

FAQ's ABOUT ESTATE PLANNING

1. What exactly is Estate Planning?

When a loved one passes, there are generally two ways to settle the final affairs of his or her estate, and transfer the assets to the beneficiaries. (a) The first way is to turn the entire estate settlement and asset transfer process over to the government to handle under the supervision of the probate court. (b) The second way is to set up a plan that allows the family to handle the estate settlement and asset transfer themselves privately without any involvement by the probate court.

I have learned that most people don't realize that the second option even exists. They just assume that the entire probate court process for estate settlement and asset transfer is a necessary evil that must be endured by the grieving family. When they find out that there is another option, they almost always choose to set up a plan that allows the family to handle the estate settlement and asset transfer themselves. *Probate Avoidance* is what estate planning is all about for most families.

2. What is the major difference between having the probate court handle the final estate settlement and asset transfer process, versus having the family do it themselves?

There are many significant differences between *option (a)*, turning everything over to the government to handle, versus *option (b)*, having a plan that allows the family to handle everything themselves.

-**Under option (a)**, the loved one simply has a "last will" prepared before his or her death; however, this leaves all of the assets still titled in the loved one's name, individually or jointly, with the spouse or children; therefore after the loved one passes, the entire estate settlement and asset transfer process will have to be handled through probate court;

-the grieving family has to find and hire a probate attorney, who has to locate the last will and inventory all of the loved one's assets and liabilities; even if the assets are jointly owned, (e.g. T.O.D.), the value of their loved one's "share" owned at death must be reported to probate court and included in the estate valuation for estate tax purposes.

-the attorney also has to identify and notify all of the potential heirs and beneficiaries;

-the attorney then has to file the last will, including all of the family's personal information, with the probate court, which of course means that all of the family private matters become a public record to which any and all interested person(s) have free access;

-the entire process of estate settlement and asset transfer through probate court can take anywhere from 6 – 12 months or more, during which time the family has little or no access or control over the assets in the estate;

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-the costs and fees of settling the estate and transferring the assets through probate court can consume anywhere from 8% to 10% of the estate assets for professional fees (attorney, accountant, property appraisers, court costs, etc) before the family gets anything;

-for an estate with assets valued at \$150,000, the costs under the government probate plan can run as high as \$15,000! For an estate of \$250,000, the costs can run as high as \$25,000 or more! For an estate of \$500,000, the costs can be up to \$50,000! For an estate of \$1,000,000, the costs could be as much as \$100,000! And so on....

-If there are any family disputes or issues requiring additional court hearings, the process can take longer, and the costs and fees can run even more;

-At the end of the process, the assets are turned over in lump sum to the surviving spouse, or other beneficiaries, with no protection from creditors and predators;

-This is how the probate process works if the loved one just uses a “last will”, and leaves the final settlement of the family matters to the probate court, probate lawyers, accountants, etc.

-**Under Option (b)**, the loved one sets up their own estate plan for the family to *privately* handle the estate settlement and asset transfer to the heirs, without the time, expense, loss of privacy, and loss of control experienced under the probate process;

-the way it works is very simple; rather than leaving a “last will”, which is nothing more than written instructions to the probate court as to who is to receive the remaining assets in the estate, the loved one simply sets up their own “living trust” to handle the final estate settlement and transfer of assets to the beneficiaries;

-like a small corporation, the living trust is a legal entity, separate and apart from the loved one, yet still under his or her complete control while living; the loved one names himself or herself as managing trustee over the living trust while they are alive, and also names a successor trustee who will take over management of the trust after their death;

-the loved one then transfers ownership of their assets out of their individual name, and into the name of their living trust, which then holds title to their assets for them;

-thus, at the time of death, the loved one *owns no assets in his or her own name*, and so is not required to turn anything over to the probate court for final estate settlement and asset transfer; *the key is not to own anything in your own name at the time of death*; however, rather than “gifting” away their assets to avoid probate, they simply transfer ownership of their assets into their living trust to hold for them, without giving up control of their assets.

-upon their passing, instead of everything going through probate, the back up trustee who was named in the trust, (usually the spouse, adult child or children, or other relative or trusted friend) simply takes over management and control of the trust assets, and handles the final estate settlement and asset transfer in accordance with the loved one’s wishes, which

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are spelled out in the trust document itself; and all without any government or probate court involvement!

-instead of losing access and control of the assets for 6 – 12 months in probate, the family has ongoing, uninterrupted access and control over the assets;

-instead of losing all of their privacy in probate, the privacy of the family remains intact;

-instead of incurring the exorbitant cost of 8 – 10% of the estate value under probate, the only cost incurred under option (b) is the original one time cost of setting up the living trust and transferring ownership of the assets into the name of the living trust, which usually runs between \$1,250 & \$1,500! (versus \$15,000 for a \$150,000 estate under government probate!) Also included in that cost are the financial POA, healthcare POA, and Living Will.

-don't be misled into thinking you don't have enough assets to warrant a plan to avoid probate; many folks confuse a *probate avoidance trust* with an *estate tax avoidance trust* that benefits only larger estates; a probate avoidance trust will benefit almost everyone; even estates valued at only \$150,000 would benefit from a probate avoidance trust;

-also, the living trust becomes “creditor and predator proof” upon the loved one's passing, which means the estate assets that remain in the trust for the care and support of the spouse or minor children are protected from any exposure to creditors or predators.

-Option (b) allows the family and their financial advisor to maintain uninterrupted access and control over the family assets after the loved one's passing. That is why it is clearly the preferred option of choice for most of my clients *and* their financial advisors.

-One word of caution. In order for probate avoidance trust to work, the loved one has to get it set up and in place *before* they die. I always advise my clients, young or old, to overcome their procrastination toward thinking about their own mortality, and ***get their planning done now!*** The peace of mind that follows for the loved one, and the family, is priceless!

-Call today to schedule a free in-home consultation for yourself, your parents, your adult children, your elderly relatives and friends, and anyone else who does not currently have a probate avoidance plan in place for their family. Or visit the website at www.keyslaw.com to fill out your family data worksheet and fax or email it in today to get your plan set up and in place now.

-Financial advisors can now schedule a free estate planning consultation in their office for their clients during their annual reviews, depending upon the attorney's availability. The advisor can also include this educational article in their client mailings to emphasize the importance of estate planning as part of the overall financial planning process.

-Free educational seminar presentations are also available for church groups, civic and community organizations, retirement communities, healthcare organizations, etc.

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