



WEINBERG, JACOBS & TOLANI, LLP

BASIC GUIDE TO ESTATE PLANNING:

Crafting the Future for
Family and Loved Ones

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Basic Guide to Estate Planning: Crafting the Future for Family and Loved Ones

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Did You Know You Already Have an Estate Plan?

When asked this question, most people are surprised to learn that they already have one – the state’s laws of intestacy provides for the distribution of assets after death if the decedent does not have a formal estate plan. The question that you should be asking is whether this is the estate plan you want – one that’s tailored to fit the needs of your family and family’s future.

Any person who has assets – whether they have millions in assets or only a nominal amount – should have an estate plan. An estate plan is a set of documents that convey how a person would like their assets distributed after death.

Upon a person’s death, law requires that their assets be properly distributed. The distribution process, known as the probate process, is governed by the courts. If the decedent had a Will, the Will is admitted to probate and the court uses the decedent’s Will to distribute assets in accordance with the Will. If the decedent does not have a Will, the court distributes the assets to the decedent’s heirs in accordance with the laws of intestacy. Without proper planning, the distribution process is left to the court and determined by state law, which may not fit the wishes or intentions of the deceased.

Why an Estate Plan is Necessary

People often assume the goal of an estate plan is to save hard-earned money on estate taxes. With that in mind, many people don’t think they’re subject to the federal¹ and state² estate tax and consequently don’t believe an estate plan is necessary. However, increasing home values, larger life insurance policies and larger retirement accounts often push estates over the estate tax thresholds making many people vulnerable to estate tax.

While saving on estate taxes is one of the main benefits of estate planning, there are additional benefits of a properly crafted estate plan:

- Distributing your assets as you wish;
- Maintaining control of assets after death;
- Minimizing the emotional and financial burden on your heirs;
- Providing funeral, cremation or other burial instructions;
- Minimizing feuding among heirs over your estate;
- Increasing the amount available for charitable donations;
- Avoiding the cost and delay of probate; and
- Providing provisions for a guardian of minor children.

Fundamental Estate Planning Documents

There are four fundamental estate planning documents: Last Will and Testament; Durable Power of Attorney; Healthcare Agent Designation (Medical Power of Attorney); and Living Will and Declaration. Depending on where you live, the documents may have different names.

¹ Federal estate tax exemption in 2016 is \$5.45 million.

² DC 2016 Estate Tax Exemption: \$1 million

MD 2016 Estate Tax Exemption: \$2 million

VA 2016 Estate Tax Exemption: No State Estate Tax

Will – A will is a legal declaration whereby a person provides for distribution of his or her property at death. A person’s will applies only to assets owned solely in his or her name (probate assets); assets owned jointly (such as a married couple’s home or car) may pass to the survivor, while assets having a beneficiary owner (such as an IRA or life insurance policy) pass to named beneficiaries upon death.

General and Durable Power of Attorney – A Power of Attorney is a legal document that provides someone that you choose (the agent) the legal authority to act on your behalf in financial matters in the event you ever become mentally incapacitated. The Power of Attorney provides your agent with the authority to make financial decisions on your behalf, provides them access to your assets and the authority to manage those assets, to pay bills, and to take any other action needed to keep your financials in order during your incapacity.

Health Care Agent Designation – A Health Care Agent Designation (Medical Power of Attorney) is a legal document that provides someone that you choose (the agent) the legal authority to act on your behalf in the event you ever become mentally incapacitated. The form provides your agent with the authority to make medical decisions on your behalf.

Living Will – A Living Will is your written expression of how you want to be treated in certain medical circumstances. The document permits you to express whether you wish to be given life-sustaining treatments in the event you are terminally ill or injured, to decide in advance whether you wish to be provided food and water via intravenous devices (“tube feeding”), and to give other medical directions that impact your care, including the end of life.

What is a Trust? Do I Need One?

A trust is an independent legal entity which can own and convey assets. Generally, a trust involves one or more grantors (whose assets are paid into the trust), trustees (who administer the trust) and beneficiaries (who receive benefits from the trust). Whether a trust is right for you depends largely on the size of your estate, what types of assets the estate contains, and what plans you have for you and your family. While trusts can be more beneficial in certain scenarios, they do provide benefits, including:

- Protecting privacy and avoiding probate;
- Reducing estate taxes;
- Maintaining control of assets in the event of incapacity;
- Ensuring that a person’s assets go to their children rather than the surviving spouse’s children from a previous marriage; and
- Managing money for an heir who is too young or financially incompetent.

Revocable Living Trusts vs. Irrevocable Trusts

One of the most popular types of trusts is the Revocable Living Trust. As the name implies, this type of trust can be revoked by the trustmaker during the trustmakers lifetime. With a Revocable Living Trust, the trustmaker is able to maintain control of his or her assets during their lifetime or up until the point in time where he or she no longer has the mental capacity to control their assets at which point their named trustee is responsible for maintaining control of the assets.

On the other hand is an Irrevocable Trust, where the trustmakers assets are taken out of the ownership of the trustmaker, owned by the trust and managed by an independent trustee. A popular form of Irrevocable Trust is the Irrevocable Life Insurance Trust (ILIT) which is specifically designed to hold and

own life insurance policies. Many people don't understand that their life insurance proceeds will be included in their estate at their death. So, for example, if you own a \$2 million term life insurance policy at the time of your death, you've already used up your state estate tax exemption (not applicable to Virginia residents). An ILIT can be used to take the life insurance proceeds out of your ownership. By doing so, the life insurance proceeds cannot be taxed in your estate when you die but may be held in trust for the benefits of your spouse, children or others.

Avoiding Estate Taxes Through Less Expensive Alternatives

Charitable Gifts – Your estate plan can help support religious, educational, and other charitable causes, either during your lifetime or upon your death, while at the same time taking advantage of tax laws designed to encourage private philanthropy.

Gifts to Donees – Another useful way to avoid estate taxes and remain under the estate tax threshold is to gift money to loved ones. A person can give away \$14,000 (the 2016 annual exclusion amount) every year to each person they choose, free of gift tax. A couple can give a donee \$28,000 a year. You also can pay the tuition bill or a medical bill for a person free of gift tax, as long as you pay it directly to the institution.

I Own a Business: Should I account for it in my Estate Plan?

Yes, an estate plan can make sure your business is not thrown into chaos upon your death or incapacity. This is another great example of why estate planning is important and more than an estate tax issue. You can provide for an orderly succession and

continuation of its affairs by spelling out in your estate plan what will happen to your interest in your business.

I Already Have An Estate Plan: How Often Should I Review It

You've met with your estate planning attorney and developed a sound estate plan that covers all of your and your family's needs. Now you wonder how often you should review your plan. Tax laws change constantly so it is a great idea to review your plan regularly, especially your will (and trust if you have one). Personal circumstances and your net worth may also change, necessitating revisions to your plan. A good rule of thumb is to review your plan every two-three years.

About Weinberg, Jacobs & Tolani, LLP

Weinberg, Jacobs & Tolani, LLP is experienced in assisting clients prepare for matters affecting all stages of their lives through the development of estate plans, the creation of wills and trusts to provide for the efficient and cost-effective transfer of assets, and the creation of powers of attorneys, health care agent designations, and living wills to ease the burden of this difficult time on family members.

Weinberg, Jacobs & Tolani, LLP's estate planning team is led by managing partner Anita Tolani and associate attorney Justin DeVault. WJT is located in Bethesda, Maryland and our attorneys are admitted to practice in the District of Columbia, Maryland and Virginia. If you have questions about your estate plan or would like to inquire about the development of an estate plan, please contact (301) 468-5500 or visit us online at www.wjtlaw.com.

