

Estate Planning

As the saying goes, two things are inevitable, taxes and death. While most people take their tax planning seriously, few take the time to plan for health problems and/or death.

You can never plan too early - only too late. Yet every day, I see people in my practice who wait until a health issue arises or they don't have the capacity due to advanced age or dementia to take care of their estate planning needs.

A well drawn estate plan will save you money and stress in the long run. It will make things much easier for your friends and family to assist you in the case of an illness or accident and will help them move forward in the event of your death. In the case of nontraditional families, estate planning can be even more vitally important to ensure that chosen family members are treated with respect and that assets pass to the people you choose. Finally, many people have strained relationships with blood relations and don't want interference from those people and a well-crafted estate plan can ensure your wishes are honored.

You can prepare any of these documents by yourself. However, I recommend that you DON'T. Each state has different rules related to estate planning which can relate to appropriate language, how to sign and have the documents witnessed as well as estate tax issues of which you should be aware. A competent attorney can help you with all of these aspects of planning your estate.

WHY YOU NEED A WILL

Most people need a thoughtfully prepared Will. You will need a Will regardless of your age, health, marital status or the amount of property you own. A Will can provide peace of mind that your wishes will be carried out upon your death. It is one of the ways to ensure that your values and desires will be perpetuated after your death, and that the people and causes you care about will receive your property.

A validly executed Will can prevent people that you don't want receiving all or part of your property, like estranged parents or other family members, from getting it.

QUESTIONS AND ANSWERS ABOUT WILLS

Q. What is a Will?

A. It is a written document signed by you in accordance with legal requirements in which you state how your property (estate) should be distributed upon your death.

Q. Does a Will need to be witnessed?

A. Yes. All states require witnesses. In Washington, where I practice, two witnesses, who are not beneficiaries under the will, must witness your signing the will. You should check with your attorney to see what your state requires.

Q. May I change the terms of the will after it has been executed?

A. Yes. A will is not effective until your death and therefore may be changed by an amendment called a codicil or by execution of a new will.

Q. How do I revoke my will?

A. By executing a new will; by destroying an old will with the intent to revoke it; or if you marry after the execution of a will, unless you expressly state that it remains in effect after the marriage. A divorce revokes the will with respect to the ex-spouse.

Q. What property is included in the estate?

A. Your one-half share of community property if you're married and all of your separate property. Property held as joint tenants with right of survivorship and death benefits (IRA's, Pensions, life insurance) payable to beneficiaries are not included in the probatable estate.

Q. My spouse/partner and I own everything as joint tenants with right of survivorship. Should we still do wills?

A. Yes. There is always the chance that you might die together and you should make provisions for a secondary beneficiary. A will can also contain provisions about your funeral/burial wishes and organ donation directives.

Q. Can probate be avoided if I do not leave a will?

A. The necessity for probate depends on a number of factors, including the value, nature and registration of assets, and the relationship of the survivors to the deceased. E.g., just because you have a trust in place does not necessarily mean that probate will be avoided.

Q. Why should I go to the trouble of having a Will prepared if my state's law provides that my property will be distributed where I want it to go anyway?

A. A Will lets you decide a number of things beyond designating where your property will go. Some of these are: Naming your personal representative (executor/executrix)

Directing from what assets death taxes will be paid

Authorize your personal representative to continue your business

Name alternative beneficiaries in the event your primary beneficiaries predecease you

Place restrictions on certain gifts

Name a guardian for your minor or disabled children

Establish a trust for your beneficiaries

Stating your wishes regarding funeral and/or burial arrangements Stating your wishes regarding organ donation

Q. Who should prepare my Will?

A. Although you can do it on your own, I recommend that you have an attorney prepare your Will.

DIRECTIVE TO PHYSICIANS/HEALTH CARE DIRECTIVE

Sometimes these are also called "Living Wills". The purpose of this document is for you to make known your desires regarding medical care if you should become terminally ill or injured. It will cover what types of treatment you will and will not accept, what life extension methods you prefer and in what circumstances you wish to have life support systems removed.

FUTURE DURABLE POWER OF ATTORNEY FOR HEALTH CARE and MENTAL HEALTH CARE DIRECTIVE

A Power of Attorney for Health Care allows you to designate who will make medical decisions for you in the event you become incompetent or incapacitated. It stays in effect only for the period of time that you are incompetent or incapacitated.

You can also draft a Mental Health Care Directive to designate who will make mental health care decisions for you, and what treatments you do and do not want to have in the event you need to be hospitalized.

FUTURE DURABLE POWER OF ATTORNEY

This document will ensure that your chosen family will be the one(s) to make crucial financial decisions and asset management for you if you become incapacitated or incompetent. Furthermore, the Power of Attorney will give you the opportunity to nominate a guardian of your person and estate should a guardian ever become necessary.

HOSPITAL VISITATION AUTHORIZATION

Many people in the U.S. are creating family in new forms and those forms may not be recognized by service providers like hospitals. A hospital visitation authorization can make clear who you want to be able to visit you in the hospital under any circumstance and also, who you wish to exclude from visitation.

TRUSTS & OTHER ESTATE PLANNING TOOLS

There are a large variety of other estate planning tools that may serve your particular needs. These include trusts, family limited partnerships, annuities, and more. Having a detailed discussion with your attorney, as well as your accountant and financial planner, can help you determine whether or not one of these other tools will be useful in completing your estate plan. Examples of trusts include:

REVOCABLE TRUSTS

In this type of trust you transfer all, or most, of your property to a Trustee who manages the trust assets for your benefit. Generally, you are the Trustee, possibly together with a Co-Trustee. The Trust document also names successor Trustees to manage the Trust if the original Trustee(s) become(s) incompetent, incapacitated, or dies.

The Trust Agreement also spells out the benefits you receive and the powers you retain. All of the income from the Trust, and so much of the principal as you need, is used for your benefit and you have the power to amend or revoke the Trust. Finally, the Trust contains your directions regarding distribution of the trust assets upon your death.

Advantages of a Revocable Trust:

- \$ Flexibility. You can modify at any time prior to death or incompetence.
- \$ Probate is not necessary if all of your assets are placed into the trust. The Trustee merely follows the distributive directions in the Trust Agreement.
- \$ If you become incompetent, the Co-Trustee is already in control of your assets and is able to manage them for your benefit and protection.

Potential Disadvantages:

- \$ Because it is a more complex document, the cost of establishing a Trust is more expensive.
- \$ In order for the Trust to be fully effective, all of your assets must be re-titled and transferred to the Trust. This can be a cumbersome and costly process.

The Trustee is entitled to receive commissions for administering and distributing the Trust. Trustee's are paid each year. Typically, Trustee's are paid based on a percentage of the Trust principal, which you establish in the Trust Agreement.

The value of trust assets are included in your gross estate for estate tax purposes, just as they would be with a Will.

Attorney's fees are still incurred at death for preparing estate tax returns and for settling the Trust (accounting, obtaining releases for the Trustee and distributing the assets).

IRREVOCABLE TRUST

The Irrevocable Trust is most often used to manage and protect assets for others or for particular estate tax planning purposes. In contrast to the Revocable Trust, the Irrevocable Trust cannot be changed or altered by you, and generally you do not act as Trustee. Because of this, it has some particular uses that are beyond the scope of this general overview.

If it appears that an Irrevocable Trust is necessary or recommended in your situation for tax purposes or for long-term care planning, we would explain the reasons for and benefits of such a trust and discuss the legal and other costs in creating and maintaining the trust.

Don't delay in taking your estate planning seriously. It needn't be a cumbersome process but it can help ease things for your family in the event of illness, accident or death.