

FUNDAMENTAL ESTATE PLANNING

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For many people "Estate Planning" is something only to the very rich do. While avoidance of estate taxes is a major element of estate planning for larger estates, every person risks subjecting his or her family to major problems if he or she has not directed how assets will be disposed of upon death.

Why should you have a Will?

One of the primary purposes of a will is to designate the persons who are to receive your assets upon your death. If a person dies without a will (i.e., "intestate"), the state statutes list which relatives will receive the person's assets. For example, if a Georgia resident dies with a surviving spouse and three (3) children, the children and the spouse will each inherit a one-fourth interest.

If a person dies intestate, children will generally have access to inherited assets at the age of 18. In the above example if the probate estate were worth \$600,000, the spouse would inherit \$150,000 and each of the three children (upon reaching age 18) would receive \$150,000. Unfortunately the children may not have the maturity to handle those sums and the assets may be quickly dissipated. By drafting a will that provides for a trust for the children, distributions can be delayed until the children have the maturity to handle the funds.

By properly drafting a will, estate taxes can be minimized. For example, each person is allowed an amount he or she can pass free of any estate or gift tax, called the Unified Tax Credit. As of 1999, it equaled \$650,000. If a couple's combined estate (with insurance) exceeds \$650,000, a will may be needed to maximize the tax-free transfers at up to \$1.3 million rather than just \$650,000.

If a person has minor children the will can provide the names of the persons who the decedent wants to raise the children. These "guardians" are most often family.

Persons without children may want to make sure only designated charities or friends and family members receive their assets. This cannot be done without a will.

Finally, the process of probating the estate of an intestate decedent is generally more complicated than the probate of a decedent dying with a well drafted will. The greater complexity in the intestate area will generally result in more delays and hardships to the family and in higher legal fees.

Probate

Probate is a process by which the court oversees the collection and distribution of the assets of the decedent. It can be a fairly expensive process.

Particularly when one is facing imminent death or disability, will alternatives should be reviewed. A living trust is designed to avoid the probate process by transferring assets into the trust which is the legal owner of the assets. Upon the death of the grantor of the trust, the assets are distributed to the designated beneficiaries or may continue to be held for the benefit of the beneficiaries. Because the trust and not the decedent owns all the assets at death, there is generally no probate process. A living trust generally provides minimum estate tax savings.

Medical and Property Decisions

As our population continues to age, people are being forced to designate how medical decisions will be made for them if they cannot make those decisions.

A "Living Will" is a written document in which a person states that he or she wants life sustaining treatment withheld or withdrawn if he or she has a terminal condition. The document deals only with the removal of life support for terminal patients.

A "Medical Power of Attorney" is a more expansive document. It designates the individuals who are to make all medical decisions for the person if he or she is unable to make those decision. While it generally covers the areas governed by a Living Will, is also covers most other medical decisions and can include a designation of a guardian for the disabled adult.

A "Durable Power of Attorney" can designate the individuals who will be responsible for managing the property and income of a person who becomes disabled. The power can provide that it only becomes operative upon disability. A well drafted power of attorney can result in reduced costs and minimum delays (as opposed to a guardianship), assures that the client and not the court selects the persons to make those decisions, and, if properly drafted, can result in significant estate and income tax savings.

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