



ESTATE PLANNING BASICS

What your family needs to know.

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ESTATE PLANNING

WHAT IS ESTATE PLANNING?

Estate Planning is the coordination of a person's affairs to provide for the management of property and medical issues when that person is no longer able to manage their own affairs due to disability and direct the disposition of assets upon death.

WHY DO I NEED AN ESTATE PLAN?

The primary benefits to an estate plan are:

- Simplifying decision making in case of disability
- Avoiding Probate
- Creating a distribution plan that meets family objectives
- Minimizing Estate Taxes

WHAT IS PROBATE?

Probate Court is a court of limited jurisdiction over a person or the person's assets upon disability or death. The Probate Court interprets the intentions of the disabled or deceased, appoints a personal representative and settles the interests of the heirs and other parties that may have a claim against the estate.

WHAT IS A LAST WILL AND TESTAMENT (WILL)?

A will is simply a letter of instruction to Probate Court that states the person's wishes for the

management and distribution of assets subject to Probate. The Will does not affect assets that are not subject to Probate.

WHAT ASSETS ARE SUBJECT TO PROBATE?

All assets owned individually by the decedent must go through Probate. Those assets that may be excluded from Probate are:

- Assets owned jointly with right of survivorship
- Life insurance
- Retirement accounts
- Annuities
- Transfer on death assets

HOW ARE ASSETS DISTRIBUTED?

Assets distributed pursuant to a Will go to the beneficiary via the Probate process. If the Will dictates that a distribution shall be in the future, Probate oversight will continue until final distribution at that future date. This type of distribution is called a Testamentary Trust.

Minimum of six months to complete except for very small estates. It typically takes one year or more.

WHAT ARE THE CONSEQUENCES OF PROBATE, WITH OR WITHOUT A WILL?

- All assets distributed are controlled under supervision of Probate Court.
- Probate administration and court costs can be 6% or more of the total estate value.
- Any Probate case is open to the public for their review.
- Court selects administrators and guardians if there is no Will.
- Must post bond (purchase insurance) for 2 times the value of the estate, unless waived in the Will.

HOW DO I AVOID PROBATE?

Consider different forms of ownership other than individual.

- **Joint Ownership** – When assets are owned jointly, with right of survivorship, they typically avoid Probate and pass to the joint owner, but only if the joint owner is able to receive them. If there is no surviving joint owner, the assets are subject to Probate.
- **Beneficiary Designated Assets**– Retirement accounts, life insurance, and annuities avoid Probate and are distributed to the designated beneficiary outright. If the beneficiary does not have the legal capacity to own or manage the asset, i.e. children, Probate Court will once again oversee how the assets are utilized.

- **Living Trust** – Assets titled in the name of a Living Trust are not “owned” by the individual and therefore avoid Probate and are managed and distributed pursuant to the terms of the Trust.

WHAT ARE THE EFFECTS OF BENEFICIARY DESIGNATIONS?

It is important to consider the beneficiary designations of life insurance policies, IRAs, and other retirement plans, because the Will and other plans may not affect their distribution.

- Proceeds are distributed directly to the designated beneficiary regardless of the terms of the Will or Trust.
- May have many other undesired consequences.

WHAT IS A TRUST?

A relationship created at the direction of an individual, where one or more people hold the individual's property, subject to specific duties to use and protect it for the benefit of the individual or others.

A Living Trust is a Trust that is funded during life. Funding is the process of transferring ownership of assets to the Trust.

WHAT ARE THE VARIOUS ROLES WITH A LIVING TRUST?

- **Grantor** – The person who creates the Trust. They retain complete authority to amend or void the Trust during their life.

- **Trustee** – The individual who is granted the responsibility to manage, invest, and utilize the Trust assets, provided it is in the best interest of the beneficiary.
- **Beneficiary** – The individual(s) or whom the Trust is created and who shall receive the benefit of the Trust assets
- Typically, the person creating the Trust serves as all three until they are no longer able.

WHY WOULD I NOT LEAVE MY ASSETS OUTRIGHT TO MY HEIRS?

There are often significant reasons NOT to leave assets to someone outright. Incapacity due to age or disability, immaturity, creditor problems and marital problems are only a few of the reasons why one would desire to distribute assets to a beneficiary at a time in the future.

WHAT ARE THE BENEFITS OF A LIVING TRUST?

- Any asset held in a Living Trust, at the death of the Grantor, can be distributed over time without oversight by Probate Court.
- Assets can be passed to subsequent generations in a method best suited for your family situation with the trustee having discretion to provide for health, education, support and maintenance during the term of the Trust.

- A Living Trust avoids Probate and assets are not subject to marital or creditor claims against the beneficiary.
- Assets can be directed by beneficiary designation to the Trust to avoid Probate, leaving the terms of the Trust to dictate the distribution of assets pursuant to its terms.

WHAT IS DISABILITY?

In the context of estate planning, disability refers to the mental or physical condition that significantly impairs one's ability to understand and manage their own financial, legal or healthcare decisions.

WHAT ARE THE CONSEQUENCES OF NOT HAVING A PLAN FOR DISABILITY?

Probate Court controls all legal, financial and medical decisions through the process called Guardianship.

WHAT DOES A GUARDIANSHIP INCLUDE?

- Constant reporting and accountability to Probate Court
- Bond
- Typically, attorneys fees and other expenses
- Court costs
- Public process

HOW ELSE CAN YOU HANDLE LEGAL AND FINANCIAL ISSUES UPON DISABILITY?

A Power of Attorney is an authorization by one person, the principal, given to another, the attorney-in-fact, granting the power to take care of the principal's business or personal affairs without Probate Court involvement.

WHAT ARE THE TYPES OF POWER OF ATTORNEY?

- **General** – The principal grants the attorney-in-fact authority to act on the principal's behalf in any transaction which the principal may engage.
- **Specific** – Attorney-in-fact is granted authority to act on behalf of the principal only for a specific task.
- **Durable** – Power of Attorney is exercisable by the attorney-in-fact, even after the disability or incapacity of the principal.
- **Springing** – The attorney-in-fact does not have power until a later time or when certain event occurs.

WHAT ARE THE ELEMENTS OF A POWER OF ATTORNEY?

- Principal must sign before a notary public if the Power of Attorney will be used in any real estate transaction.
- Best to include provision for two witnesses.
- Must state name and address of attorney-in-fact.

- Due to heightened scrutiny, best to list any potential transaction in which attorney-in-fact may be involved.
- No personal liability, provided that attorney-in-fact acts consistent with authority set forth in Power of Attorney, in best interest to principal.
- Divorce automatically revokes Power of Attorney.

WHAT'S THE BEST WAY TO ADDRESS MEDICAL CARE UPON DISABILITY?

Through a Power of Attorney for Healthcare, the principal authorizes the attorney-in-fact to make decisions related to health care on behalf of the principal.

WHAT ARE THE ELEMENTS OF A MEDICAL POWER OF ATTORNEY?

- Attorney-in-fact may NOT be the attending physician or the administrator of the nursing home where principal resides.
- Limited to situations where principal is unable to direct medical care themselves, due to disability or incapacity.

WHAT IS A LIVING WILL?

A Living Will is your written declaration regarding life support, upon confirmed medical determination that you are terminally ill, permanently unconscious, where death is imminent and there is no chance of recovery. This is the Terri Schiavo issue.

WHAT ARE THE PRIMARY ELEMENTS OF A LIVING WILL?

- Must define pertinent provisions such as “terminal condition” and “permanently unconscious state”.
- Two qualified physicians must determine that there is no reasonable possibility of principal regaining capacity to make decisions or otherwise recover from terminal condition.
- Physician must make reasonable effort to contact family and inform them that life-sustaining treatment will soon be withdrawn.

WHAT ARE ESTATE TAXES?

The Estate Tax is tax on the transfer of assets, not an inheritance tax. The tax is determined by the fair market value of all assets owned by the decedent at the time of death and includes business interests, retirement accounts, and can include certain rights to control others’ property. The Federal Estate Tax also includes life insurance proceeds. Ohio and Indiana do not have an estate tax.

Kentucky has an inheritance tax but spouses and descendants are exempt. The Federal Estate tax is assessed on estates over \$13.6 million per person / \$27.2 million per couple in 2024 and will be adjusted annually for inflation. In 2026, the current rates “sunset” and will be adjusted to approximately one half of the 2025 rate.

ARE THERE ANY POTENTIAL CREDITS AVAILABLE FOR INDIVIDUALS?

There is an unlimited marital deduction at both the state and federal level for assets passing to a surviving spouse outright. There are also tax credits that vary by state and a federal credit that will offset Estate Tax obligation. As the credits are subject to change, consult your tax or legal advisor for actual credit figures.

HOW MUCH MONEY CAN I GIFT BEFORE IT IS SUBJECT TO TAX?

In 2024, the limit is \$18,000 per person, per year. Any gift over \$18,000 to any person in a given year will reduce the amount of the Estate Tax credit available at death.

DO I NEED AN ATTORNEY TO PREPARE AN ESTATE PLAN?

No, however, the largest fees in relationship to the size of the estate are commonly the result of people trying to do it themselves.



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