

Trusts & Estates Notes

A Series of Articles on Legal Issues Regarding Estate Planning and Estate Administration

Estate Planning

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What is Estate Planning?

“Estate planning” is a broad term often used to describe the process of putting legal documents in place to arrange one’s personal and financial affairs, both during life and after death. The goals of estate planning often include:

- Providing for management of one’s assets during life
- Planning for incapacity
- Providing for distribution of assets to loved ones after death
- Minimizing or deferring different types of taxes

Without an estate plan, it often becomes necessary for many of these personal decisions to be made by a court of law or under default laws.

A common misconception is that estate planning is only necessary for the extremely wealthy. Many people are motivated to do estate planning in order to designate guardians for their minor children and to provide for trusts to be established for their children upon their deaths. Without such arrangements, a costly and inconvenient court procedure may need to take place to appoint a guardian who will care for the children and manage the children’s inheritance. Other people may wish avoid probate or to do planning for beneficiaries who may not be their heirs under the default intestacy laws, such as parents, siblings, domestic partners, friends, or charities, or to disinherit a person who would be an heir under intestacy laws.

Basic Estate Planning

- **Planning for Death.** At a minimum, basic estate planning involves executing a Will containing provisions that set forth how a person’s assets should be distributed after that person’s death. Living trusts are also used to provide for the disposition of one’s assets at death and are popular because they can also provide for management of one’s assets during lifetime and, if used properly, can avoid probate after death. For more information regarding living trusts and probate, see Living Trusts available at www.thoits.com.

- **Planning for Incapacity.** Planning for incapacity can be accomplished through the use of living trusts, Durable Powers of Attorney, and Advance Health Care Directives. A living trust can designate successor Trustees to manage the trust's assets for your benefit if you become incapacitated. A Durable Power of Attorney allows an agent to deal with assets not held in a living trust and to sign documents and provide consent, approval and other types of authorizations on your behalf when you are, for any reason, unable to do so personally. An Advance Health Care Directive allows an agent to make health care decisions for you, and you may also specify the type of health care measures you want taken, organ donation instructions, and burial wishes.

- **Tax Planning.** Tax planning is another integral component of estate planning. Through various methods of transferring assets both during life and at death, gift taxes, estate taxes, generation-skipping transfer taxes and capital gains taxes can often be reduced or deferred.

A comprehensive basic estate plan will typically include the following:

- A Will (including nominations of guardians for minor children, if applicable)
- Living trust
- General assignment document assigning assets to a living trust
- Durable power of attorney for financial management and personal care
- Advance Health Care Directive
- HIPAA medical release
- Trust certification

Sophisticated Estate Planning

Many clients require or desire a more complex estate plan to address various financial, tax and family issues. Such sophisticated estate planning may include:

- Business succession planning
- Planning for non-U.S. citizen spouses
- Irrevocable trusts for children
- Generation-skipping transfer tax planning
- Special needs trusts
- Life insurance trusts
- Leveraged gift planning (such as a Qualified Personal Residence Trust or Grantor Retained Annuity Trust)
- Charitable trusts

A good estate plan will be customized to take into account a person's assets and liabilities, personal situation, family situation, and the person's concerns and goals. As a result of this process, the estate planning attorney often becomes a trusted and knowledgeable advisor who can help the client's chosen fiduciaries properly administer and distribute the client's estate after the client's death.

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