



Courtney Elder Law Associates

Elder Law • Special Needs Planning • Estate Planning

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The Five Components of a Good Estate Plan

Many people believe that if they have a will, their estate planning is complete, but there is much more to a solid estate plan. A good plan can address issues such as avoiding probate, saving on estate taxes, protecting assets if you need to move into a nursing home, and appointing someone to act for you if you become disabled. Without a well thought-out plan, these situations can bring huge problems for you or your family.

All estate plans should include, at minimum, two important estate planning instruments: a durable power of attorney and a will. A trust can also be useful to avoid probate and to manage your estate both during your life and after you are gone. In addition, a health care directive allows you to appoint someone to make medical decisions on your behalf. And if you have life insurance or retirement accounts, forgetting to plan your beneficiary designations can result in loss of intended distributions to family members and increased taxes at your death.

Power of Attorney

A power of attorney allows a person you appoint -- your "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney. A properly drafted power of attorney allows you to set the rules for certain transactions by your attorney-in-fact (such as getting approval from others to sell certain land). A "form" power of attorney that you make yourself from the internet will most likely not take into account some important details that will make it easier to carry out your intentions if you become disabled.

Will

A will is a legally-binding statement directing who will receive your property and assets at your death. If you do not have a will, the state inheritance law will determine how your property is distributed. A will also appoints a legal representative (called an executor) to carry out your wishes. A will is especially important if you have minor children because it allows you to name a

guardian for the children. However, a will covers only “probate” property. Many types of property or forms of ownership pass outside of probate and thus, not through your will. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate and aren't covered under a will. In your will, you can create a trust to hold assets after your death for a minor or disabled child or grandchild or a disabled spouse, thereby avoiding the need for a court-supervised guardianship or conservatorship for that loved one.

Trust

A trust is a legal arrangement through which one person (or an institution, such as a bank or trust company), called a "trustee," holds legal title to property for another person, called a "beneficiary." Trusts have one set of beneficiaries during those beneficiaries' lives and another set -- often their children -- who begin to benefit only after the first group has died. There are several different reasons for setting up a trust. The most common reason is to avoid probate. If you establish a revocable living trust that terminates when you die, any property in the trust passes immediately to the beneficiaries. This can save time and money for the beneficiaries.

Certain trusts can also result in tax advantages both for the donor and the beneficiary. These could be "credit shelter" or "life insurance" trusts that are used to move life insurance funds or other assets out of your estate for estate tax purposes. Other trusts may be used to protect property from creditors or to help the donor qualify for Medicaid. Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

Advance Health Care Directives

An Advance Health Care Directive allows you to control and direct decisions about your health-care after you become disabled by selecting the most appropriate person to handle such decisions and by giving directions based on your personal values. This document allows you to designate one or more other persons as your agent to make *medical and health-care treatment* decisions for you if you later become incapacitated and unable to make such decisions. In the directive, you can state personal decisions about keeping or removing life-support treatments in the event of terminal illness and other choices concerning medical treatment based on your own personal values. It is wise to include specific language in your directive that identifies your agent as your “personal representative” who is entitled to request and receive your medical information for HIPAA privacy law purposes. You may also have a separate “HIPAA Authorization” that will allow other family members to obtain information about your health care and medical situation, even though they are not named as the agents in your Advance Health Care Directive to make decisions for you. Such an authorization must be properly worded, and we can assist you with this.

Beneficiary Designations

Although not necessarily a part of your estate plan, at the same time you create an estate plan, you should make sure your retirement plan beneficiary designations are up to date. If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan. Some plans automatically distribute money to a spouse or children. Although others may leave it to the retirement plan holder's estate, this could have negative tax consequences. The only way to control where the money goes is to name a beneficiary. In addition, if you go through a divorce or wish to remove a beneficiary from life insurance or retirement accounts for some other reason, the only way to change the recipient is by completing and filing a new beneficiary designation form with the company. If you forget to do so, the original beneficiary will get the money at your death, regardless of your wishes otherwise.

Summary

Now, at the beginning of 2012, is a good time to get your estate plan in order, or to review an older plan to see if modifications and improvements are in order. With these important documents in place, based on your personal needs and circumstances, you will have peace of mind knowing that your goals will be carried out with a minimum of taxes and legal costs.

Call us today at 601-987-3000 for a consultation.