



TEXAS ESTATE PLANNING

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What is Estate (Wealth Preservation) Planning?

- Who gets what, when does a beneficiary receive it, and how does he or she receive it?
- Who are the economic “players” in your estate planning?
 - You, Your Family and Other Individuals
 - The Probate System
 - IRS
 - The government through the transfer tax system
 - Private Philanthropy
 - A private charity you select as your beneficiary

Objectives of Estate Planning

- Distribution of Owners Assets
 - Minimize tax burden
 - Minimize probate(Independent Administration or Funded Revocable Trust) and other administration expenses
 - Achieve owner's goals for distribution to beneficiaries
- Other Considerations
 - Durable Power of Attorney (protects assets if disabled)
 - Power of Attorney for healthcare decisions
 - HIPPA Authorization
 - Designation of Guardian in Event of Later Need or Guardian for minor children
 - Physicians Directive
 - Organ donation
 - Beneficiary designation for non-probate assets

What Makes Up an “Estate”?

- Probate Assets
 - Real Property
 - Personal Property (tangible and intangible)
- Non-probate Assets
 - Life Insurance & Annuities
 - Retirement Plan Benefits
 - IRA’s
 - Joint Tenancies with Right of Survivorship (bank accounts, etc.)
 - Property in Revocable Trust
 - Payable on Death Accounts
 - Life Estate Property
 - Contract Rights
 - Community Property with Right of Survivorship

Types of Property

- Community Property
 - Property owned ½ each by a husband and wife (similar to a partnership)
 - Presumption all property acquired during marriage is community property—can be rebutted by evidence
 - Income from separate property is community property in Texas—not so in California
 - Quasi-community property for purposes of divorce but not testamentary disposition
 - Sole management and joint management community property
- Separate Property
 - Property owned before marriage
 - Property acquired during marriage by:
 - Gift
 - Will
 - Inheritance
 - Partition of Community Property
 - Property acquired in common law state
 - Recovery for personal injuries

Do I need a Will or a Revocable Trust with a Pour Over Will?

- Yes
 - A Will is the basic element of most estate plans but many individuals elect to do their planning under a Revocable Trust with a Pour Over Will
 - Ensures nothing is overlooked if it contains a residuary clause
 - Facilitates getting assets to intended beneficiaries
 - Reduces expenses
 - Can reduce or eliminate estate taxes if proper planning done

What happens if I don't have an Estate Plan?

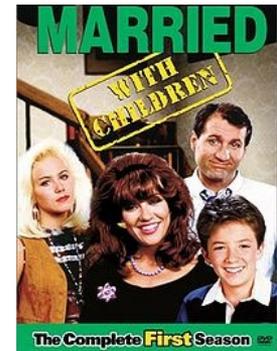


What happens if I don't have an Estate Plan?

- Married – No children
 - Community property
 - All to surviving spouse.
 - Separate Property
 - Personal property all passes to spouse.
 - Real property will pass $\frac{1}{2}$ to spouse, $\frac{1}{2}$ to heirs at law (parents, siblings, nephews, etc.)

What happens if I don't have an Estate Plan?

- Married – With Children
 - Community Property
 - If all the children are yours, all to spouse
 - If not, $\frac{1}{2}$ passes to children from prior relationship
 - Separate Property
 - $\frac{1}{3}$ of all personal property to spouse, $\frac{2}{3}$ to children
 - Spouse gets $\frac{1}{3}$ life estate in real property, rest to children



What happens if I don't have an Estate Plan?

- Single
 - Children
 - All property to children
 - If any of your children are deceased, their share passes to their children
 - No Children
 - Parents
 - Siblings
 - Nieces/Nephews

Types of Wills and Requirements

- Formal Will
 - In writing
 - Signed by testator 18 or older or has no legal disability
 - Attested by two witnesses over 14, who sign in presence of testator and each other
 - May be self- proved by affidavit
- Holographic Will
 - Entirely in the writing of testator
 - Signed by testator

Problems with Holographic Wills

- Not self-proving, require witnesses for the handwriting
- No independent executor
- No tax provisions
- Partial intestacy
- No bond waiver
- No clause for payment of debt and taxes
- No power of sale provision

Can I just use an online site to create my Will?

- Do not provide legal advice
- May provide a false sense of security
- One size fits all approach
- Lack of options
- Not tailored to each state's requirements
- Laws change, their forms may not
 - One major site says Texas recognizes oral wills, they DO NOT (law changed over 8 years ago).
- The money saved on planning could be spent many times over by heirs to address legal issues.

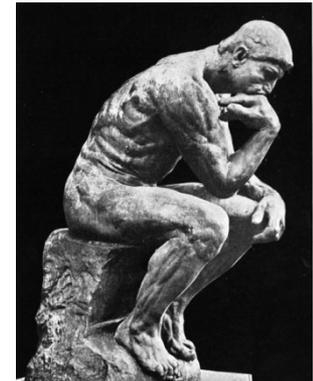


How do I select an attorney?

- Estate planning encompasses every aspect of your life so make sure you have an attorney with the necessary expertise:
 - Financial
 - Personal
 - Familial
- Need to consider objectives and expertise needed.
- Board Certified—Estate Planning & Probate
- Tax Planning, business planning, asset protection
- You are the primary player in the process, the attorney is there to teach, guide, and offer solutions.
- Take advantage of the attorney's experience and expertise

Beginning to plan

- Think about your goals
 - Who do you want to benefit
 - Who do you trust to manage the property
 - Family issues
 - Assets difficult to deal with—real estate & business assets
 - Protect assets—creditors, divorce & remarriage
- Prepare an inventory of personal data
 - Current value of all assets
 - How they are owned
 - Current value of all liabilities
 - Names and addresses of beneficiaries
- Consider tax ramifications
 - These should not override your other goals but take advantage of techniques that achieve your objectives—Credit Shelter Trust, Family Trust, or Bypass Trust, QTIP Trust, GST Trust, QDOT, CRUT, CRAT, CLAT



Elements of a good Will

- Introduction – identifies you and revokes prior Will
- Family Identification
- Appointment of Executors – should be independent
- Appointment of Trustees
- Does not leave property outright to minors
- Dispositive provisions – distributes property, either in general or specific bequest, and has a residuary clause to dispose of balance of property

Elements of a good Will (cont)

- Debts and Administrative Expenses
- Death Taxes – provides for payment of taxes
- Waives Bond
- Power of Sale Provision
- Will Execution—only 1 original
 - Statements affirming the Will
 - Witnesses
- Self-proving affidavit
 - Separate document that simplifies probate procedure

Other issues

- Keep your original in a safe place (safe deposit box or deposit with County Clerk)
 - Most attorneys will only keep the copy
- Updating
 - Your will should be updated when your family or financial situation changes
 - Significant financial gains/loss
 - New marriage
 - Divorce
 - Children/grandchildren
 - Move to new state

Will my Estate owe Estate Tax?

- Yes, for decedents dying in 2019, if you leave property worth more than \$11,400,000 to someone other than your spouse.
- Use Bypass Trust to leverage exemption
- Deceased spouse unused exemption
- Maximum estate tax rate is 40%
- Tax payable 9 months after death
 - Can be installments to alleviate problems with liquidity (small businesses, etc.) if certain requirements can be met



Methods to Minimize Tax Burden

- Gifting
 - \$15,000 per year, per recipient(current law)
 - No limit on how many years or how many people
 - Use \$11,400,000 lifetime gift tax exemption
- Marital Planning
 - Create Bypass Trust for benefit of surviving spouse to utilize estate tax exemption of first spouse to die—property in Bypass Trust is not part of surviving spouse’s taxable estate
 - Use unlimited marital deduction to zero out taxable estate of first spouse to die to defer estate taxes—marital deduction property is part of surviving spouse’s taxable estate
 - QTIP Trusts for benefit of surviving spouse to protect assets and obtain fair market value income tax basis at death of surviving spouse
- Life Insurance
 - Give it to ILIT (irrevocable life insurance trust)
- Irrevocable Trusts (GST , GRATS, IDIGITS, QPERTS, CRUTS, CRATS, CLATS, etc.)

Is a Trust something I can use?

- Not just for the wealthy
- Advantages
 - Places assets outside of probate (Revocable Trust)
 - Protection from Will contests (RT)
 - Can reduce future estate tax obligation—many options
 - Protect assets from creditors—spendthrift provision
 - Protects assets in divorce
 - Assure you that beneficiaries get their inheritance if surviving spouse remarries
 - Avoids need for guardian of estate for a minor child
 - Privacy

Example

- Sam and Susan are married, each with a child from a previous marriage.
- Each have mirror Wills, giving everything to the other; if both die each child treated the same.
- Sam dies, leaving everything to Susan.
- Can Susan change her Will?
- Is it common for Susan to change her Will to leave everything to her child?

Solution

- Sam and Susan each create a trust for the surviving spouse and at the death of the surviving spouse, the trust property passes to children of first spouse to die.
- Sam is assured that upon his wife's death his son will be taken care of because of the creation of the trust.

Planning for Disability

- Don't let a court decide with a Guardianship
- Three main ways to plan:
 - Power of Attorney
 - Funded Revocable Trust with provisions to dispose of property at death
 - Standby Trust is an unfunded Revocable Trust and agent under power of attorney will attempt to fund trust if owner becomes disabled

Conclusion

- Estate planning ensures your property is distributed in a manner YOU want, to WHOM you want, and in the MANNER you want.
- Planning can give you peace of mind regarding the future of your loved ones.
- Planning can provide a very good financial return on the dollars invested.
- Planning allows you to protect and preserve your assets during your lifetime.



Questions?

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