



Estate Planning Basics

Through our lives, we spend so much time worrying about making a decent living. Questions like, "Will we have enough for a new house? Can I afford that new car? Can I take that trip I've always wanted to take?"

But the years pass. You've built up an estate, and achieved success. Your focus starts shifting away from taking care of yourself, to ensuring your loved ones are cared for after you're gone. That's what estate planning is all about.

Some traditional methods of estate planning include: Wills, Living Trusts and Durable/Medical Powers of Attorney

Introduction to Wills

Wills are the most basic of estate planning documents. First introduced in medieval England, wills are basic instructions to a court how a deceased person wanted to distribute money and property. Everyone who is concerned how their estate will be divided should (at the very least) have a current and valid will.

What's In a Will? Within a will, you describe several things:

- Who you are, and what right you have to give away property
- A description of the property itself
- Exactly who you want it to be distributed to.

Wills are extremely easy to draw up. A qualified estate planning attorney, although recommended, is not always required. Many courts have accepted simple handwritten wills drawn up without any legal counsel. In addition, Internet and software companies manufacture programs that create a will right from your home computer. Some states even allow an oral will to be acceptable; however, it is best to execute a formal will (just to be sure).

Publicity vs. Privacy. While its simplicity is a definite benefit, a will has serious disadvantages. For instance, a will is only an instruction to a court of law; it can be contested. Once entered into court, your will is public record, eliminating any privacy.

Relatives, friends, and associates can be reading a newspaper, read about your death and petition the court to share in your wealth. Family Court can be heartbreaking for many; not only do your loved ones have to cope with your death, but then have to battle other acquaintances and distant family members for the right to your estate.

Can a Will Be Invalid? Unfortunately, when a will comes before a court, you are no longer around to vouch for it. A will can be found to be invalid for several reasons including:

- **Improper execution**
- **The grantor was not mentally competent and able to understand what they were doing when they executed the will**

The will was made under duress, or as a result of undue influence from another person.

If the will is found to be invalid for any reason, the court will usually treat it as though you had died intestate, or without a will. At that point, the particular state you reside in will decide how your property will be distributed. And if there are no living relatives, the property reverts back to the state.

Wills and Probate. The process of having an attorney present your will before a court is called probate. Unlike living trusts, each and every will must go through the probate process. Probate usually ties up the estate anywhere from 9 months to 2 years, and can cost approximately 2% of your entire estate value.

What Happens If You Become Incapacitated? Wills only become effective when you pass away; they do nothing for you while you're still alive. For instance, if you should become incompetent, and not have named a trustee or given power of attorney to someone else, the court will decide your proper medical care and distribution of assets. By the time you pass away and the will goes into effect, there may be little of your original estate left for your family.

Nothing Worse Than Death and Taxes. Wills do nothing for estate taxes. Individuals that have assets, including real estate, over \$1 million are subjected to extreme estate taxes that climb up as high as 50%. Plus, if you're married, a will may not maximize the Unified Credit exemption for both individuals; in some cases, the \$1 million exemption meant per individual is reduced to \$1 million per couple. In 2009, the estate tax exemption is raised to \$3.5 million per person and in 2010 the estate tax goes away altogether. However, if Congress doesn't act, the law will revert to the \$1 million per person exemption level in 2011.

Drafting Your Own Will. Each family's situation is different. For some, a will is sufficient. However, it is the most basic of estate planning documents. If you wish to preserve your wealth for generations to come, then you may want to combine a will with other advanced estate planning techniques.

While a will can be drafted with simple estate planning software, it's usually wise to have a professional estate attorney do it for you. Legal counsel may help you avoid many of the pitfalls associated with wills, and ensure that the chances it could be contested are reduced.

Living Trusts

Over the last two decades, the popularity of Living Trusts has skyrocketed. No longer a tool just for the rich, Living Trusts are one of the most common estate planning tools in use today.

This legal arrangement, usually drafted by an estate attorney, creates a separate entity called a Living Trust. A Living Trust is called that simply because it is created while you're alive (as opposed to a "testamentary" trust created after death).

The Parties Involved. The Living Trust document itself names three different parties. The individual (or couple) that establishes the Trust is named the Grantor (also referred to as the Trustor).

The Trustee is the person named by the Trust as the controller of the Trust's assets (and in many cases, the Trustees are the same people as the Grantors). On the receiving end, the Beneficiaries are the heirs that will benefit from the Trust once the Grantor's have passed away.

Who Needs A Living Trust? Almost anyone with an estate of \$100,000 or more can benefit from having a living trust. Estates of \$100,000 or more are often subjected to probate in their state of residence, which can cost anywhere from 2%-4% of the estate's value in court and legal fees.

The living trust also is useful for individuals subject to estate taxes. Through a living trust, a couple is able to maximize their Unified Credit to its fullest. It even accomplishes protection for individuals wanting to avoid conservatorship.

Advanced living trusts can be structured for complicated family situations. Re-married spouses, with children from a previous marriage, can use an advanced revocable trust to ensure kids receive their proper inheritance.

Avoiding Probate. Living Trusts avoid probate, since they are completely private. Because a trust is recognized as a separate legal entity, distributions can be made by a Trustee to named beneficiaries without any involvement from the courts.

The courts maintain no control over the Trust's assets, and do not tie up the assets in a lengthy (and costly) probate process. The Trustee simply distributes assets to named heirs, but only if those assets have actually been placed inside the Trust.

Funding Your Living Trust. Once established, almost anything can be placed in a trust: bank accounts, stocks, bonds, real estate, life insurance, and personal property. In "funding" the trust, you simply change the name or title on your assets to the name of your Trust. Many people worry about losing control of assets; however, that is not the case within a carefully constructed Living Trust.

Always There For You. Because the Trust is essentially controlled by one individual (the Trustee), that person can carry out your wishes when you're not able to. For instance, if you have children from a previous marriage and wish to leave them an inheritance, specific instructions to the Trustee will ensure that they receive what you had requested.

If you're institutionalized or unable to care for yourself anymore, the Trust can still function and make distributions as needed. The Trustee has a fiduciary responsibility to see that your requests are fulfilled exactly. He or she can even provide care and protection for disabled relatives or handicapped children in accordance with your wishes.

Reducing Estate Taxes. The Living Trust also minimizes estate taxes by fully utilizing every individual's Unified Credit. The Unified Credit, as mandated by Congress, shelters up to \$1 million from estate taxes. With only a will in place, a married couple will receive a single \$1 million exemption. However, if a Living Trust with "A-B Provisions" is in place and one spouse dies, the Living Trust separates into two separate trusts (commonly referred to as an A-B Trust). . In 2009, the estate tax exemption is raised to \$3.5 million per person and in 2010 the estate tax goes away altogether. However, if Congress doesn't act, the law will revert to the \$1 million per person exemption level in 2011.

In an A-B Trust, each of the two separate trusts receives its own \$1 million exemption, meaning a total of \$2 million is sheltered from estate taxes. Remember that for 2009, this exemption is raised and so a total of \$7 million could be sheltered from estate taxes. In 2010, there is no estate tax. Also keep in mind that if Congress doesn't act, the law will revert to the \$1 million per person exemption level in 2011.

Any amounts over that \$2 million (\$7 million in 2009, as noted above) will be subject to estate taxes, with rates climbing as high as 50%.

Living Trusts are easy to start-up and require little on-going maintenance. They afford an extra measure of protection against loss of control, and ensure that your assets remain out of the public record even after your death. However, they do not provide protection against creditors or divorce, and do not reduce estate taxes for estates over the limits specified in the law.

Power of Attorney

A power of attorney is used for situations where an individual cannot be present, but that individual has entrusted someone to do the job in their place. When someone holds "a power of attorney," they are able to enter into contracts, negotiate, and settle matters as if they were that other person.

An ordinary power of attorney expires when a grantor becomes incompetent or passes away. The theory is that if the principal couldn't do it on their own, then the agent shouldn't be able to do it either. This makes sense in many financial and commercial situations, but makes little sense when dealing with elderly issues.

Durable Power of Attorney. A Durable Power of Attorney can act on a person's behalf even while that person is still alive. People suffering from dementia or senility, who are no longer competent to make their own decisions, need to continue to make financial and medical transactions long after they have the capacity to do so. A Durable Power of Attorney allows them to do that.

Setting up a Durable Power of Attorney is as easy as signing a single legal document, naming who you would like to appoint as your agent. There are no hearings or court proceedings to go through. What happens if you do suffer from dementia or are incapacitated, and have not signed a Durable Power of Attorney? If you have not named an agent to act on your behalf, you can only hope that someone will become a Conservator for you.

Conservatorship is a lengthy and expensive court procedure requiring someone to volunteer to become your Conservator. Finding a volunteer, whom you trust with your affairs, to suddenly appear and want to be your Conservator is rare. In many cases, it is also unreasonable to expect there will be enough money and time to go through the court proceedings necessary to establish the conservatorship.

Individuals granted Power of Attorney must, by law, act in good faith at all times on behalf of the grantor. Suppose an elderly man is declared incompetent, but had given his adult child a Durable Power of Attorney. The son cannot turn around and put his father's house in the child's name, or sell off assets for his own use. The law maintains agents have a fiduciary duty to the grantor, and cannot take advantage of his or her position.

Medical Power of Attorney. A Medical Power of Attorney (also known as a Durable Power of Attorney for Health Care) is so critical, because it allows a trusted agent to make healthcare decisions on your behalf. Few hospitals wish to take on the responsibility of determining your healthcare decisions for you, especially in this litigious society.

The Medical Power of Attorney helps your doctors determine when life-supporting measures should be stopped. If your wish is to not use life-sustaining measures, you can convey this to the person you've named, and they will be able to fulfill your wishes on your behalf. A Medical Power of Attorney only has this responsibility to you for healthcare decisions, and cannot make financial or other decisions on your behalf (unless, of course, you've granted both Powers of Attorney to the same person).