

BASIC ESTATE PLANNING

Estate planning involves more than deciding which heirs will receive assets at your death. Anyone who has a spouse, children, dependent relatives, substantial assets, or charitable intent needs to engage in at least a basic level of estate planning. Some of these techniques are applicable during life, and some come into play after death. Establishing a strategy surrounding your estate is an important aspect of your financial plan.

DURABLE POWER OF ATTORNEY

The provisions of your will are not applicable until death. Therefore, if you are living but unable to make your own financial decisions, no one is authorized to act on your behalf unless you have executed a durable power of attorney (DPOA). The DPOA provides continuity in the management of your affairs in the event of disability or incapacity. Please note, a spouse is NOT automatically permitted to make these decisions for you without the DPOA in place. The DPOA can be immediately effective or a 'springing' power that does not become effective until you are incapacitated. You also have the ability to change your named agent and revoke or amend their powers at any point. The power ceases at death when the last will and testament becomes effective.

If you hold assets in only your name and you do not execute a DPOA, you could lose access to your assets in the case of incapacity until the court appoints a guardian to make financial decisions on your behalf.

HEALTHCARE DECISIONS

A durable power of attorney for healthcare (DPOA for healthcare) allows you to appoint a person to make healthcare decisions on your behalf. It is usually written as a springing power that becomes effective after you are incapacitated. Again, a spouse is not automatically permitted to make these decisions for you without the DPOA for healthcare in place.

You should also consider a living will or advanced medical directive. This document allows you to specify what life-sustaining measures you would like physicians to perform. The document is specifically drafted to meet state statutes. If you spend a significant amount of time in more than one state (for example, a vacation home), you should execute a living will in each state. A DPOA for healthcare is not a substitute for a living will. Without a living will, the agent appointed by a DPOA for healthcare can make the decisions he/she sees fit and can be influenced by the physician and hospital policies. These decisions may not be consistent with your wishes.

LAST WILL AND TESTAMENT

A will is the legal document that allows you to transfer property to designated heirs at death. You designate a Personal Representative to facilitate the process. The will allows you to specify how estate taxes are apportioned, designate a guardian for minors, specify charitable bequests and create testamentary trusts. It also allows you to specify how your assets are transferred, to whom, and when.

For simple estates, the Will is the cornerstone of your estate plan.

If you die without a valid will, the probate court will decide how to distribute the assets of your estate based on state-specific intestacy laws. In some states, the entire estate transfers to a surviving spouse, and other states split assets equally between a surviving spouse and the children (a family with 4 children would result in 20% to the spouse and 20% to each child). The process can take several months, will cost the estate, and may result in assets being transferred inefficiently from a tax perspective.

ASSET TRANSFER

There are several means by which property transfers to your heirs at death. We encourage you to review the ownership of all assets and review all beneficiary designations to ensure your assets will transfer according to your desires.

- ▶ **Transfer by contract** – Certain assets allow you to designate a beneficiary. These include IRA's, qualified and non-qualified retirement plans, annuities, life insurance policies and transfer on death (TOD) or payable on death (POD) accounts. All of these assets transfer to the named beneficiary regardless of what your will states. Therefore, it is essential to periodically review and update all beneficiary designations to ensure they comply with your wishes.

Note that naming your estate as the beneficiary of these assets will cause them to go through the probate process. The retirement plan, annuity or life insurance proceeds will be transferred to a bank account in the name of your estate, go through probate and then be transferred according to the terms of your will.

- ▶ **Transfer by operation of law** – Certain types of ownership result in assets transferring directly to a surviving owner. For property held as Joint Tenants with Rights of Survivorship (JTWROS), the deceased owner's share automatically is transferred to the surviving tenant(s). However, if both tenants die at the same time, assets owned as JTWROS must go through the probate process.

Assets held in trust will be transferred according to the terms of the trust. A surviving trustee or successor trustee would manage and distribute those assets. Again, this happens regardless of what is stated in your will.

- ▶ **Transfer by will or intestacy** – All assets that do not fall into either of the above categories will go through the probate process. The court will review the terms of your will, if you have a valid one, and then authorize the Personal Representative to distribute the remaining assets in accordance with the will. If you do not have a valid will, the court will apply that state's intestacy law and instruct the Personal Representative to distribute the assets in accordance with the law.

PROBATE

The probate process enables property to be transferred to the rightful beneficiary. If the decedent has a will, the probate process proves the validity of the will and creates an orderly process for distributing assets to heirs. The Personal Representative facilitates the process with the probate court and is responsible for filing notices with potential creditors of the estate. Creditors have a certain amount of time to present their claims. After all claims have been resolved and the will validated, the court will instruct the Personal Representative to distribute the remaining assets. If there are any disputes among heirs, the court will resolve those disputes and ensure the terms of the will are properly executed.

Probate can be expensive and the process takes several months, which can delay the distribution of assets. It's also a public process. The assets of the estate, the beneficiaries, and estate creditors are all public information.

Real property located in a state outside the decedent's state of domicile will trigger a separate probate process in that state. This increases expenses and results in additional delays in asset distribution.

REVOCABLE LIVING TRUST

To avoid probate, it may be worth establishing and funding a living trust. Assets placed in a trust would avoid the public probate process and allow for direct transfer of specific assets upon death. A living trust is created during the grantor's life. The trust defines the grantor's goals and provides the ultimate flexibility during life and at death. The grantor is typically the trustee and has all rights and powers to amend and revoke the trust. Benefits of a living trust include:

- ▶ **Planning for incapacity** – If the grantor becomes incapacitated, the co-trustee(s) or successor trustee(s) continue to manage trust assets and make financial decisions. The successor trustee(s) can be an individual or a corporate trustee.

- ▶ **Valid in all states** – Many financial institutions will not accept a durable power of attorney unless you have signed one of the institution's proprietary forms. However, all institutions must accept instructions from the trustee of a living trust.
- ▶ **Probate avoidance** – Trust property does not pass through probate at the grantor's death. Therefore, the assets transfer to the designated heirs with minimal publicity, expense and delay. A funded trust will also avoid ancillary probate if assets are owned in more than one state.
- ▶ **Ease of distribution** – The successor trustee(s) manage the assets and make distributions in accordance to the terms of the trust document.
- ▶ **Asset protection for heirs** – Distributions made outright to heirs have no protection from the heir's creditors or a future divorce. Assets kept in trust for the benefit of the heirs will provide this protection and can also ensure ongoing support for heirs with special needs.

A living trust will only accomplish these objectives if it is properly funded. Assets must be re-titled and re-deeded in the name of the trust. All income and capital gains from trust assets will be taxed to the grantor.

PLANNING

We would be happy to review your existing estate plan and discuss additional planning strategies with you. We will also partner with your estate planning attorney to ensure implementation of the most advantageous and tax efficient planning strategies.

This is an informational fact sheet and is not intended to be a specific recommendation. If you are interested in exploring these strategies to see if they are applicable to your specific situation please contact us. The information contained in this fact sheet is accurate to the best of our knowledge.