

Estate Planning: A Vital Part of the Strategy for Financial Survival

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If nothing else, business and economic news tells us that financial conditions are dynamic. Financial strategies must be periodically re-evaluated. A plan that made sense 10 years – or even 10 months – ago may no longer help protect your assets and support your financial goals.

Many people associate “estate planning” with death planning, so many of us choose to avoid it. The disposal of your property at your death, in accordance with your wishes and with minimal tax exposure, is an important component of safeguarding your financial resources.

Another misconception about estate planning is that it is only for the wealthy. If you want to insure that your property and affairs are handled according to YOUR wishes, no matter what your income level, estate planning is a necessity, not a luxury.

This overview discusses five elements of successful estate planning: wills, trusts, powers of attorney, healthcare proxies and living wills, and disposition directions.

Wills

A will is a document that governs the disposition of your property after you die. It only becomes effective at the moment of death. The will contains a provision appointing an executor, who typically is given the power to pay your debts, invest funds of your estate, sell property – and, of course, distribute the estate to the beneficiaries you have named in your will. While there are provisions common to many wills as a “best practice,” there are also many that must be crafted specifically for the needs of the particular person.

It is important to note that wills only affect property that is not otherwise disposed of at death. For example, if you own real estate jointly with your spouse, the title to that real estate passes to your spouse when you die, and is not governed by your will. This is also true for other forms of joint assets, such as joint bank accounts. Because of this, a will needs to be a part of an overall death planning strategy.

Another important consideration is estate taxation at the federal and state levels. Our firm will develop the right will for your needs.

Trusts

Unlike the will, which is really a death instrument, trusts can be created either for the living (inter vivos trusts) or as part of a will (testamentary trusts). The person who creates a trust is known as a grantor or settlor. A trust is an entity created to manage a person's property in accordance with the persons wishes – perhaps to manage the property for a young person until that person reaches adulthood, manage a family's finances, or shield assets – but is designed to be managed for beneficiaries. Title to the property to be managed in trust is transferred to the trust and managed by a trustee. Depending on the needs and purposes of the trust, they can be irrevocable (the settlor cannot dissolve the trust and recover the trust property), or revocable (the settlor can terminate the trust).

Which trust is appropriate, and if a trust is appropriate, depends on your particular financial situation, goals, and tax considerations. Our firm will be glad to explain all of these options to you.

Power of Attorney

A power of attorney is designed for the living. Specifically, it is a document you use to appoint an agent (known as an "attorney in fact") to make decisions on your behalf if you become incapacitated and unable to act. These appointments can be limited (such as giving another person the power to sign documents at a real estate closing) or broad (e.g., to pay debts, access bank accounts, make estate planning decisions, etc.). A power of attorney can be designed to be immediately effective (a durable power of attorney) or contingent upon certain conditions, such as mental incapacity (a "springing" power of attorney).

As with death, the loss of sanity or mental capacity is not a pleasant subject for many people. But the result of the failure to plan for this contingency can be expensive, protracted, and bitter guardianship proceedings. We can help you design an appropriate document that fits in with your overall financial strategy.

Healthcare Proxy and Living Will

The power of attorney addresses many areas of life in which you can designate someone to "take charge" if you become incapacitated. One area that a power of attorney CANNOT cover is your healthcare decisions, and that is where the healthcare proxy comes in. This document appoints someone (a healthcare proxy) to make healthcare decisions on your behalf if you are unable to do so. It also authorize your proxy to access your medical records.

The living will works in tandem with a healthcare proxy (and is often incorporated into the healthcare proxy) to meet your medical care wishes. This document is an explicit expression of your wishes about extraordinary medical care, intubation, and organ donation. If you choose, it allows you to reject things such as respirators or life support when there is no reasonable expectation you will regain intelligent consciousness.

Disposition of Remains

In the past, people often expressed their wishes about the disposition of their remains in a will or possibly a side document like a letter. Often, these wishes were never expressed in writing at all. Placing these wishes in a will was not helpful because wills are often not easily located right away and the disposition of a person's remains requires immediate attention.

In 2006, New York authorized the designation of agents for disposing of remains. This designation is a useful document that will relieve the strain of funeral planning, and we will be pleased to include this directive as part of your estate planning process.

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