Introduction to
Basic Estate Planning

Estate planning can be complicated, but its purpose is straightforward: It aims to provide for the management and transfer of your property in the event of your incapacity or death at the smallest financial and emotional cost to your family.

This brief introduction to some of the basics of estate planning merely attempts to familiarize you with how it works. It does not attempt to describe every possible estate planning document that may be drafted or technique that may be followed. We encourage you to talk to an experienced planner for a comprehensive review of your specific needs and circumstances.

Key Benefits of Estate Planning

The key benefits of any estate plan may include:

- Minimization of estate-related taxation
- Control over the distribution of your assets
- Protection of loved ones in the event of your death
- Designation of executors, trustees, and guardians to manage your affairs in the event of death or incapacity

An improperly structured estate plan can have potentially harmful effects, such as:

- Assets may be passed to unintended beneficiaries or devalued by unnecessary taxes or unsound investments.
- Failure to name executors, trustees, and guardians to manage your affairs invites conflict over who should fill these roles, and court involvement.
- Incapacitated people could have a court-appointed guardian or conservator who might not follow their wishes regarding medical and financial matters.

Will-based Revocable Trust-Based Estate Planning

Some estate plans are will-based, meaning the plan's key dispositive terms (who gets what and in what format) are contained in your will and the plan will be implemented as part of a probate process. Other estate plans are trust-based, meaning the key dispositive terms are in your revocable trust agreement, not the will, and will be primarily implemented outside of the probate process. In the latter case, the will is still necessary, and any probate assets will be paid to the trust so that the trustee may distribute them as part of your more comprehensive plan. This type of will is known as a pour-over will.

Whether will-based or trust-based, both types of plans allow you to tailor your plan to your wishes. In either case, proper titling of assets and properly completed beneficiary designations are essential to creating an effective estate plan. An estate planning attorney can guide you regarding which type of plan is best for you, but you must have a plan in place. If you die without a plan, your estate may unnecessarily go to probate, where state law determines who will receive your assets and the court determines who will care for your children.

You can achieve the same basic dispositive objectives whether your estate plan is will-based or trust-based. In some jurisdictions, however, the probate avoidance feature of a revocable trust together with the privacy features of a trust lead the estate planning attorney to recommend a trust-based plan.

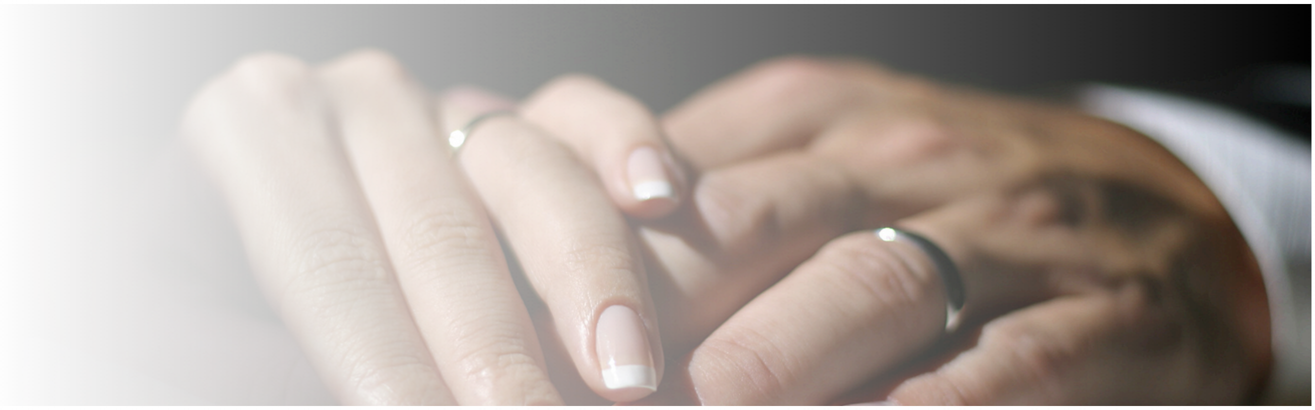
Focus on Minimizing Taxes

For some, a driving motivator for their estate planning is the minimization of possible federal estate tax liability. The federal government currently imposes a gift tax on lifetime gifts and an estate tax on asset transfers at death. Since the maximum federal estate and gift tax rate is 40%, the estate planning process typically focuses on reducing or eliminating these taxes if the client is above certain wealth thresholds.

A well-structured plan can dramatically reduce the estate tax by taking advantage of available deductions and exemptions, including:

- The gift and estate tax unified credit, which permits individuals to transfer a specified amount of assets (often referred to as an exemption) tax-free either during lifetime or at death (in 2025, the exemption is $13,990,000 per person).
- The unlimited marital deduction, which provides for tax-free transfers during life and at death between a married person and his/her U.S. citizen spouse.
- Annual exclusion gifts, which are gifts of a present interest (e.g., outright) in a limited amount of property per done each year (the allowable amount is $19,000 in 2025).

Tax Planning for Married Couples



Building upon the unlimited marital deduction referenced above, married couples have several options to avoid estate taxation upon the death of the first spouse to die, which may minimize their federal estate taxation upon the death of the second spouse to die, such as:

- If you leave all your property to your spouse outright, there will be no estate tax at the time of the first death, and the surviving spouse will be able to combine the deceased spouse's federal estate tax exemption amount with their own, shielding the maximum amount of property possible from the federal estate tax at the second death.

- If you do not wish to leave all your property outright to your surviving spouse, there are various trust approaches that can be followed upon the first death to avoid taxation upon the first death and minimize taxation upon the second death. The technique used may include the creation of an estate tax sheltered trust in conjunction with an outright or marital trust transfer to the surviving spouse upon the first death.

Planning for Children and Future Generations

If you leave property to your children and make no further provisions, each child generally will be entitled to full use and control of his/her inheritance upon attaining the state-defined age of majority, which is usually 18 or 21. A court-appointed guardian will manage the child's property until then.

To avoid the necessity and cost of a court-appointed guardian or provide for the management and protection of your children's inheritance beyond the age of majority, estate planners recommend leaving the inheritance to a trust designed for that purpose under your will or revocable trust. Depending upon the type of trust you choose for distributions to your children, there may need to be additional planning in consideration of the Generation-Skipping Transfer Tax (GST Tax), which is imposed on transfers to grandchildren and their descendants in addition to the federal estate and gift tax. Currently, the GST Tax rate is equal to the maximum federal estate and gift tax rate (40%). Like the estate and gift taxes, there are exemptions and exclusions that shield certain transfers from the GST Tax. Planning for the GST is not considered part of basic estate planning and generally is discussed as part of more advanced planning.

Lifetime and Charitable Gifts

If your estate is large enough that an estate plan taking full advantage of available exemptions and deductions is not sufficient to eliminate the imposition of federal estate tax, lifetime giving may substantially reduce it.

Lifetime gifts are subject to a federal gift tax, which is currently imposed at the same tax rates as the federal estate tax. Such gifts can be sheltered by using some of the exemption during lifetime.

Complete estate planning should include consideration of making charitable gifts as well. Charitable planning includes evaluating potential tax benefits of gifts, as well as implementing a variety of sophisticated techniques such as charitable lead trusts, charitable remainder trusts, and family foundations.

Additional Estate Planning Documents and Techniques

Life Insurance Trust:

Although life insurance proceeds generally are not subject to income tax, they are subject to federal estate tax. As a result, it may be advisable to include provisions for your life insurance in your estate plan. If you decide to give away your life insurance to reduce your estate or acquire life insurance as part of your estate plan, you will likely create an irrevocable life insurance trust specifically designed to hold such policies.

Revocable Trust:

You may decide to utilize a revocable trust (also known as a living trust), rather than a will as your primary estate planning document. As its name suggests, a revocable trust can be revoked or changed at any time during your lifetime. This would be the document implementing your trust-based estate plan.

Durable Power of Attorney:

Regardless of whether you establish a revocable trust to guard against future incapacity, your estate planning attorney will recommend that you sign a durable power of attorney naming a family member or trusted advisor to manage your assets in the event you are no longer capable of doing so.

Living Will:

Many states have laws encouraging physicians and hospitals to follow the wishes of a terminally ill patient who has signed a living will expressing his/her desire that no extraordinary life support measures be used. The law also permits you to appoint a health care representative to make medical and life-support decisions if you cannot act.

The Bottom Line: Talk to an Experienced Estate Planning Attorney

Estate planning is a complex endeavor generally requiring the guidance of a highly knowledgeable professional. This write-up scratches the surface of basic estate planning options and is no substitute for a deeper discussion of the topics with an attorney. The attorney can discuss these issues with you in more detail and can assist you with the development of a comprehensive estate plan that meets your unique needs.

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