Biddinger, Schrot & Rolando, PC
Estate Planning & Elder Law Attorneys

ESTATE PLANNING BASICS:

An Introduction to Estate Planning Concepts and Tools

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WHAT - Is an Estate Plan?

Your estate is comprised of all the wealth you have accumulated during your lifetime, including retirement plans, stocks, bonds, real estate, business interests, personal effects, and anything else you own.

Your legacy is also part of your estate. It encompasses everything from your work ethic and sense of responsibility to the issues and institutions that have come to mean the most to you during your lifetime. All of these can be passed on, along with your assets, to future generations of your family and even to society as a whole.

WHAT - Is Estate Planning?

Estate planning can be defined in many different ways. To put it simply, estate planning is the process by which you accomplish three primary goals:

- Manage your assets while you are alive and well and if you become incapacitated
- Distribute assets according to your wishes after you pass away
- Leave a lasting legacy

Who - Needs an Estate Plan?

Everyone.

Without a plan, the state will decide who receives your assets and when and how your heirs will receive them. Similarly, the state will decide who has the authority to make financial and medical decisions on your behalf if you become incapacitated. Finally, without a plan, your loved ones will have to make difficult decisions while grieving.

When - Should You Plan?

Now, while you can, before your plan is needed.

Many people know they need an estate plan but keep putting it off. Big mistake. The longer you wait, the fewer options you will have to protect your assets and leave a lasting legacy. Worse, if you become incapacitated, you will have no planning options at all. Your family will have to make the decisions you should have made yourself.

The time to plan is *as soon as possible* (if not sooner).

WHAT ARE THE BENEFITS OF ESTATE PLANNING?

A properly designed and implemented estate plan allows you to accomplish all of the following and more, depending on your particular needs and goals:

- Ensure that your minor children will be raised according to your wishes if something happens to you
- Ensure that you have control over your assets if you become incapacitated
- Leave what you want to whom you want and in the manner you want after you pass away, and do it in the most cost-effective manner to minimize fees and expenses
- Protect your assets against creditors, lawsuits and other threats
- Pass your work ethic, values and sense of responsibility to heirs
- Significantly reduce estate, income, gift and other taxes
- Ensure that your financial affairs and information about your family remain private
- Protect your heirs' inheritances
- Leave a lasting legacy and impact on others

THE ESTATE PLANNER'S TOOLBOX

Here is a list of the most commonly used estate planning tools and brief descriptions of their purpose.

LAST WILL AND TESTAMENT

This allows you to specify "who gets what" when you pass away. Without your own Last Will and Testament, your assets will be distributed according to state guidelines. A Will also allows you to name guardians for your minor children. This is important because if something happens to you and your spouse, the state will decide who will have legal authority over your minor children. This could very well be a person or institution you would never have chosen to have such authority.

DURABLE POWERS OF ATTORNEY

These allow you to name people of your own choosing to make decisions for you in the event of incapacity. A power of attorney for health care lets you designate a person you trust to make decisions about your medical care, while a power of attorney for finances lets you name the person you want to make financial and legal decisions on your behalf.

HEALTH CARE POWER OF ATTORNEY

A Health Care Power of Attorney, also known as a Patient Advocate, allows you to choose, in advance, the types of medical treatments you want (or don't want) in an end-of-life situation.

HIPAA AUTHORIZATION

The Health Insurance Portability and Accountability Act (HIPAA) established national standards to protect the privacy of patients' health care information by regulating the use and disclosure of "protected health information."

A HIPAA Authorization ensures your that loved ones and decision makers can gain access to medical information about your condition when they need it.

TRUSTS

There are many types of trusts, capable of helping you accomplish a variety of goals. However, when most people think about trusts, a Revocable Living Trust is the one they have in mind.

A Revocable Living Trust allows you to maintain complete control over your assets while you are alive and after you have passed away. You don't have to transfer your assets to the trust all at once, you can do so over time and even add to the trust as you acquire new assets.

Other benefits of a Revocable Living Trust include:

- Avoiding probate. The probate process is time-consuming, needlessly expensive and exposes your assets and estate to public scrutiny
- It can be changed over time, to compensate for changes in your financial and family situation
- Basic wills can lead to disagreements among family members. A Revocable Living Trust can help eliminate challenges to the will and ensure beneficiaries receive what you have intended for them
- It allows for ongoing financial management. As your wealth accumulates, so too will assets in the trust

The Ten Most Avoidable ESTATE PLANNING *Mistakes*

1. DYING INTESTATE

If you die without a Will or some other form of estate planning, the state in which you reside and the IRS will simply make one for you. Of course, they have no interest in avoiding or reducing estate taxes, minimizing estate administration costs or protecting your family and legacy. The distribution of your assets will just be turned over to the Probate Court. The probate process is needlessly time consuming, frustrating and expensive. It is also open to the public, meaning creditors, predators or anyone else will have complete access to all information about your estate. For the vast majority of people, the benefits of a Will or other estate planning tools far outweigh any initial costs.

2. HAVING AN "I LOVE YOU" WILL

An "I love you" Will is one in which all the decedent's assets have been left to the spouse. On paper, it might seem to be a caring, thoughtful gesture, but the reality is quite different. That's because such a Will simply passes the complex issues and problems associated with transferring and protecting wealth onto the spouse or other loved ones. An "I love you" Will creates more problems than it solves, particularly for future generations.

3. GIVING PROPERTY OUTRIGHT TO YOUR CHILDREN

Here is another "solution" that might sound good at first, but ignores several important realities. For instance, what if the child in question is too immature to handle the responsibility of a large sum of money on his or her own? What if the child suffers a severe financial setback that puts the inheritance at risk to creditors? What if the child marries a fortune-hunter, is addicted to drugs or alcohol, gets divorced or remarried? In short, you may need to protect your children and heirs from their own poor decisions.

4. OWNING PROPERTY JOINTLY

There are two types of joint ownership, Joint Tenancy with Right of Survivorship (JTWROS) and Tenants in Common (TIC). Problems with JTWROS include postponement of probate until last tenancy, gifting issues, and outright distribution. With TIC, you lose the double step-up in tax basis, and your property is subject to the estate plan of each tenant as well as probate for each tenant.

5. NOT HAVING A TRUST

A trust is the single most effective estate planning tool available. There are many different types of trusts. Among the better known and more commonly used are revocable trusts, irrevocable trusts and testamentary trusts. In addition to protecting your privacy, a trust will help you leave what you want, to whom you want, in the way you want—at the lowest possible cost.

6. NOT FUNDING YOUR TRUST

A trust can be thought of as a safe. It can do a great job of protecting your hard-earned wealth, but if there's nothing in the trust—i.e. nothing in the safe—what good does it do you? None whatsoever. Which begs another question, why would someone go to the trouble of creating a trust and then not fund it? The answer is quite often that the person in question simply never got around to it. He or she procrastinated, resulting in an unfunded trust—which is the same as having no trust at all.

7. NOT HAVING YOUR DOCUMENTS REVIEWED AND UPDATED

Once they have their estate planning and other documents created, many people simply file them away and never look at them again. Big mistake. An outdated plan can be as bad or even worse than having no plan at all. Your documents should be reviewed, at the very least, every two years. Why? In a word, change. Your needs and goals change; your financial situation changes; your children grow older and their needs change. The law itself is constantly changing. And even if you've specified a trustee or executor, the named person's ability to follow through on your wishes may change as well. Updating your plan allows you to take these changes into account and avoid unintended consequences.

8. RELYING ON JOINT TENANCY TO AVOID PROBATE

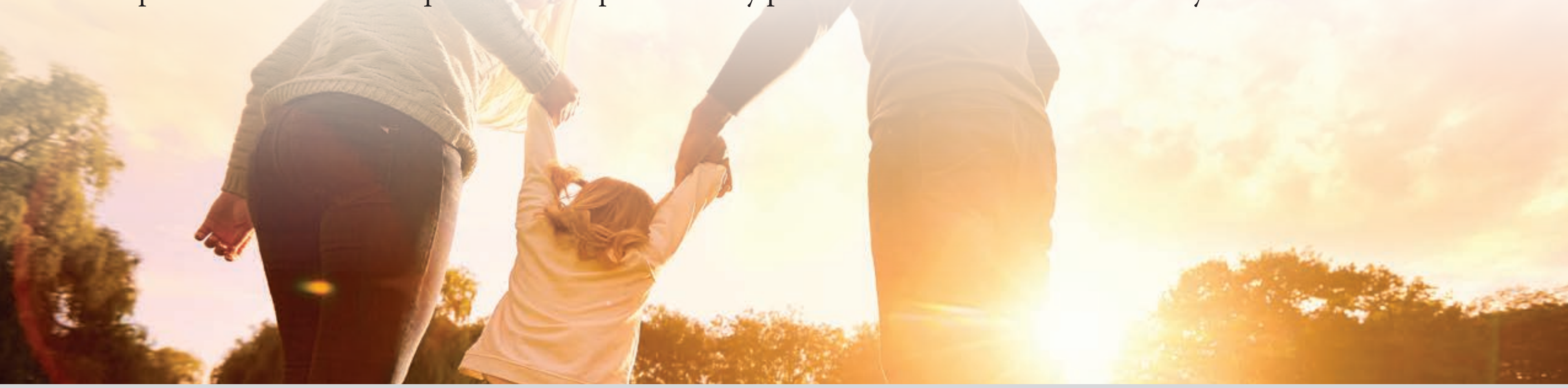
Did you know that joint tenancy can accidentally disinherit intended beneficiaries? Joint tenancy property passes by the operation of law and can defeat an Estate Plan. Many people add names on joint tenancy property incorrectly thinking it will protect their assets if they have to go to a nursing home. This can be a huge mistake and end up disqualifying individuals from Medicaid. The importance of getting expert legal advice to understand property ownership is critical. Different types of property ownership can be very beneficial.

9. THINKING A PATIENT ADVOCATE ALONE IS ENOUGH

The Patient Advocate is a powerful estate planning tool; but to truly ensure your wishes are carried out should you become incapacitated and incapable of making decisions for yourself, addendums can be extremely helpful. For example, an Advanced Health Care Directive can dictate how you wish to be cared for and what steps you authorize medical personnel to take to prolong your life. A HIPAA Authorization can ensure your privacy while still making crucial medical information available to the people you want to have it. A Power of Attorney for financial affairs determines in advance who will be able to make financial decisions for you. Other commonly used addendums include Pour-over Wills, Assignment of Personal Property, Community Property Agreements, Appointments of Guardianship or Conservatorship, to name a few.

10. NOT UNDERSTANDING THAT THE BIGGEST PROBLEM IS NOT THE IRS

If the biggest threat to preserving your wealth is not the IRS, who or what is? Frankly, it is human nature. None of us wants to think about our own deaths or the possibility of becoming incapacitated. Consequently, we tend to put off taking the steps necessary to prepare for what the future may hold. We procrastinate. And our loved ones often suffer the painful financial consequences. Perhaps Walt Kelly put it best: "We have met the enemy and he is us."



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