Estate Planning Basics

Presented by LifeTime Asset Management, LLC

Everyone needs an estate plan, no matter the size of the estate. An estate plan helps carry out your wishes after your passing and benefits you while you're living. A good estate plan includes documents to manage your financial affairs and health care decisions in the event you cannot. It can prove invaluable in easing the administrative burden for your family and friends during a time of emotional distress. Through an estate plan, you have a say in the "how, when, and to whom" your assets are transferred, in addition to achieving your own specific tax and non-tax planning goals.

An estate plan benefits you, your family, and friends by allowing you to do the following:

- Ensure that your property will be preserved and passed on to beneficiaries
- Provide financial support to friends or family members, such as a relative with special needs
- Avoid possible disruption of your business during a time of transition
- Direct money to your favorite charity or religious organization
- Reduce taxes owed and minimize other administrative costs after your death
- Mitigate or avoid disputes among family members
- Ensure competent management of your property in the case of incapacity

It is advisable to consult with a qualified attorney about your specific situation and unique goals. Cost is a common concern for clients in need of estate planning. Ask about fees and the cost of an estate plan at your first meeting with the attorney. Many attorneys charge a flat fee for simple estate plans. When the estate is significant and tax planning is required, it is common for an attorney to charge hourly. If this is the case, remember that you can save a significant amount of time—and therefore money—by organizing your documents, creating a net worth statement, and thinking ahead about your goals and potential heirs.

Essential Estate Planning Documents

Core estate planning documents generally include:

- Durable power of attorney (POA) for financial matters
- Health care POA (and/or a living will)
- Will
- Trust agreement (depending on your specific situation)

Durable POA. This document allows you to authorize someone, called an *agent*, to handle your financial matters if you become incapacitated. Without a durable POA, your family members would have to institute legal proceedings and request a probate court to appoint a guardian to carry out these responsibilities. By addressing the possibility of incapacity in advance through a durable POA, you and your family can avoid the expense and potential hassle of the guardianship process.

Health care documents. With a **health care POA**, sometimes called a health care proxy, you authorize an agent to handle your health care needs in a manner consistent with your intentions in the event of your incapacity. This includes authority to deal with general health care decisions that may arise.

Some states authorize a secondary health care document, typically called a **living will**. It works in conjunction with a health care POA, authorizing your health care providers to take specific action with regard to life-sustaining treatment, such as the continuation or cessation of life support and nutrition and hydration, in the event there is no reasonable hope of your recovery. It also serves an important function if the agent named in your health care POA is unable to decide whether to continue life- sustaining treatment for you.

Will. A will allows you to direct who will receive your probate property upon your death and under what circumstances. It also enables you to direct the payment of estate administration expenses and taxes and nominate an executor to handle these matters. Even more important, it allows you to designate a guardian for your minor children.

Trust. With a trust, you can plan for the management of assets during your life and upon your death. A trust can also help minimize potential federal or state estate taxes. There are many different types of trusts. Trusts can be integrated directly into a will (called **testamentary trusts**) or as separate documents during life. Generally revocable, a living trust is the centerpiece of a well-rounded estate plan and (unlike testamentary trusts) can be funded during life to help avoid probate at death. When a living trust is established, the process of distributing assets held in that trust at the time of death will not be subject to the jurisdiction and oversight of the probate court. The trustee of the trust would be able to manage any assets held in that trust for any period where you are living but not competent to manage your financial affairs.

Key Terms
An understanding of key terms commonly used in estate planning will help as you create your plan. They include:

Probate. This term refers to the legal process of administering a will or distributing property. Depending on the size of your estate and your state's laws, the probate process can be simple or complex. You may be able to avoid legal complexities by minimizing how many of your assets flow through the probate process. By funding trusts during your life, naming beneficiaries on insurance or financial accounts, and registering jointly owned property to include rights of survivorship, you may be able to avoid probate, if doing so meets your estate planning goals.

Executor. Also known as the administrator or personal representative, your executor follows the instructions you outlined in your will, ensuring that your wishes are carried out. In executing your will, you nominate your choice or choices for executor. Although only the court can officially appoint the individuals named to that role, it will generally respect the wishes expressed in the will unless there is a compelling reason not to. If there is no will, the court would consider any petitions for appointment as executor of the estate and would appoint an executor from among those petitions.

Intestate. If a person dies without a will, the decedent's probate property will be distributed in accordance with state law. This is called an intestate estate. This could mean that the people most important to you, or those most in need, will not receive what you would have wished.

Simplified probate procedure. Almost every state offers small estates an alternative to the formal probate process. The requirements and rules differ from state to state, but if the estate qualifies, simplified probate procedures allow a speedy distribution of assets to heirs without waiting for court approval.

Letter of instruction. This document provides informal guidance to your executor and can add important clarification about your wishes. It may include information about your funeral arrangements, wishes for care of your pet(s), or descriptions of a specific asset's sentimental value. Your executor may find that your letter of instruction is the most important document of your estate plan.

Beneficiary designations. Retirement plans, life insurance, and annuity policies allow you to name beneficiaries directly on those accounts. At your death, those beneficiaries would receive those assets regardless of what your will might say and without the need to pass through probate. Some brokerage and bank accounts, known as "transfer on death" or "paid on death" accounts, also allow you to name beneficiaries. If all of your primary beneficiaries predecease you, your named contingent beneficiaries will inherit the accounts. If you fail to name contingent beneficiaries, your estate is usually the default beneficiary.

Per stirpes. This Latin term can be used in conjunction with a beneficiary designation as a substitute for a lengthy list of contingent beneficiaries. If part of the estate would have gone to one of your previously deceased children, the inherited share is divided among the offspring of this person. The laws governing how the inheritance is divided differ from state to state. It is important to understand how financial institutions where your accounts are held will administer per stirpes inheritances.

Joint ownership. There are several ways to own property with another person, but not all registrations avoid probate. In most states, joint ownership, tenancy by the entirety, and community property with rights of survivorship can act as effective substitutes for a will. Adding a joint owner to your property merely to avoid probate is not always a good idea because it may subject the property to your joint owner's creditors or raise disputes after your death.

Other Considerations
As discussed above, many assets will avoid probate. These assets include:

- Jointly held property
- Life insurance proceeds
- Retirement benefits
- Employee death benefits
- Retirement plan proceeds
- Assets held in a revocable trust

It's especially important to coordinate the beneficiary designations on all of these assets with your will and any trusts to match your overall plan. Keep the following in mind:

- Be sure that your beneficiary designations reflect your wishes and align with your will or trust documents. Contact your current and former employers, your investment advisor, and your life insurance agent for the required paperwork to make any changes, if necessary. It is important for you and your financial advisor to review the ownership and/or beneficiary designation of your assets to ensure that they will be distributed according to your wishes upon death.
- Don't make the mistake of assuming a change in your circumstances, like a remarriage, will make a prior designation null and void. Always make beneficiary changes on the correct paperwork specific to the financial institution.
- Include primary and contingent beneficiaries for your accounts. If your primary beneficiaries die before you, without a backup beneficiary, the death benefit would be paid to your estate. This can result in unnecessary fees and delays associated with probate, as well as accelerated taxes.
- Relatives with special needs or disabilities rarely inherit directly. Receiving an inheritance outside of a special needs trust could mean the loss of valuable government benefits.
- A spouse who inherits a retirement account has several options for deferring income taxes until the money is needed. When your children inherit retirement accounts, they cannot defer taking distributions from the account until their own retirement. Rules governing those distributions have become less favorable and more complex in recent years; generally, absent special circumstances (such as a minor or incapacitated beneficiary), retirement accounts inherited by individuals other than a spouse will (at best) need to be withdrawn within 10 years of the participant's death.
- You can name a trust as the beneficiary of your retirement accounts, but be aware of the tax impact, which can be significant. In the end, the advantages of having the retirement accounts managed by a trustee may outweigh the tax disadvantages.

Your financial advisor can coordinate efforts with your attorney and tax preparer in creating an estate plan that suits your needs and purposes and helps achieve your financial and personal goals.

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