

Inexpensive Estate Planning Strategies



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The Benefits of an Estate Plan

No matter what your net worth or your stage of life, you should put an estate plan in place. Estate planning has two fundamental goals: 1) it allows you to plan for your healthcare and asset management in the event of your disability or incapacity; and 2) it arranges for the management and transfer of your assets in anticipation of death. An estate plan can:

- Provide the security to know that your affairs are in order.
- Maintain privacy of family affairs.
- Reduce the burden on your family in the event of your disability or death.
- Clarify your health care wishes, giving your loved ones the confidence to honor your wishes in the event of your disability.
- Provide for management of your assets in the event of your incapacity.
- Provide understanding as to how you currently hold title to your property and how it can effect distribution of your assets upon your death.
- Allow loved ones to grieve without conflict and the added stress of a probate proceeding and the decisions as to how to divide your assets.
- Express your wishes as to a guardian for your minor or disabled child.
- Leave specific gifts.

Planning for Disability or Incompetency

In the event of your disability, without an estate plan your family will have to make your health care and financial decisions without the guidance of documents expressing your wishes. Your family may need to request a court appoint a guardian and/or conservator to make your personal and health care decisions and to manage your finances. With proper estate planning and the use of the following documents, you can designate the individual(s) you choose to manage your financial affairs and to make your healthcare decisions.

Health Care Power of Attorney: By a Health Care Power of Attorney, you legally appoint an individual to make medical decisions for you if you are not able to make such decisions for yourself.

Living Will: Your Living Will allows you to tell your family and doctors what treatment, if any, you want in the event of a terminal medical condition or irreversible coma. The Living Will helps to guide your family and loved ones to honor your wishes.

Durable General Power of Attorney: A Durable General Power of Attorney gives full legal authority to the individual you chose to manage your financial affairs in the event of your disability.

Planning for Distribution of Your Assets at Your Death

In the event of your death, if you do not have an estate plan in place, the law, instead of you, controls the distribution of your property. Your family will likely need to open a probate proceeding with the court in order to collect and distribute your assets. This places a burden on your family, and wastes time and money.

An estate plan, however, does not always need to be an elaborate set of documents. Understanding how you hold title to property, utilizing beneficiary designations and having a will may in some cases be sufficient.

Will: Everyone should have a Last Will and Testament regardless of the value of your assets. A Will sets out your wishes as to the transfer of your assets at the time of your death and you nominate a Personal Representative (executor) to handle the administration of your estate in your Will. You can also nominate a guardian for your minor or disabled children.

Tangible Personal Property List: You can attach a Tangible Personal Property List to your Will on which you list in your own handwriting to whom you wish to leave specific items of personal property.

Title to Property: It is important to understand how you hold title to property and the effect that it has on distribution at your death. Property which you own with another as joint tenants with rights of survivorship or with your spouse as community property with rights of survivorship automatically passes to the joint tenant or your spouse. Holding title with rights of survivorship provides a simple and efficient means of transferring property - particularly when married persons purchase property together or if it is your intent that the joint tenant receive 100% of the property at your death.

It is necessary, however, to consider your future objectives when taking title to property with rights of survivorship. For example, in a second marriage, if you hold title to real estate with your new spouse as community property with rights of survivorship, at your death your spouse receives that real property and your children from a prior relationship do not receive any interest in it. If you own property as joint tenants without the right of survivorship designation or as tenants in common, your interest in the property may not automatically pass to the other owner(s).

Beneficiary Designations: Many assets, including life insurance policies, retirement and pension plans, IRA's, 401(k) plans, payable on death accounts, bank accounts, motor vehicles, stocks and securities allow you to name a beneficiary to receive the asset at your death and avoid probate. Beneficiary designations are a simple and efficient way to transfer your assets at your death. The named beneficiary, however, receives the asset to the exclusion of your other heirs. Thus, proper consideration must be given when designating beneficiaries.

Beneficiary Deed: A beneficiary deed allows you to retain title and control over your real property while designating to whom a particular piece of real property will pass upon your death. Until your death, you can still sell or transfer the real property. Upon your death, however, it passes automatically to the named beneficiary, avoiding probate.

Charitable Gifts: Charitable gifts are an important part of any estate plan. Charitable gifts may provide a tax deduction and reduce the size of your estate, thereby reducing estate taxes, if any, at your death. Most simply you can designate a charity as the beneficiary of an account, life insurance policy or real estate. Or you can leave specific gifts in your Will of money or property to a charity. There are various other estate planning tools available for charitable giving.

Family Letter: You may also wish to give written instructions to your family such as your burial wishes, the type of memorial service or even the dollar amount you wish spent on the remembrances. Directions of this nature can ease the burden on your survivors by letting them know your wishes in these matters.

Out-of-Date Estate Plan

It is important to periodically review your estate plan including your Will and the designated beneficiaries on your life insurance, retirement accounts, and other assets. It is particularly important to do so after major life events, such as marriage, divorce, death, birth of a child or increase in wealth. If you divorce and do not update your estate plan, the law presumes that you intended to revoke any bequest in your Will to your ex-spouse and the designations naming your ex-spouse as the beneficiary of life insurance or retirement plans (unless your divorce settlement agreement specifically provides otherwise.) If your Will does not leave your assets to anyone else or if you did not designate a secondary beneficiary on assets such as life insurance and retirement accounts, your property will pass by state law. If you are in an unmarried relationship and have designated your partner as your beneficiary on various assets, if the relationship ends, you will need to take affirmative steps to change your beneficiary designations.

Is Simple Estate Planning All You Need?

Many individuals and families have particular needs that require additional planning and documents beyond the inexpensive estate planning techniques outlined above. For example, you probably require additional estate planning documents if you have minor children, a special needs child, a large estate with or without potential estate tax considerations, business interests or if you want to leave your assets to your heirs with restrictions or distributions over time. You should consult with an experienced estate planning attorney to ensure that your particular needs and objectives are met.

Talk With Your Family

It is important to discuss your estate plan and health care wishes with your family - especially with the individual(s) you have chosen to act as your health care power of attorney, general power of attorney, and personal representative. This does not mean that you need to share every detail or provide them information regarding all of your assets. But it is important to communicate with your children and other family members about these issues, let them know that you have an estate plan, and what your health care wishes are in the event of your disability. Also make sure to let them know where they can find your estate planning documents and financial information.

When properly prepared, an Estate Plan is a great gift to leave your family and loved ones. It provides you with the security to know that you will be taken care of in the event of your disability and your wishes honored, and it clarifies your wishes and simplifies the process of transferring your assets at death.

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