



ESTATE PLANNING BASICS

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THE PURPOSE OF ESTATE PLANNING

Estate Planning involves arranging our affairs to provide for the orderly management and disposition of our property, particularly at the time of incapacity or death.

The primary concerns of an estate plan should include:

- Being sure the right people receive our property, at the right time, with appropriate management.
- Minimizing publicity, expense and inconvenience, including avoiding probate when appropriate.
- Minimizing taxes payable on account of or following death.
- Making any desired charitable or special gifts.
- Maximizing opportunities to protect assets.

Each of the following documents helps to address one or more of these concerns.

BASIC ESTATE PLANNING DOCUMENTS

LAST WILL AND TESTAMENT

A Last Will and Testament or "Will" is the most basic estate planning document. A Will is a legal document stating how your property is to be disposed of at your death and should be dated, witnessed and signed by you. A Will is subject to probate and only controls the distribution of probate assets.

Your Will is the proper place to:

- Name the personal representative who will oversee the disposition of your probate estate.
- Name the guardians for your children, to serve if neither natural parent can care for them.
- Make gifts to individuals or charities.
- Specify final takers of property where heirs you otherwise named predecease you.
- Specify the order of death between you and your spouse if a common accident occurs.
- Specify any special instructions regarding burial, cremation or organ donation.

A Will may be amended as long as the "testator" remains competent. A "Codicil" is an amendment to a Will.

Even with a Living Trust, a Will should be signed. This will pour over any probate property to the Living Trust.

LIVING TRUSTS AND JOINT OWNERSHIP AVOID PROBATE COURT

The Probate Court will oversee who gets all property passing at death, except property passing:

- By a valid contract without probate (e.g. life insurance, pensions, payable on death accounts or Living Trust property).
- Automatically by law without probate (e.g. joint property).

If you die without a valid Will, your probate property will be distributed according to the "intestacy" laws. The intestacy laws may not coincide with the decedent's wishes. You do not pick the estate administrators. Intestacy laws do not give any gifts to charities. These problems can be avoided with a valid Will or a Living Trust.

LIVING TRUSTS ARE PREFERRED

A trust is an arrangement where assets are transferred to a trustee, to be managed for the benefit of specified beneficiaries/distributees. A legal bucket is a common analogy.

The most common estate planning trust is a Living or Revocable Trust. The same person may set up the trust (the "Settlor"), manage the property as trustee and be the initial beneficiary. A Living Trust can be amended anytime by the Settlor while competent. Any assets held in the name of a Living Trust are not subject to probate when the Settlor dies or becomes incapacitated.

LIVING TRUSTS PROVIDE MANY BENEFITS

A Living Trust can provide all the advantages of a Will, plus:

- Property management now or, if preferred, only during incapacity or at death.
- Probate avoidance.
- Retention of property in trust for the benefit of a surviving spouse without being included in the survivor's estate and taxed at death (a "residuary" or "credit shelter" trust).
- Retention of property in trust after the Settlor's death, to be distributed to the named beneficiaries only when and as the Settlor has specified.

A Testamentary Trust, included as part of the creator's Will, becomes effective only at death, and is subject to probate. Such trusts are no longer preferred.

There are several specialized types of trusts in addition to those noted. For example, an Irrevocable Life Insurance Trust owns life insurance for the creator's beneficiaries. The insurance is intended to be excluded from the taxable estate of the creator. Such trusts may not be amended after they are created.

Charitable Remainder Trusts and Charitable Lead Trusts are irrevocable trusts established for the benefit of named individuals and one or more charities. Tax savings can result.

DURABLE POWER OF ATTORNEY

A Power of Attorney is a document authorizing another person to act as your agent, signing your name for the purpose specified. A Power of Attorney is not valid during incapacity, unless it is "durable" under local statutes. Without a Durable Power of Attorney, a Probate Court order appointing a guardian or conservator would be necessary to act on behalf of an incapacitated individual.

PATIENT ADVOCATE DESIGNATION & LIVING WILL

A Patient Advocate Designation or PAD is a medical power of attorney that designates an individual to make your medical decisions while you are unable to do so. The PAD may include specific instructions or preferences. A PAD typically includes a Living Will statement that your dying should not be artificially prolonged. A "HIPAA" privacy waiver should be included.

These and many other documents may be used in the estate planning process. A unique plan must be customized for each person.

WHAT SHOULD YOU DO NEXT?

Contact one of our attorneys for additional information about planning your estate.

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This publication does not attempt to give specific legal or tax advice. For advice in particular situations, the services of competent legal, tax or financial planning advisors should be obtained.