

Estate Planning Basics

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INTRODUCTION

Estate planning is the process by which a person plans for the management of his or her assets, affairs and healthcare if he or she becomes disabled or dies. Prior planning produces positive results upon a disability or death. Failing to plan is planning to incur unnecessary problems, delay, taxes and expense.

There is a 58% probability that you will suffer a disability of 90 days or more during your life. It is certain you will die. Failing to plan commonly results in the imposition of default “remedies,” such as guardianships, conservatorships, and intestate succession. These default remedies frequently will not produce the results that you would have chosen. Failing to plan will often result in additional or unnecessary expenses, taxes, and delays.

The AARP reports that only 60% of people over age 50 have wills, 45% of these people have durable powers of attorney, 30% of these people have advance medical directives, and only 23% have living trusts. These statistics indicate that most people fail to make a comprehensive estate plan. And of those who have completed their estate plans, the odds are that they haven’t reviewed their plans in years.

At a minimum, a comprehensive estate plan will address the following issues:

- Whom do I want to make healthcare decisions for me if I become disabled?
- What medical care do I want if I am dying and can not make decisions concerning my care?
- If I become disabled, how will I pay for my nursing home or long-term care and for the support for those dependent upon me?

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- Whom do I want to manage my assets and personal affairs if I become disabled?
- Whom do I want to settle my affairs and distribute my property after my death?
- Where do I want my property to go at my death?
- Do any of my beneficiaries require assistance or protection?
- How can I minimize expenses, taxes (income, probate, and estate taxes) and delays if I become disabled or die?
- When I die, do I have sufficient assets or insurance to pay administrative expenses and taxes resulting from my death and to provide for my beneficiaries?

One must pay particular attention to estate planning for persons with disabilities or impairments or persons with minor, immature, disabled or impaired beneficiaries. A d(4)(a) or a d(4)(c) special needs trusts (see Glossary) can be created for a disabled person in order to preserve the disabled person's SSI or Medicaid eligibility (see Glossary). Those with (1) disabled or impaired beneficiaries, (2) minor or immature beneficiaries, or (3) beneficiaries with credit, marital, or substance abuse problems can create third party special needs trusts, spendthrift trusts, or incentive trusts to protect the beneficiaries and the trust assets.

Other situations in the estate planning process which require special attention are those where people have cognitive impairments, have multiple family groups or dysfunctional families, own small businesses, or own real property in several states.

One of the most important decisions that one must make in creating an effective estate plan is the selection of the people who will implement the plan. These people are fiduciaries, and depending on the capacity in which they serve, they will be called an executor, trustee or agent. No matter how well designed an estate plan; it will produce poor results if it is poorly implemented. The fiduciary should have good judgment and experience in the management of money and assets, and be loyal. A well-crafted estate plan will appoint successor fiduciaries if the originally named fiduciaries are unable or unwilling to serve.

A comprehensive estate plan may incorporate some or all of the following legal documents: (1) an advance medical directive, (2) a general durable power of attorney, (3) a revocable trust, (4) an irrevocable trust, (5) a family limited partnership, (6) a pre-marital or marital agreement, (7) a supplemental or special needs trust, and (8) a will. (Please see the Glossary, below, for the definitions of these and other terms.) Frequently, it will be necessary to retitle assets and coordinate the designation of beneficiaries of annuities, life insurance policies, IRAs, and retirement plan accounts with the legal documents. In some cases, it may be advisable to purchase life or long-term care insurance.



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Because laws and your personal circumstances change over time, you should regularly review your estate plan. We recommend that you review your estate plan with your attorney whenever you have had a significant change in your circumstances or at least every five years.

Questions to Ask Yourself When Planning Your Estate

- If I am disabled, whom do I want to make healthcare decisions for me?
- If I am disabled, whom do I want to manage my personal affairs and assets?
- If I am disabled, how will I pay for my nursing home or long-term care and pay my obligations?
- When I die, whom do I want to settle my estate and distribute my assets?
- What do I own and how is it titled?
- Where are my deeds, insurance policies, tax returns, certificates of deposit, annuity contracts, estate planning documents, investment and bank statements, etc.?
- Do I own a professional practice, business or interest in a closely held business?
- Does my estate, including life insurance benefits, exceed the applicable exemption amount (In 2010, there is no federal estate tax. However, it is scheduled to return in 2011 with a \$1 million exemption level.)?
- Do I have real property located in more than one state?
- Do I have any property that will pass at my death by a designation of beneficiary (i.e. life insurance, IRAs, 401(k) plans, retirement plan accounts, annuities)?
- To whom do I want to give my assets at my death?
- Are any of my beneficiaries minors?
- Do any of my beneficiaries receive SSI or Medicaid?
- Do any of my beneficiaries have substance abuse, marital or credit problems?
- Do I want to make any gifts to a charity?
- Do I have any continuing obligations under separation, pre-marital, or marital agreements?
- Do I have any continuing obligations under a divorce decree?



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- Do I want to disinherit anyone or make unequal distributions among my children or other beneficiaries?
- If I have stepchildren, do I want to treat them as my natural children?
- When I die, do I have sufficient assets and insurance benefits to pay my debts, the administrative expenses and taxes that will result from my death and to provide for my beneficiaries?

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