# The Five Components of a Good Estate Plan

Many people believe that if they have a will, their estate planning is complete, but there is much more to a solid estate plan. A good plan should be designed to avoid probate, save on estate taxes, protect assets if you need to move into a nursing home, and appoint someone to act for you if you become disabled.

All estate plans should include, at minimum, two important estate planning instruments: a durable power of attorney and a will. A trust can also be useful to avoid probate and to manage your estate both during your life and after you are gone. In addition, medical directives allow you to appoint someone to make medical decisions on your behalf.

# 1.Will

Your will is a legally-binding statement directing who will receive your property at your death. It also appoints a legal representative to carry out your wishes. However, the will covers only probate property. (Probate is the court process by which a deceased person's property is passed to his or her heirs and people named in the will.) Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate.

Why should you have a will? Here are some reasons:

First, with a will you can direct where and to whom your estate (what you own) will go after your death. If you died intestate (without a will), your estate would be distributed according to your state's law. Such distribution may or may not accord with your wishes.

Many people try to avoid probate and the need for a will by holding all of their property jointly with their children. This can work, but often people spend unnecessary effort trying to make sure all the joint accounts remain equally distributed among their children. These efforts can be defeated by a long-term illness of the parent or the death of a child. A will can be a much simpler means of carrying out one's wishes about how assets should be distributed.

The second reason to have a will is to make the administration of your estate run smoothly. Often the probate process can be completed more quickly and at less expense to your estate if there is a will. With a clear expression of your wishes, there are unlikely to be any costly, time-consuming disputes over who gets what.

Third, only with a will can you choose the person to administer your estate and distribute it according to your instructions. This person is called your "executor" (or "executrix" if you appoint a woman) or "personal representative," depending on your state's statute. If you do not have a will naming him or her, the court will make the choice for you. Usually the court appoints the first person to ask for the post, whoever that may be.

Fourth, for larger estates, a well-planned will can help reduce estate taxes.

Fifth, and most important, through a will you can appoint who will take your place as guardian of your minor children should both you and their other parent both pass away.

# 2.Trusts

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a "trustee," holds legal title to property for another person, called a "beneficiary." The rules or instructions under which the trustee operates are set out in the trust instrument. Trusts have one set of beneficiaries during their lives and another set -- often their children -- who begin to benefit only after the first group has died. The first are often called "life beneficiaries" and the second "remaindermen."

There can be several advantages to establishing a trust, depending on your situation. Best-known is the advantage of avoiding probate, the court process by which a deceased person's property is passed to his or her heirs. In a trust that terminates with the death of the donor, any property in the trust prior to the donor's death passes immediately to the beneficiaries by the terms of the trust without requiring probate. This can save time and money for the beneficiaries.

Certain trusts can also result in tax advantages both for the donor and the beneficiary. These are often referred to as "credit shelter" or "life insurance" trusts. Other trusts may be used to protect property from creditors or to help the donor qualify for Medicaid.

Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

## *Kinds of Trusts*

Trusts fall into two basic categories: testamentary and inter vivos.

A testamentary trust is one created by your will, and it does not come into existence until you die. In contrast, an inter vivos trust, starts during your lifetime. You create it now and it exists during your life.

There are two kinds of inter vivos trusts: revocable and irrevocable.

*Revocable Trusts*

Revocable trusts are often referred to as "living" trusts. With a revocable trust, the person who created the trust, called the "grantor" or "donor," maintains complete control over the trust and may amend, revoke or terminate the trust at any time. This means that you, the donor, can take back the funds you put in the trust or change the trust's terms. Thus, the donor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to death.

Revocable trusts are generally used for the following purposes:

1. *Asset management.* They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.
2. *Probate avoidance.* At the death of the trust grantor, the trust property passes to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor's estate for tax purposes.
3. *Tax planning.* While the assets of a revocable trust will be included in the grantor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

*Irrevocable Trusts*

An irrevocable trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the grantor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

*Testamentary Trusts*

As noted above, a testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the grantor is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or to provide for the care of a disabled child.

*Supplemental Needs Trusts*

The purpose of a supplemental needs trust is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend. The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. In this way, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid and low-income housing. A supplemental needs trust can be created by the grantor during life or be part of a will.

*Credit Shelter Trusts*

Credit shelter trusts are a way to take full advantage of state and federal estate tax exemptions.

# 3.Durable Power of Attorney

For most people, the durable power of attorney is the most important estate planning instrument available -- even more useful than a will. A power of attorney allows a person you appoint -- your "attorney-in-fact" or “agent” -- to act in place of you – the “principal” -- for financial purposes when and if you ever become incapacitated.

In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

A power of attorney may be limited or general. A limited power of attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

A power of attorney may also be either current or "springing." Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, it is very important that the standard for determining incapacity and triggering the power of attorney be clearly laid out in the document itself.

However, attorneys report that their clients are experiencing increasing difficulty in getting banks or other financial institutions to recognize the authority of an agent under a durable power of attorney. A certain amount of caution on the part of financial institutions is understandable: When someone steps forward claiming to represent the account holder, the financial institution wants to verify that the attorney-in-fact indeed has the authority to act for the principal. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute such forms offered by the institutions with which you have accounts. In addition, many attorneys counsel their clients to create living trusts in part to avoid this sort of problem with powers of attorney.

While you should seriously consider executing a durable power of attorney, if you do not have someone you trust to appoint it may be more appropriate to have the probate court looking over the shoulder of the person who is handling your affairs through a guardianship or conservatorship. In that case, you may execute a limited durable power of attorney simply nominating the person you want to serve as your conservator or guardian. Most states require the court to respect your nomination "except for good cause or disqualification."

# 4.Medical Directives

A medical directive may encompass a number of different documents, including a health care proxy, a durable power of attorney for health care, a living will, and medical instructions. The exact document or documents will depend on your state's laws and the choices you make.

Both a health care proxy and a durable power of attorney for health care designate someone you choose to make health care decisions for you if you are unable to do so yourself. A living will instructs your health care provider to withdraw life support if you are terminally ill or in a vegetative state. A broader medical directive may include the terms of a living will, but will also provide instructions if you are in a less serious state of health, but are still unable to direct your health care yourself.

# 5.Beneficiary Designations

Although not necessarily a part of your estate plan, at the same time you create an estate plan, you should make sure your retirement plan beneficiary designations are up to date. If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan. Some plans automatically distribute money to a spouse or children. Although others may leave it to the retirement plan holder's estate, this could have negative tax consequences. The only way to control where the money goes is to name a beneficiary.

Many people periodically update their wills or other estate plans, but don't remember to update who will receive distributions from their retirement plans (such as IRAs and 401(k)s) upon their deaths. Every year you should review your entire estate plan, and the review should include retirement plan "beneficiary designations" to make sure they aren't outdated. The following are some tips for naming a retirement plan beneficiary:

**It is important to name a beneficiary**. Do not assume that your retirement plan will be distributed according to your will. If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan. Some plans automatically distribute money to a spouse or children. While others may leave it to the retirement plan holder's estate, this could have negative tax consequences. The only way to control where the money goes is to name a beneficiary.

**You may want to designate a trust as your beneficiary**. If your estate is more than the current estate tax exclusion ($5.49 million for 2017) and a large portion of it consists of retirement plans, it may make sense to direct that the plans be payable to a trust rather than to the surviving spouse. The trust must be properly drafted to avoid tax consequences, so consult with your attorney before doing this. If you want your money to go into a trust for your children, be sure to designate the trust as the beneficiary. If you name your children, the money will go directly to them.

**If you have major life changes, be sure to keep your retirement plan updated**. If you get married or have children, you may want to change your beneficiary. Also, if your spouse was your beneficiary and you get divorced, your former spouse will still be the beneficiary -- divorce does not automatically remove an ex-spouse as beneficiary. If you wish to remove a former spouse from the plan, you will have to fill out a new beneficiary designation form.

**Even if you don't have big changes, you should review your beneficiary designation periodically**. Your beneficiary may not be who you remembered it to be or it may be outdated. For example, if you named a charity as beneficiary, you will want to make sure the charity still exists. A Change of Beneficiary form can often be downloaded from the Web site of the firm holding the plan assets.