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Wealth Strategies

Estate Planning

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Wealth Strategies: Estate Planning

Why Should You Care?

Through estate planning, you can act now to ensure that you control the fate of yourself, your family, and your assets in the possible event of your incapacity and the certain event of your death.

For example, the creation of a fairly basic trust could allow you to save your estate from falling into the hands of creditors, should an heir have an untimely fall into bankruptcy. Or it could save your estate from being squandered rapidly and senselessly if an heir were to have impaired judgment due to a battle with addiction. Proper planning can give you the flexibility to address these potentially unforeseen issues if they arise at the time of your death. Without an estate plan in place, you surrender any flexibility and submit to the default laws of your state.

Here are just some actions you can take with an estate plan:

- Determine who will care for your minor children or dependents if the unthinkable were to happen and they were to be left without parents
- Give yourself a say in how you are treated if you ever become incapacitated and appoint someone you trust to make critical decisions on your behalf
- Give yourself a say in who receives all of your hard-earned assets when you die (and possibly how those assets are handled by those heirs after your passing)
- Minimize how much of your estate goes to taxes and attorneys' fees when you die
- Ensure the settlement of your estate remains private

If you don't address these essential estate planning issues, they will all be decided for you by the courts through a costly and lengthy public process called probate.

Let's Start at the End

With estate planning, it's essential that you start where you want to finish. Your financial estate can easily end up in the hands of unintended beneficiaries. Though you may want your assets to be passed to your children or a charitable organization, some or all of it could find its way into the hands of ex-spouses, creditors, or taxing authorities. The estate planning process provides a means to ensure that as much of your estate as possible ends up where you intend it to. You should start at the end by defining your ultimate goals, then work backward to formulate a plan to achieve them. There are many strategies that can be employed in estate planning, ranging from basic to extremely complex. It is each family's unique situation that determines the legal and financial tools needed and level of complexity required. The most common and essential elements of an estate plan, including those non-financial elements that govern the care of your person and your children, will be the focus of this discussion.

Key Estate Planning Documents

- Will
- Advance healthcare directive
- Durable power of attorney
- Revocable living trust

Will

The main purpose of a will is to provide instructions for the disposition of your property upon your death. If you die "intestate" (meaning without a proper will in place), your property will be disbursed according to state law, regardless of your wishes. In addition to specifying how to disburse your assets, your will should name an executor who will manage and settle your estate. If no executor is named, one will be appointed by the court. For those with minor children, the most important estate planning element of all is the appointment of a guardian for your children, should they be left without parents. You can also name a legal guardian for any dependents with special needs. You can appoint a guardian for your minor children or dependents and their assets, or you can separate the roles of personal and financial guardianship if the same individual would not be well suited for both. You should seek the consent of any appointed guardians in advance to ensure that such guardianship is not refused upon your death, which would cause the fate of your dependents to be placed back in the hands of the court. The probate court has final approval of all provisions of a will, including the choice of guardian(s). However, a will is a binding legal document, and the courts are very reluctant to overturn any provisions within it. Therefore, it is crucial that your will be well articulated and properly executed under your state's law. Additionally, it's essential to keep your will up to date with life changes as well as compliant with

current state law. A will may be replaced easily, at any time prior to death or incapacity, by executing a new or revised version. It is worthwhile to note that a will does become a matter of public record when filed with the court after your death.

A **pour-over will** is a simple will used in conjunction with a living trust, which we will discuss later. This type of will simply transfers into the trust any assets remaining outside of the trust upon your death; it is a catch-all for any items not previously titled in the name of the trust. The specifics of beneficiaries and distributions would be left to the provisions of the trust. This type of will would also include any guardianship designations that may be required.

You may also choose to draft an accompanying letter of instruction. A **letter of instruction** (also called a letter of testamentary or side letter) is an informal, non-legal document that generally accompanies your will but should not be stored with it or filed with the courts. This document remains private, unlike your will, and serves a personal—rather than financial—purpose. It can be used to specify your burial wishes; help the executor locate important documents, assets, or people; suggest how you might like your heirs to handle their inherited assets; explain any decisions made in your will; or provide thoughtful guidance to those who would be caring for your dependents. This document would be most helpful when left in the hands of your family members and/or your executor. A letter of instruction is a non-binding document, and its contents are merely suggestions or directions that may be ignored.

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Today there are an astonishing number of people without even a basic will in place. This is, in fact, irresponsible—especially if you have minor children. If you're in this group, you are urged to immediately draft and execute a basic will—in even the crudest format—or go to an online legal service and create a formal will compliant with your state's laws. There are many options to get this done for less than $100. This would serve as a stopgap measure until you can consult with an attorney and review your complete estate planning needs.

Advance Healthcare Directive

An **advance healthcare directive** (also called an advance directive or a living will) is a document that lets you specify how you would or would not like to be treated medically in the event of your incapacity or inability to express your wishes yourself. These directives typically address the types of treatments and procedures that artificially prolong life. If you don't have advance medical directives, medical professionals must prolong your life using artificial means, if necessary. With today's technology, physicians can sustain patients for days, weeks, months, or even years.

An alternative to an advance healthcare directive is a **durable power of attorney for healthcare**, which empowers another person—appointed by you—to make all healthcare decisions on your behalf. Select an appointee that you would trust with your life (literally), and make him or her well aware of your intentions. Another commonly used document, when the circumstances warrant, is a **do not resuscitate order** (known as an DNR). A DNR specifies that a medical professional should not perform CPR if you go into cardiac arrest. The various legal options to predetermine certain critical healthcare decisions differ from state to state, so it's important that you seek counsel to determine the most appropriate and effective method of ensuring that your wishes are honored and your best interests are represented.

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Durable Power of Attorney

A durable power of attorney (DPOA) helps protect your property in the event you become physically or mentally incompetent to handle financial matters. When instituting a DPOA, you are authorizing someone else to act on your behalf to do things such as pay everyday expenses, file taxes, watch over your investments, and handle other essential financial matters. If no one is designated to look over your financial affairs, you run the risk of wasted benefits as well as potential loss or even abuse of property. Invoking a DPOA is an area fraught with potential conflict. It's easy to determine when one has been physically incapacitated and is no longer able to perform certain functions for themselves, but it's not so easy to determine when mental capacity has diminished to the point where the power of attorney can or should be invoked. It's common for this decision to be difficult, possibly resulting in confrontation. Authority to make one's own decisions is not easily given up, even when properly planned for as a potential contingency using a DPOA. It's important that

all parties remain cognizant of the sensitivity of the situation. It may be advisable for responsible parties to consult with a specialized psychologist when preparing to discuss invoking a DPOA with a mentally incapacitated individual. It's obviously very important to select someone you are extremely comfortable with and trust explicitly to take on this responsibility for you. And it's important that they take on the responsibility willingly and are well aware of your financial situation, personal needs, and intentions.

Revocable Living Trust

A living trust (also known as a revocable trust or an inter vivos trust) is a separate legal entity meant to function while you're alive. Once the entity is formed, you generally transfer the title of all assets to the name of the trust, excluding retirement accounts. During your lifetime, you maintain control over the property placed in the trust as well as the ability to change trust terms, transfer property in and out of the trust, or terminate the trust altogether. A revocable living trust can be amended or restated in its entirety.

The primary parties to a trust are as follows:

- The settlor(s) or grantor(s) or trustor(s): Person(s) who created and funded the trust
- The trustee(s): Person(s) who have authority to manage the trust
- The beneficiary/beneficiaries: Person(s) for whom the trust is managed to benefit

Initially, all three parties are usually the same person(s). For example, when a husband and wife form a trust, fund it, and manage it for their own benefit while they are alive, they serve in all three capacities. If the couple were to become incapacitated, the successor trustee(s) would assume control and continue to manage the trust for the benefit of the couple while the couple

is alive. When the couple dies, the successor trustee(s) would assume control, if they hadn't already, and manage the trust for the benefit of subsequent beneficiaries. This could be as simple as settling the financial affairs of the deceased couple and distributing the remaining property to the beneficiaries, similar to settlement under a will except without the courts. Or, it could mean that a new irrevocable trust is formed to maintain control of the assets for later or gradual distribution according to detailed instructions.

Benefits of a Trust

- Avoidance of probate time and costs
- Privacy
- Tax efficiency
- Flexibility of distributions
- Protection from beneficiaries' creditors or from beneficiaries themselves

The primary function of a living trust is to avoid probate when settling your estate. Depending on your situation and state's laws, the probate process may vary in complexity, time required, and cost. Transferring property through a living trust not only avoids the probate process but also ensures privacy of the decedent and his or her family's financial affairs. Property that passes through probate will become public record. Generally, property titled in the name of a trust does not.

Tax efficiency is the focus of most of the more complex types of trusts used by those with larger estates. A basic living trust has tax efficiency embedded as well. The trust sets out to maximize the benefit of estate tax exemptions by placing the first-to-die spouse's assets in a new irrevocable trust, thereby utilizing their exemption and passing the assets to the next generation/beneficiaries while maintaining them in a trust for the surviving spouse's benefit (for the duration of his or her life). With the new portability of estate tax exemptions, the second-to-die spouse can now utilize both spouses' exemptions together if properly documented upon the death of the first. This places less importance on that particular feature of a trust, but many existing trusts have not been amended to adjust for the change in law. When a settlor dies, an outdated strategy may be irrevocably deployed.

Another benefit of the trust structure is that it can leave the successor trustee with the authority to determine which particular assets are distributed to which beneficiary based on the circumstances at that time. For example, they may determine it to be more advantageous to transfer an IRA to the charitable beneficiary and a cash balance to a child looking to buy a home. The charity wouldn't have to pay taxes on the IRA distribution under current law, making the transfer much more efficient than if it were passed to the child.

The provisions of the trust could also allow the trustee to determine if a beneficiary should receive their distribution at all. For example, if one of the beneficiaries was going through bankruptcy, the inheritance could be immediately claimed by creditors. If this were the case, a properly drafted trust would allow the trustee to determine that the beneficiary should not receive a distribution at this time. The same could apply to a child with a substance abuse problem that would likely squander the inheritance without providing any durable benefit to itself. These are situations that are not typically known at the time of drafting. It's the trust structure that allows the flexibility to adapt to the current situation and better serve the interests of all beneficiaries. As illustrated, it's extremely important to keep your trust documents up to date with current law and make sure that they reflect your current intentions.

Conclusion

The laws governing all of these estate planning documents vary from state to state, but there is a significant level of standardization that has been adopted by most states. It's important to find a specialized estate planning attorney, licensed in your state, to help you through this process and draft these documents in such a way that they are tailored to your individual needs. Working backward from the desired end, there are tools (documents) they can use to help ensure that your wishes for you and your family are fulfilled in an efficient manner. These are things you don't want to leave to chance or in the hands of the courts.

A typical estate planning package, including all documents discussed here, should cost roughly $2,000–$3,000. The cost will vary depending on your location. Of course, some packages can be found for much less (be careful—you get what you pay for!) or much more, based on additional levels of complexity. In California, probate for a $500,000 estate will cost more than $10,000. That savings alone is worth the price of the trust. Don't wait until it's too late for you, your children, or your assets. Take the steps needed to get a plan in place. The process is always much easier than the typical client anticipates.

This paper is not intended to provide any legal advice. It's intended to encourage you to consult with a specialized estate planning attorney to address any of these issues that are applicable to you (if you have not already done so).

Reilly Financial Advisors

Reilly Financial Advisors is a fee-only RIA aimed at helping clients both define and achieve their individual financial goals through four unique service offerings:

- **Wealth Building**
  For those still accumulating their investment portfolios
- **Wealth Management**
  For those who have amassed savings and have specific needs associated with their wealth
- **Wealth Legacy**
  For those who have accumulated a significant amount of wealth and face unique wealth transition needs
- **Corporate Retirement Services**
  Providing tailored solutions for plan sponsors and participants

Reilly Financial Advisors, founded in 1999 and headquartered in San Diego, California, serves clients around the United States and in more than one dozen countries worldwide.

As an independent advisor, Reilly Financial Advisors is able to provide clients with the highest level of fiduciary services, making investment decisions based solely on their best interests.

At Reilly Financial Advisors, it is our goal to be clients' first point of contact for all their financial needs, serving as their trusted financial partner for life.

If you would like to make a complimentary appointment to meet with one of our advisors, you may do so **on our website** or by calling us at **(800) 682-3237**.