this often does more harm than good.

Joint Ownership results in loss of asset control. For example, jointly owned real estate cannot be sold without the permission of all joint owners. Funds from jointly owned accounts can be withdrawn by a joint owner, without permission of the other joint owners. Jointly owned assets are subject to attachment and confiscation by the creditors of any or all of the joint owners.

Problems can arise even when you have total confidence in a joint owner. For instance, if a joint owner becomes incapacitated, real property cannot be transferred without going to court and having a judge appoint a conservator to act on the joint owner's behalf. The court will have ultimate control over the property until the incapacity ceases or the joint owner dies.

Joint ownership of property can create capital gains tax liabilities far greater than the actual cost of probate. It may also disqualify the joint owners from receiving Medicaid and Supplemental Security Income benefits.

Finally, although owning assets jointly (with rights of survivorship) avoids probate at the death of the first joint owner, this probate avoidance is only temporary. When the last joint owner dies the asset must be probated.

Will Based Planning

A Will is a document that allows you to direct how your assets will be distributed and who will care for your minor children after your death.

However, a Will can not keep your assets out of the Probate Court or reduce estate taxes. In fact,

a Will has no legal power unless it is probated. Like the "Do Nothing" method, Will based planning subjects your assets to the attorney's fees, costs, delays and loss of privacy associated with probate.

Trust Based Planning

A Trust is a document that enables you to: 1) direct who will handle your financial affairs if you become incapacitated; and 2) control when and to whom your property will be distributed after your death – without going through probate. In it, you name a Trustee, usually yourself, to manage assets you place in trust (stocks, bonds, real estate, personal effects, etc.). You can still buy, sell, trade, spend or do anything with these assets you choose. You can revoke the Trust or change its terms at any time.

If you become incapacitated, the Trust provides for the automatic appointment of a Successor Trustee you have chosen - without going through Probate. Your Successor Trustee is required to use and manage the Trust assets as you direct in the Trust.

Trust based planning enables you to control your assets after your death. Unlike a Will, you can direct not only who receives your assets, but when and under what conditions they will receive them (upon reaching a certain age, completing school, etc.).

Trust assets do not go through the Probate Court no matter in which state they are located. As a result, your loved ones avoid the attorneys fees, costs, delays and loss of privacy associated with the probate process.

Other than giving your assets away, Trust based planning is the only way to eliminate or at least reduce estate tax liability for estates

with a value of \$2,000,000 or greater. When determining the value of an estate, all assets you own are counted, including real property, retirement benefits, personal property, jointly held property and even insurance paid on account of your death. Estate assets above \$2,000,000 are taxed at rates from 46%.

With a Trust a married couple can raise their estate tax exemption to \$4,000,000. The use of such a Trust can save hundreds of thousands of dollars.

For even larger estates, additional Trust based planning tools can greatly reduce, if not eliminate, estate tax liability. These include Irrevocable Life Insurance Trusts, Grantor Retained Trusts, Charitable Trusts, and Personal Residence Trusts.

For smaller estates, Trust based planning used in combination with a properly drafted Financial Power of Attorney can maximize Medicaid planning opportunities and help keep assets from being consumed by the cost of long term nursing home care.

Powers of Attorney

Every estate plan should also include a Financial Power of Attorney and a Medical Power of attorney.

A Financial Power of Attorney (also known as a Durable Power of Attorney) grants the person you appoint authority to handle your financial affairs (including real estate transactions, banking, filing tax returns, etc.). It can be drafted to become effective upon your incapacity or upon signing, and can be modified or revoked at any time. A properly drafted Financial Power of Attorney contains asset handling, gifting and transfer provisions necessary to facilitate Medicaid eligibility.

A Medical Power of Attorney (also know as a Patient Advocacy Document) permits you to designate a person to make medical decisions on your behalf, if you no longer can, without seeking permission from the Probate Court. It also allows you to direct what types of medical care and treatment you will receive, including whether to withhold or withdraw life support, in case of incurable illness or injury. You can modify or revoke a medical power of attorney at any time.

WHAT SHOULD I DO NOW?

To ensure that you and your loved ones will have the protection of an Estate Plan designed to meet your particular goals, you should consult with an attorney who specializes in Estate Planning. If you already have an Estate Plan, you should have it reviewed periodically to make sure it addresses your needs, reflects your goals and takes advantage of any changes in the law.

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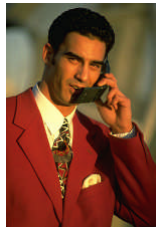


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