

Final Topic: Getting Your Affairs In Order

- Basic estate documents
 - Durable Power of Attorney
 - Healthcare Power of Attorney
 - Healthcare Directive (*aka "Living Will"*)
 - Will (& possibly a living trust)
- Some questions
 - What do these documents do?
 - Why should you care?
 - What is involved in acting as an executor, trustee or attorney?
 - How should you be organizing your records?

Power Of Attorney

- Names someone to act as your agent with specified powers.
 - Financial powers could allow someone to negotiate and sign contracts, buy/sell assets, sign checks, etc.
 - Healthcare powers could allow someone to make healthcare decisions on your behalf.
 - Powers can be limited or general. Key is that they are clearly defined.
 - Agent signs documents on your behalf as “agent name – POA”
- Examples of a limited power
 - My Boston real estate purchase
 - Giving discretion to a broker/investment adviser
 - Make sure limits – including time limits - to power is clear.

Power Of Attorney - 2

Common Estate POAs

- Durable Power of Attorney
 - Authorizes someone to take financial decisions on your behalf
 - Powers granted to agent remain effective even if you become disabled
 - Often grants general and broad powers.
 - Examples:
 - Handling parents' financial affairs after my Dad's diagnosis
 - Dealing with Alzheimer's (John & Virginia)
 - Enabling childcare for Russell Consultant
 - Dealing with assets in your own name if married, etc.

Note 1: POA of no force if no one knows of its existence or can't produce it

Note 2: Be sure to check if bank, etc. requires the signing of their own POAs

Note 3: What should you do with your POA?

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Common Estate POAs (*continued*)

- Health Care Power of Attorney
 - Issue: Who can authorize surgery, medical treatment, make end-of life decisions, etc. if you are unconscious?
 - Doctor will generally listen to spouse, parents, children and siblings
 - But what if people don't agree?
 - Healthcare POA gives a designated person the ability to make healthcare decisions on your behalf.
 - Why you want to name one person at a time
 - Why you want someone who understands your preferences and will act in a way that accords with them

Power Of Attorney - 5

Do you need a lawyer?

- There are websites that have POAs you can fill out
 - Example: You can look at PowerofAttorney.com for CA POAs
 - Certainly better than nothing for simple POAs which you can monitor
- However, I recommend you use a lawyer for estate POAs
 - Usually stronger boilerplate on POA powers
 - And a source of advice on how to handle POAs safely
(Remember you are not in a position to monitor things in this case.)

POA vs. Guardianship/Conservatorship

Health Care Directive

- What it does
 - Indicates when you do and don't want to be treated
 - Issues:
 - Can't anticipate everything
 - People change their mind about what is acceptable, limiting willingness of hospital/doctor to rely on it
 - Thus, why some hospitals want you to use their own form.
- Alternative: the DNR (*Do not resuscitate*)
 - What it does.
 - Check and see if hospital/hospice has their own form (*likely*)
 - Where to post them when the time comes (*everywhere*)
 - Where 911 responders often look for them (*check, in one case it was the freezer*).

Joint Ownership And Estate Management

- Sometimes called “the poor man’s will”
- Simplicity of joint ownership (WROS)
 - Either person can sign check, give buy/sell orders while alive
 - Simply present death certificate and account is automatically converted into name of survivor
 - Outside of probate process, so everything can happen instantly
- Issues
 - If both people die (Andrew’s parents)
 - Providing for estate expenses (my dad – burial and taxes)
 - You want additional beneficiaries (like a favorite charity)
 - General
 - If you want to make sure kids get the money after spouse dies
 - If you need oversight of assets by someone else

Digression on Marriage & Divorce

- Marriage as an implied legal contract
 - Ability to make healthcare decisions
 - Ability to make financial decisions
 - Cost of living
 - Kotlikoff math: $1+1 = 1.6$
 - Taxation (income & estate)
 - Dissolution
- Divorce
 - $\frac{1}{2}$ of new marriages are ending in divorce
 - Impact on financial well-being (see Kotlikoff)
 - Typical approaches vary by state (Kotlikoff)
 - Reversal of Kotlikoff math
 - Social security & spousal benefits retained only if married for 10+ years and don't remarry
 - Can you agree on alimony, division of assets and custody?
 - Otherwise rules vary by state (Kotlikoff)
 - Cost of contested divorces and why “pre-nups” are on the rise

Will

- What happens if you die without a will?
 - When Glenn died intestate
 - How distribution was determined
 - Issues of speed, control, cost, and hassle
- By contrast, a will
 - Names an agent (*executor, personal representative, etc.*) to settle your estate in the event of your decease.
 - And also makes clear what powers this agent has to settle the estate.
 - States how you want your property allocated upon your decease (*in a legally enforceable way*)
 - Specified bequests vs. general bequests
 - A good will anticipates a lot of “what ifs” with its bequests
 - Often names guardians for dependent children if both parents are deceased.

Will - 2

- Recommend creating a simple will if you have significant assets, a partner, or children
 - Websites are available that will let you write a simple will for free or a small fee
 - Check out these Investopedia articles
 - “How to Write A Simple Will”
 - “Best Online Will Makers”
 - Most states have simplified probate procedures for small estates
 - Can easily be changed in future via a codicil or a new will
- Legal help
 - Good idea for trusts, more complicated wills, and making sure you are protected in all cases. (*Some sad cases I have seen*)
 - Can be a source of valuable questions, advice and boilerplate
 - Need not be expensive
 - Just ask beforehand

Will Issues

- Be sure executor has agreed to this job
- Distribution challenges:
 - Ultimate distribution of your assets (after spouse dies)
 - Providing for beneficiaries who can't manage their affairs
 - Your underage kids
 - People with disabilities (Cindi, Missy, Fred's son)
 - Cognitive issues: Andrew's mom
 - Irresponsible beneficiaries (Jack, Lorraine, Lorraine's brother)
- Probate issues
 - Speed, cost, hassle, inflexibility, publicity

The Probate Process

- For assets distributed via a will
- All actions under court supervision
 - Will need to supply court with original will and preliminary inventory to create estate and get letters patent naming you as the executor
 - Only at that point can you convert all assets into name of estate and start the process of settling all affairs.
 - Will need a court order to distribute assets
 - Court will require a final accounting before it provides order requiring (allowing) you to make the final distribution
 - Final accounting will include realized asset values, all expenses, documentation that all debts and taxes have been paid, etc.
 - Court records are public records
- And all of this takes time and involves legal costs
 - Probate fee
 - Estate lawyer costs
 - Potential executor costs

Trusts

- Creates a new legal person (e.g. *John Doe Trust U/T/A 9/1/2022*)
 - Which owns all assets titled in name of that trust
 - And are controlled by the named trustees of the trust
 - Whose powers stated in the trust
 - And who are required to carry out the stated aims of the trust.
- Revocable vs. irrevocable trusts
- Uses of trusts in estate planning
 - As a beneficiary
 - Receives funds for the care of someone (Cindi, a minor)
 - Limit uses of funds (Lorraine's brother, QTIP, etc.)
 - As an alternative to distributing assets via a will
 - By putting the assets while alive into a grantor (or family) trust

Grantor Trusts

- Initially revocable with few restrictions
 - Grantors usually named as trustees (but can have other trustees)
 - Names successor trustee(s) upon death
- Becomes irrevocable upon grantor death
 - Surviving co-trustee(s) or successor trustee(s) distribute trust assets according to the terms of the trust
 - Terms usually mirror what you see in a will.
- Features relative to a will
 - Trust already set up, accounts set up
 - Successor trustee takes control with presentation of death certificate
 - Successor trustee automatically empowered to take actions allowed by trust (realizing & distributing assets, pay taxes, etc.)
 - Subsequent actions not subject to court approval.
 - Result: winding up trust is often cheaper, faster, more flexible, and with less need for legal involvement.
 - No public record

Settling An Estate: Five Shared Features

1. You are acting in the capacity of an fiduciary when acting as an estate's executor and trust's successor trustee.
 - But in case of an executor your actions will be overseen by a court.
2. You need assemble/inventory all of the estate's or trust's financial affairs (*i.e. all assets, liabilities, insurances, etc.*)
3. These assets need to be valued using date-of-death values.
 - DoD valuations become new cost basis for all assets
(*for both estate/trust and for beneficiary*)
 - Gains/Losses on this stepped- basis are treated as long-term
4. You will need to notify all relevant people, manage these assets, file and pay trust/estate taxes, etc. during the process.
5. This is going to be a lot of work. Key is to be organized and to document your actions.

Settling An Estate - Preliminaries

- Get a large number of death certificates from funeral director
- Notify Social Security of death.
 - Make sure surviving spouse continues to receive benefits, as appropriate.
- May need to notify (*perhaps former*) employer of death.
 - Make sure surviving partner/spouse/beneficiary
 - Continue to receive benefits (*pension, retiree health insurance*)
 - Receives funds as a named beneficiary (*life insurance, 401k, accident insurance if on business travel, etc*).
- Get tax IDs for estate & trust (*estate lawyer will probably do this*)
 - Will need to sign documents with lawyer anyways
- Find original will (& *trust documents if there is a trust*)
 - Issue: Is there a Memorandum of Tangibles somewhere?
- But I usually hold off in telling bank (except for joint account)
 - So recently-written checks and ongoing direct debits get paid
 - But understand Social Security will inform bank of death within a couple of months.

Settling An Estate – Initial Inventory

- Identify all assets & liabilities
 - Keep all financial statements showing holdings as of date-of-death
- Sort assets into three groups
 - Probate assets & liabilities
 - Solely in deceased name
 - Disposed of by will
 - Will be handled by probate process (TBD)
 - Non-probate assets & liabilities
 - Includes:
 - Joint holdings WROS, (*measured as ½ of total holding for estate purposes*)
 - Holdings with named beneficiaries (*IRAs, life insurance, etc.*)
 - Handled by presenting death certificate
 - *Notes: Life insurance generally not part of estate for estate tax purposes*
Unexpected example: a golf membership
 - Trust assets & liabilities
 - Owned in name of trust
 - Present death certificate to get named as successor trustee
 - And follow directions set out in the trust

Settling An Estate – Valuation

- Value assets using date-of-death prices
 - Becomes new cost basis for estate and for beneficiaries
- Typical valuation methods
 - Securities: Typically average of opening and closing price on DOD
 - Real Estate: Can start with Zillow or agent valuation for preliminary. Final valuation can be sale price if it occurs within six months of death. Otherwise will likely need an appraisal.
 - Tangibles: Usually a percentage of house value with exception of high valued items.
 - Other: Example of British Sovereigns
- Be sure to document how you arrived at these DoD cost bases
 - And leave space in spreadsheet to show
 - Final price realized upon sale, distribution, etc. (*so everything in your in your final inventory matches up*)
 - Date and method of disposition

Example of My Background Documentation

Asset Worksheet
Estate of XXX
Date of Death: YYY

Probate Assets (also separate tables for nonProbate & Trust Assets)

| # | Description | Title | DOD Value |
|---|-----------------|-------|--------------------------|
| 1 | XXXX Status: | XXXX | \$XXX.XX (How Valued) |
| 2 | YYYY Status: | | |

** Long list, can include refunds*

Settling An Estate – Taxation

- Income tax returns:
 - Deceased for year of death (*Form 1040*)
 - Estates and trusts (*Form 1041*)
 - Can do annually or use fiscal years
 - Can make a 645 election (*Form 8855*) to combine estate and trust tax return
 - *Note: You will need to do a state election if you do a federal election*
 - Income passed to beneficiaries is deducted from estate income and taxed at the individual level.
- Estate and inheritance taxes
 - Federal estate tax only required on largest estates
 - Exemption of \$12.92 million per individual (2023)
 - Plus marital deduction & charitable deductions
 - State estate taxes
 - 13 states have estate taxes
 - State inheritance taxes (*paid by beneficiary*)
 - Only 6 states impose this tax (and Iowa will phase it out in 2025)

Settling An Estate – Distribution

- Manage, realize and distribute assets
- Issue #1: Intermediate distributions
 - Fairly easy with trusts
 - Just go proportionate with general intermediate distributions
 - And make sure enough is left to meet any taxes and liabilities
 - Will need a court order to distribute any assets under probate
 - Which is why estates tend to distribute assets only after getting court order for final distribution.
- Issue #2: Non-proportionate distributions of individual assets
(*to general beneficiaries*)
 - Fairly easy with trusts
 - Just get everyone to sign a document agreeing to asset valuations being used (to make sure total shares are right)
 - Will: Expect probate court is going to want appraisals as well as beneficiary consent

Settling An Estate – Recordkeeping

- Document
 - Assets & liabilities at date of death
 - Including statements, pictures, appraisals, etc.
 - And including all insurance policies, etc.
 - Date of death prices (*and how arrived at*)
 - Proceeds realized/spent in all transactions
 - All trade confirmations, to show actions and realized prices.
 - All estate bank account statements to document inflows and expenses
 - Tax returns
 - Final inventory of estate (using realized prices)
 - All distributions
- And retain all records for at least 5 years after filing final tax return

Estate Process: Probate vs. Trust

| Probate Process | Trust Process |
|---|---|
| <ul style="list-style-type: none">• Submit will & preliminary inventory of all assets and liabilities to court• Pay court costs• Wait to get letters patent naming you as estate's executor/personal representative | <ul style="list-style-type: none">• Trust is already created• Trust has already named you as successor trustee. |
| <ul style="list-style-type: none">• Create estate accounts, get named as executor on all accounts• Discharge debts, file taxes, and get assets into form ready for final distribution | <ul style="list-style-type: none">• Accounts created, just update them to list you as successor trustee.• Discharge debts, file taxes, and get assets into form ready for final distribution• <i>Can easily do intermediate distributions</i> |
| <ul style="list-style-type: none">• Submit final inventory and final tax forms• Get court order to make final distribution (<i>net of legal costs</i>)• Submit evidence of completed distribution | <ul style="list-style-type: none">• File final tax forms• Make distributions• <i>Can easily distribute different assets to different people if they agree on valuations.</i> |
| <ul style="list-style-type: none">• Estate value published as a court record | <ul style="list-style-type: none">• No public record of trust value |

Fiduciary Responsibilities

- Role: Takes decisions on behalf of someone
 - While alive: POA, trustee
 - After death: Executor (Personal Representative), Successor Trustee
- Requirement: Must put other person's interest first if there is a conflict of interest.
 - Principals include deceased and beneficiaries
 - With implied legal risks and, in the case of probate assets, court oversight
 - (*A good reason to keep beneficiaries "in the loop"*)
 - Issues:
 - Can you trust the person to do this (*inc. due diligence*)?
 - Do they understand your interests (*esp. healthcare POA*)?
- Can be a time-consuming & burdensome obligation
 - So be sure to get person's assent before naming them as an executor or successor trustee

Getting/Providing Needed Information

- Suppose you were my executor/successor trustee
- Would you know
 - Where to find my original will and trust?
 - All of my insurance policies, annuities, and employee benefits?
 - How to locate all my assets & liabilities?
 - And who should you contact to deal with these accounts?
 - What tangible holdings are valuable?
 - And who would be a good person to handle the sale of these assets?
 - Where I have safety deposit boxes and storage places?
 - What monthly bills you would need to deal with?
 - And what items are on direct debit?
- So what should you have ready for the person you want to act on your behalf?

Other Things You Should Have

- Letter of Instruction
 - Quick balance sheet (what to expect)
 - Cover issues, accounts, policies and contacts
 - Any issues to check out with company HR
 - Where to find things
 - Not a bad thing to review annually
- Memorandum of Tangibles
 - Think of it as the household inventory of valuable items
 - And what you want done with them, or where to sell them if a special kind of collectible.
- Household inventory
 - If only to make sure you know what you own and have titled everything correctly
- Where should you store this?

Econ20PZ – Evaluation Feedback