



Estate Planning Basics

An at-a-glance summary of transferring assets through wills, trusts, and powers of attorney.

At death, assets are transferred in one of four ways:

Contract

- Life Insurance
- IRAs
- 401(k)
- Annuities

Joint Tenancy with Rights of Survivorship (including TOD and POD)

- Deeds
- Bank accounts
- Brokerage accounts
- Stock/bonds/mutual funds

Trust Agreement

- Revocable
- Irrevocable

Probate Court

- Statutes
- Will

Therefore, it is essential that your estate plan properly coordinates the transfer of all assets.



Essential Estate Planning Documents

Will

A Will is a document signed with legal formalities, directing the distribution of your “probate property.” Probate property is any property you own that is not otherwise distributed by contract, survivorship, TOD or POD designations, or trust.

A Will allows you to nominate an Executor who will have the legal obligation for gathering, inventorying and safe guarding your assets, notifying and paying your creditors, and ultimately distributing your assets as you direct.

A Will also permits you to nominate a guardian for your minor children.

Distribution of your probate property, whether by Will or by statute in the absence of a valid Will, is supervised by the Probate Court of the County in which you reside at your death.

A well drafted Will can provide flexibility in the administration of your estate, facilitate smooth transition of your assets, and allow you to control the final disposition of your assets in accordance with your wishes.

Trusts

A Trust is a very flexible legal device used for the management and transfer of assets. The creator of a trust can reserve the power to amend and revoke the terms of the trust during their lifetime (a “revocable” trust) or the trust can be irrevocable. Revocable and irrevocable trusts can be used for a variety of purposes.

One main reason a revocable trust is used is to manage assets after the death of its creator. This may be to manage assets for beneficiaries who are not mature enough or otherwise able to adequately manage assets, for tax planning, to ease in the transfer of assets by minimizing or avoiding the probate process, to avoid probate of real estate located in a different state, to provide protection from a beneficiary’s creditors, including former spouses, or to provide for the management of successive beneficiaries such as a spouse first, then children (often a motivation in second marriages), or a combination of reasons.

Careful consideration must be given to the proper drafting of trust agreements and to the selection of trustees.

Essential Estate Planning Documents, continued

Power of Attorney/Health Care Decision Making

Management of your assets and your healthcare during your lifetime is just as important as planning for the disposition of your assets after your death. Unfortunately, it is often given little attention or even overlooked.

A carefully drafted Financial Durable Power of Attorney permits you to appoint one or more agents to act on your behalf. Special attention must be given to the selection of these agents (often called “Attorney in Fact”) and to the specific powers given to them.

In addition to the Financial Durable Power of Attorney, it is important to have and understand a Health Care Durable Power of Attorney. This document authorizes others to make health care decisions for you if you are unable to do so. In addition, you may authorize them to refuse or withdraw life support systems under certain circumstances.

You should engage in a careful, professional review to determine the best way to accomplish your goals and effectively manage your assets.

Tax Basics

Estate Tax is a tax on the value of the assets you own at your death (including life insurance death benefits). It is different from an income tax and is a tax on all assets—both probate and non-probate (avoiding probate does not avoid estate tax). Some states also have an estate tax separate from the Federal estate tax. The Federal estate tax currently taxes estates with value exceeding \$11.7 million (the Exemption) with a maximum rate of 40%. The Exemption is scheduled to fall to \$5 million on January 1, 2026). If applicable, proper planning can help to significantly reduce estate taxes.

Income and Capital Gains Taxes are also an important consideration in estate planning. Generally, receipt of an inheritance is not taxable income to a beneficiary. Also, most assets get a tax basis equal to the fair market value of the asset as of the date of death, eliminating capital gain prior to death. However, a major exception to this general rule is for tax-qualified retirement assets such as 401(k)s and IRAs. Distributions from these assets are taxable to the recipient and require careful planning to allow for the maximum voluntary income tax deferral for the recipients. This becomes particularly complex when coordinating these types of assets with trust planning.

The information within is intended as only a brief summary. Each matter discussed has complex requirements and requires knowledgeable, professional advice in order to properly understand and effectively use. It is not intended to be legal advice.



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