

Estate Planning Basics

Estate planning is one of the most important steps you can take to ensure that you and your family are prepared in the event of your incapacity or death. A well-developed estate plan gives you peace of mind in knowing that your family will be protected and that your wishes will be followed.

Without a proper estate plan, will your assets be protected for your loved ones when you pass away? If you experience a period of significant disability or incapacity, who has the legal authority to pay your bills and manage your affairs? Who gets to make medical decisions on your behalf, and does that person even know your health care wishes and desires?

A comprehensive estate plan will protect you, your assets, and your family. While the exact details of estate planning can vary based on a number of circumstances specific to you, the following documents are the starting point for most estate plans:

Last Will and Testament

A Last Will and Testament (a “Will”) directs the disposition of your assets upon your passing. A Will also allows you to appoint the person or persons—known as your Executor—who will be responsible for administering your estate, as well as the person you want to serve as the Guardian of your minor children. Without a Will, these decisions are made according to the laws of your state and the ultimate outcomes, such as who will inherit your assets, may be contrary to your wishes.

Revocable Living Trust

In many situations, a Revocable Living Trust is the preferred option for directing the disposition of your assets at your death. If you have a blended family, minor children, or you want to protect your children from spendthrift, creditor, or marital liability issues, then you want to strongly consider incorporating a Revocable Living Trust into your estate plan.

Your Trustee is responsible for managing your trust upon your incapacity or death. Distributions to your designated beneficiaries will be made by the Trustee in accordance with your wishes and directions. Assets may be held in trust for a defined period of time, until a beneficiary reaches a certain age, or even for the duration of the beneficiary’s lifetime.

General Durable Power of Attorney

An important issue to consider is who will handle your financial and personal affairs if you become unable to do so yourself. By executing a General Durable Power of Attorney (a “POA”), you choose the person or persons—known as your Agent—who will make these important decisions for you during a period of disability or incapacity. Your Agent will have the authority to pay your bills, manage your financial accounts and investments, and maintain or even sell your real property. If you fail to execute a POA and later become incapacitated or otherwise unable to make your own decisions, the court will appoint a Guardian and/or Conservator to handle your affairs.

Advance Medical Directive

An Advance Medical Directive (an “AMD”), also known as a Medical Power of Attorney, designates the person or persons you trust to make medical decisions for you if you are unable to express your own wishes. You may also list burial instructions and organ donation preferences in your AMD.

In addition to an AMD, you should also consider the following documents related to your medical affairs:

A **Living Will** allows you to express your desires about end-of-life decisions, such as whether you want artificial or extraordinary means that would only serve to prolong the dying process. You can also express your desires regarding artificial nutrition and hydration. The directives in your Living Will only apply when you are in a persistent

vegetative state or suffering from a terminal condition and no recovery is possible.

An **Authorization for Release of Protected Health Information** (i.e., a HIPAA Waiver) authorizes your physician and other medical providers to disclose your otherwise confidential health information to the Agents named in your AMD.

Beneficiary Designations

Your estate planning is not complete without a thorough review of your beneficiary designations. It is critically important to ensure that your estate plan works in tandem with the beneficiary designations on all your accounts, policies, and plans (such as investment accounts, life insurance policies, and retirement plans). For example, if you are executing a Revocable Living Trust, in most instances you will want to update your beneficiary designations to name your new trust as the payable (or transfer) on death beneficiary of your accounts, policies, and plans.

Additionally, there are several other methods for designating beneficiaries to receive your assets:

Revocable Transfer on Death (TOD) Deed: This deed allows you to designate a beneficiary to receive your real property upon your death, while allowing you to retain ownership and control during your lifetime.

Nonprobate Transfers on Death: Virginia law authorizes the use of a written instrument to designate a transfer on death beneficiary for a wide range of assets, such as promissory notes, business interest (such as LLC membership interest), marital property agreements, stocks and securities, as well as other financial accounts and products that otherwise do not offer beneficiary designations as part of its policy or plan.

Additional Estate Planning Tools

Depending on your specific situation, desires, and preferences, there are many other estate planning tools you may want to consider, such as:

- Special Needs Trust
- Marital Agreement
- Designation of Person to Make Arrangements for Funeral and Disposition of Remains

- Self-Settled Spendthrift Trust
- Irrevocable Life Insurance Trust
- Trusts for Estate Tax Planning or Charitable Giving Strategies:
 - QTIP / Marital Trust
 - Family / Credit-Shelter Trust
 - Charitable Remainder Trust
- Titling of assets (such as joint ownership and/or survivorship accounts)
- Visitation Agreement

Common Estate Planning Mistakes

Waiting to Plan

One of the most common mistakes is waiting too long to establish your estate plan. If you are overwhelmed by the thought of planning, it is a good idea to start with the basics. Even a simple plan can give you peace of mind and that your loved ones will be protected in the event something happens to you.

Failing to Periodically Review

Have you experienced family, financial, or other life changes? Have laws changed since you prepared your estate plan? Keeping your plan current is vital to achieving the goals you set out to accomplish.

Jointly Titling Assets with Non-Spouse

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Holding assets jointly with someone other than your spouse is common, especially with older individuals who need assistance paying bills and managing their finances. Doing so, however, can have severe unintended consequences. The asset is subject to the creditors and liabilities of the joint owner. The asset may subject to marital claims in the event of the joint owner's divorce. And, finally, the joint (surviving) owner becomes the sole owner of the asset upon your death – meaning that the asset does not pass according to your estate plan.