

WHAT IS ESTATE PLANNING?

What is estate planning? In simple terms estate planning is the systematic approach to getting your own plans in place to handle the *possibility* of mental incapacity, and the *certainty* of death.

1) Estate Planning for Mental Incapacity

If you become mentally disabled, then you'll need to have a two part estate plan in place – one that will take care of your personal decisions and one that will take care of your financial decisions. Otherwise, you and your assets will end up in a court-supervised guardianship or conservatorship.

Advance Medical Directive - The legal document necessary to delegate your personal decisions is called an Advanced Medical Directive, also called a Medical Power of Attorney or Designation of Health Care Surrogate in some states. It will allow you to give to the person of your choice the right to take care of your personal needs and make your medical decisions if you're temporarily or permanently unable to do so for yourself.

Financial Power of Attorney - The legal document necessary to delegate your financial decisions is called a Financial Power of Attorney. It will allow you to choose someone to manage your assets on your behalf if you're unable to do so for yourself.

2) Estate Planning for Death

When you die, you'll also need to have a two part estate plan in place – one that will insure all of your debts will be paid and one that will determine who will receive the balance of your assets.

Last Will and Testament - The basic legal document that addresses planning for death is called a Last Will and Testament. A will contains your written instructions to the probate court as to how you want your estate to be handled after your death. One of the biggest drawbacks of just using a will to dictate the distribution of your assets is that the property must go through probate court before your family will be able to take legal control of it.

Probate is the court-supervised process of inventorying all of your assets after your death, paying your final bills, and then distributing what's left to your loved ones. The key here is that probate is "court-supervised." In other words, the probate process is dictated by the probate laws of the state where you live at the time of your death, and can tie up your property for months or even years before your family will have access to it. It can also consume up to 10% of your estate for court costs, legal fees and other expenses. It is also a public record of your private affairs, leaving the family vulnerable to creditors and predators.

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Probate and How to Avoid It: The Revocable Living Trust

While a Last Will and Testament is an important part of any estate plan, there are significant drawbacks to having all of your property pass under the terms of your will.

This is where a ***Revocable Living Trust*** comes into play. What is a Revocable Living Trust? It's a written agreement that sets forth how your property will be managed both while you're alive, and then after you die. It's like your own private corporation that holds your assets for you while you are living, and then distributes them for you upon your death.

This type of trust will allow you to control your property while you're alive and well, designate the person of your choice to manage you and your finances if you become mentally disabled, and then list your instructions to your loved ones as to what to do with your assets after you die.

Another benefit of using a Revocable Living Trust as part of your estate plan is that your family will be able to gain virtually immediate access to the family assets after your death since property held in the trust will avoid all court involvement, saving both time and expense. It also preserves the family's privacy thereby protecting them from creditors and predators.

The part that deals with how your property will be managed while you're alive will contain your mental disability plan, and the part that deals with how your property will be managed after your death will contain the exact same terms that would have been written to the probate court in your Last Will and Testament had you decided not to set up a Revocable Living Trust.

So how does a Revocable Living Trust avoid probate? If your assets are "titled" into the trust during your lifetime, they won't need to be probated after your death. How do you title your assets into the trust? For bank accounts, investments accounts, and real estate, your name will be taken off of the asset, and the name of your trust will be inserted in its place.

Once your assets are fully titled over to your trust, you'll no longer personally own your assets – your trust will, and property that's owned by your trust doesn't need to be probated after your death. Instead, the trust property can pass immediately and directly to your loved ones.

The use of trusts involves a complex web of tax rules and regulations. You should consider the advice and counsel of an experienced estate planning attorney to assist you in implementing your estate conservation and settlement plan.

Remember, if you don't have your *own* estate plan in place, the government has a plan for you, called probate. Your legacy is too important to be left up to the courts to sort out.