



Estate Planning Essentials

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The Fundamentals of Estate Planning

An estate plan is essential to every financial strategy. Having a basic understanding of estate planning can benefit both you and your family. It should allow you to leave a larger legacy, help reduce your transfer taxes and possibly avoid disinheritance.

There are many components to an estate plan, and most often creating a will is the first step. Although a will is a great place to start, there is more to estate planning than deciding how to distribute assets among heirs. Your estate plan should also ensure that your family members and/or caregivers are provided with the proper instructions on how to care for you during temporary or permanent incapacity.

These essentials can serve as a checklist of basic estate planning concepts and documents to help avoid leaving any decisions to chance.

Will

The main component of an estate plan. It is used as the primary document to ensure that property and assets are distributed according to the individual's wants. You should review and update your will at least once every two years and after any life-changing events such as marriage, divorce or new children. If you die without a will, your assets will be distributed through the applicable state's law of intestate succession and could become property of the state.

Executor

An individual designated in a will that is legally responsible for carrying out the will. Aside from distributing the assets, the executor may also be responsible for:

- » Filing a copy of the will with the local probate court
- » Notifying respective banks and credit card companies of the decedent's death
- » Paying any of the decedent's ongoing bills
- » Filing an inventory of the estate's assets with the court
- » Deciding what kind of probate is necessary
- » Maintaining the decedent's property until it is distributed or sold
- » Paying the estate's debts and taxes
- » Representing the estate in court¹

Beneficiary Designation

A section on a financial account where beneficiaries are specifically listed. Assets with the proper beneficiary designations do not go through probate. If there is a conflict between a beneficiary designation and a will, the beneficiary designation will override the directives of the will.

Pay on Death (POD) or Transfer of Death (TOD)

An account section that creates a beneficiary designation on financial accounts that do not have a beneficiary designation such as checking, savings, CDs or investment accounts. POD and TODs pay the beneficiary directly and therefore do not go through probate.

¹ Fabio, Michelle. "Top 10 Duties of an Executor of a Will". legalzoom.com. Web. April 2018.

Living Will

A document that explains the owner of the will's wants if they become incapacitated. It typically acknowledges the refusal of, or desire for, medical treatment in the event of a terminal illness, an injury or permanent unconsciousness.

Power of Attorney (POA)

A notarized document that grants another person the power to legally act on behalf of another person.

- » **Health Care Power of Attorney:** Grants your power of attorney the ability to make medical decisions if you are unable to make them on your own.
- » **Special Power of Attorney:** Grants your power of attorney specific powers. For example: selling property, handling business transactions and collecting debts.
- » **Durable Power of Attorney:** Any power of attorney can be made durable by including language in the document that extends the duration of your power of attorney's authority in the event that the document expires while you are mentally incompetent. This can vary by state. Some states already consider all power of attorneys durable unless explicitly stated otherwise.

Joint Ownership Structures

- » **Joint Tenancy with Right of Survivorship:** Each owner's share is owned equally and is passed directly to the surviving joint owner upon death, avoiding probate. This ownership can be severed by either owner during their life.
- » **Tenancy by the Entirety: Exclusively for spouses:** Similar to Joint Tenancy with Right of Survivorship, but it cannot be terminated by either spouse. It will sever upon divorce.
- » **Tenancy in Common:** Each owner holds a distinct undividable share. The owners are able to sell, exchange, gift, or leave their share to anyone without consent from the other owners. Upon death of the owner, their share is transferred to the decedent's appropriate heirs through probate.
- » **Community Property:** Community property rules hold that property interests acquired during marriage are considered to be owned equally by each spouse regardless if they are owned individually on the title. Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin, operate under a community property system. Each state's laws can vary.

In addition to the estate planning terms and essentials discussed, you should also ensure that your executor knows where the following information can be found and that these documents are easily accessible:

Account Information

Bank account information, bank account online login information, safe deposit location, life insurance and retirement account information.

Proof of Ownership

Documentation of housing and land ownership, vehicles, stock and savings bonds.

Marriage License

The surviving spouse needs proof of marriage before they can claim any assets.

Divorce Documents

Lays out child support, alimony, property settlements and division of accounts.



Strategic Titling of Assets

A properly crafted beneficiary designation can help ensure a timely and smooth transfer of assets. Accounts with beneficiary designations pass differently than assets under probate so it is essential to understand the different rules.

Probate:

The legal process of distributing and settling an estate according to the law.

Probate Process:

- » The will is used as the primary document to establish the beneficiaries of the estate.
- » Creditors can make claims against the estate.
- » After debts are settled, the estate will pay any taxes due before the assets can be legally transferred to the respective beneficiaries.

An important goal of estate planning is to reduce the amount of assets that pass through the probate process. Some disadvantages of probate can be delays, expenses, access to creditors and disinheritance. A few examples of this are:

- » The probate process does not occur immediately and it may take time for beneficiaries to receive their assets.
- » An attorney may be required for the probate process.
- » Anyone can make a claim against the estate during the probate process.
- » If a will is not constructed properly, there can be unnecessary complications, delays and expenses.



How to Avoid Probate

There are legal arrangements and certain assets that pass property by law, therefore avoiding the probate process.

1

Trusts

A trust is an arrangement in which property is managed by one party for the benefit of another. A trust document specifically lists who receives trust assets and the trustee is responsible for dispensing these assets directly to the beneficiaries.

2

Concurrent Ownership

Property that is owned jointly with rights of survivorship or owned jointly in the entirety passes automatically to the surviving joint owner at the death of either owner.

3

Beneficiary Designations

Certain types of accounts pass directly to beneficiaries outside of probate through a beneficiary designation listed on the account.

Types of Accounts with Beneficiary Designations

Tax-Deferred Accounts

IRAs, qualified plans, and deferred annuities

Tax-Free Accounts

Roth IRAs (that have met the qualified Roth distribution standards) and life insurance

Other Accounts

Pay on Death (POD) and Transfer on Death (TOD) accounts



Types of Beneficiaries

Spouse

The spouse has the most post-death distribution options for tax-deferred accounts. In these accounts, the spouse is the only beneficiary who can assume ownership.

Deceased Spouse Passed Away Before Their Required Beginning Date (RBD)

The surviving spouse can maintain the account and does not have to begin distributions until the deceased spouse's RBD.

- » **RBD = Required Beginning Date:** The date by which an IRA must begin distributing payments to the IRA owner.

Older Spouse Survives

If the surviving spouse is older than the deceased spouse, keeping the account as an inherited IRA allows them to wait until the decedent would have begun taking the required minimum distribution.

Younger Spouse Survives

If the surviving spouse is under age 59 ½, they are permitted to leave the account as an inherited IRA and distribute funds as needed from the account without the 10% additional tax.

They do not have to take distributions until the deceased would have reached their RBD. If the surviving spouse is 59 ½ or older, the survivor can roll the account into their own name.

Non-Spouse

Non-spousal beneficiaries cannot assume an inherited account with full rights of ownership. For IRAs, Roth IRAs, qualified plans, and deferred annuities a non-spouse beneficiary must begin distributing the assets of the account and recognize any taxable distributions as income.

Planning Point: **Spendthrift Beneficiary**

Leaving a large inheritance to a beneficiary who cannot handle it can cause irreparable damage to a legacy and potentially to the beneficiary themselves. A "spendthrift trust" is designed to protect a beneficiary who would, without oversight, quickly spend or lose an inheritance.

A beneficiary does not have to be a living person, but an entity listed as a beneficiary does not have the same options as an individual beneficiary.

Estate Listed as Beneficiary

The recipients of the assets are determined through probate. If the account is qualified, it must be distributed within five years after the account holder's death.

Trust Listed as the Beneficiary

Assets from a nonqualified account paid to the trust within five years of death avoid probate.

- » **See-Through Trusts:** A type of trust for IRAs, qualified plans, and Roth IRAs that may allow a life expectancy stretch option. The stretch option is based on the age of the oldest trust beneficiary. To have this option the trust must:
 - Be valid under state law
 - Be irrevocable at death
 - Have identifiable beneficiaries
 - Have beneficiaries that are individuals
 - Remit a copy of the trust document to the IRA custodian

Charity as the Beneficiary

A charity is tax exempt. The original account owner can avoid leaving an income taxable legacy to their heirs.

Planning Point:

Entity Listed as Beneficiary

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If the owner of an IRA or Roth IRA passes away after reaching their Required Beginning Date (RBD) and names an entity as the beneficiary, the entity may use the remaining single life expectancy of the deceased account holder as the longer period to distribute the account. If the owner had not yet reached their RBD, then five years is the longest post-death distribution period. This rule is not applicable for nonqualified deferred annuities where the longest period for entity beneficiaries is always five years.²

² Jackson National Life Insurance Company. n.d. A Strategic Guide to Accumulation & Wealth Transfer. Jackson National Life Distributors LLC.



Multiple Beneficiary Designations

How the beneficiary designations are assigned can be essential in determining how assets are passed to beneficiaries and in what order.

Primary Beneficiary

The primary recipient of assets upon the owner's death. There can be more than one primary beneficiary listed.

Contingent Beneficiary

If the primary beneficiary were to pass away before the owner, the contingent beneficiary would receive the proceeds from the owner's death.

Per Capita

Under a per capita beneficiary designation, the assets will be split evenly between the remaining primary beneficiaries.

Per Stirpes

Under a per stirpes beneficiary designation, the assets that would have been passed to the deceased beneficiary would now pass to the heirs of the deceased beneficiary.

All of the information in this brochure should help you avoid these beneficiary designation and estate planning pitfalls:

Common Beneficiary Designation Mistakes

- » Failing to Name a Beneficiary
- » Naming an Estate as the Beneficiary
- » Failing to Name Contingent Beneficiaries
- » Not Updating your Beneficiaries
- » Overlooking Per Capita or Per Stirpes Designation
- » Spendthrift Beneficiaries

Common Estate Planning Mistakes

- » Improper Beneficiary Designations
- » Failure to Update Asset Titling to Reflect Trust Ownership
- » Incorrectly Assuming Clients' Goals
- » Naming Minor Children as Account Beneficiaries
- » Failure to Address Medical Directives
- » Ignoring State Estate and Inheritance Taxes
- » Failure to Address Asset Protection

It is estimated that \$30 trillion will pass from boomers to millennials over the next 30 years. You should inform your family of all the assets you own, or else they may never find out.



Having the proper knowledge of estate planning concepts, necessities, and mistakes is both advantageous to you and your heirs. It is important to ask yourself the following questions throughout your life to ensure that your assets are protected through life's inevitable changes.

- » When was the last time you reviewed your will and beneficiary designations?
- » Are the beneficiaries of your retirement accounts current?
- » If something were to happen to one of your beneficiaries, how would you want the assets divided?
- » Is there any reason you would want to control the distribution of assets to one or more of your beneficiaries?
- » How does your IRA fit into your estate plan?

The time that you spend gathering information and making certain your wishes are known will help ensure that your estate will be handled in the way you want it to be. It will also be a beneficial way to save your loved ones from having to search for important documents and making difficult decisions during a traumatic time.

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