

Estate Planning 101

You may have attended various “estate planning” seminars, read articles in the paper or on the internet, or talked with friends or advisors and now you are ready to move forward in developing your estate plan. Here are answers to some frequently asked questions:

Why Do I Need an Estate Plan?

It is not necessarily for you. Estate planning is for your loved ones or for whomever else you want to leave your family heirlooms, your furniture, newspaper articles, old tax returns, and utility bill receipts. Seriously, though, it’s planning for your car, your miscellaneous brokerage accounts, stocks, your bank accounts, your IRA and other retirement benefits, your home, your life insurance, and all the other things you’ve accumulated over your lifetime. By developing an estate plan, you will save the aforementioned potential recipients of your generosity much time, much energy, and, of course, much expense.

What Documents Do I Need?

The simple answer is that you need at least three properly prepared and properly executed documents. Most people, for various reasons, would be well served to have a fourth and a fifth properly prepared and properly executed document as well. A Will, possibly a Trust, a Durable Power of Attorney, a Health Care Power of Attorney, and, if you are not philosophically opposed to it, a Living Will are the tools used to carry out a practical, effective and efficient estate plan for most people.

What Are Each of These Documents?

The Will. The Will is a formally executed, written instrument, that directs your executor (a person to act in your place because you are deceased) to dispose of those assets that are or become “probate assets” in accordance with your written wishes. It is an instrument that names guardians (including alternatives) for your minor children. It is an instrument that designates who you wish to serve as your executor (including alternatives). Simply put, your probate assets are those assets that are owned by you at death and do not pass to someone else under the terms of a contract that you entered into prior to death. Examples of probate assets include: a bank or security account in your name without survivorship rights; your business; your household furnishings; your stamp collection. Any account or asset that is not set up to be transferred on death or paid on death to another named party is a probate asset. For example, the proceeds payable to a named beneficiary under a life insurance contract are not probate assets, nor are the proceeds payable to the named beneficiary of an IRA or other retirement benefit contract, nor is the joint and survivor, or payable on death, account you set up at your local bank. Choosing your guardian and executor is the subject of further discussion.

The Trust. There are all kinds of trusts. The most often used type of trust for estate planning is the revocable (“living”) trust. The revocable trust is a contract you enter into during your lifetime that directs your trustee to manage and/or dispose of the assets transferred to the trust (during your lifetime and/or at your death) in accordance with the terms of the trust. When minimizing or avoiding the unnecessary payment of estate or inheritance taxes is called for in your estate plan, a trust is a necessary tool or vehicle to accomplish this goal for a husband and wife. Also, if parents die leaving a minor child or children behind, a trust entered into before death will serve to protect the minor child or children. A testamentary trust can be included as a part of your Will, depending on your circumstances. Issues such as who should serve as trustee (you may serve as your trustee during your lifetime) and choosing successor trustees are subjects for further discussion.

The Durable Power of Attorney. The Durable Power of Attorney is a formal appointment of an agent (called an “attorney-in-fact”) to conduct your financial or business affairs in your name if you cannot do so yourself. What makes a Power of Attorney “Durable” is the language in the document that provides that the Power of Attorney will remain in effect even if you become incapacitated. Thus, if you do become incapacitated for a short or long period of time (or, for example, you are out of the country at the very time a business-related document needs to be signed), someone will have the power and authority to act on your behalf. This can be a very broad, all-inclusive power, or it may be limited to certain business affairs. Who should serve and how broad a Power of Attorney should be are all subjects for further discussion.

The Health Care Power of Attorney. In this document you formally appoint a person to make health-care decisions for you when you lack (again, this could be short-term or long-term) the capacity to make them for yourself. Most states have a standard format that is easily recognizable by health-care providers.

The Living Will. This formal document is an announcement to the world that you do not want to be kept alive by artificial means. You do not want heroic measures taken to keep you alive. This document is philosophically optional. If the execution of a Living Will makes you feel uncomfortable, don't be afraid to say so.

Now What Do I Do?

What makes estate planning simpler and, hopefully, more palatable for you, the client, is being able to sit down with an experienced estate planning attorney with whom you feel comfortable in discussing the issues that come to mind as you and the estate planner determine what tools are best suited for your needs and the needs of your family. Remember, it's your assets that you want to preserve and protect during a period when you might be incapacitated, or pass on to your family (if that is the plan) in a fashion that saves taxes, if appropriate, and makes sense for your particular family situation.

There is no good reason for putting off estate planning, even for young couples. A young couple with a total estate of \$125,000, including life insurance, with one surviving minor child, can save that child thousands of dollars over the time of a potential guardianship, with some relatively simple estate planning.

In addition, planning for the eventuality of death or incompetence does not mean that it's going to happen. Often, Durable Powers of Attorney that are prepared are never used. Years go by and Wills and Trusts are either redone or amended. The key is that if you need these tools and you don't have them, it's too late to get them.