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Estate Planning | Wills & Trusts

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Your Estate Planning Goals

POWER POINTS

- *Estate planning is about much more than just who will receive your assets after death.*
 - *Proper estate planning can reduce the cost, time and likelihood of conflict when your assets are to be transferred to your loved ones.*
 - *Planning for specific circumstances, such as minimizing estate and gift taxes, a beneficiary who has special needs or providing for children from a previous relationship, is an integral part of a proper estate plan.*
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When most people think about their estate planning, they believe they “just need a Will” and since their wishes are obvious, it will take care of itself when the time comes. However, the disposition of your assets is only one of the many purposes of estate planning; there are significant family and financial situations that must be addressed in your estate plan and failing to do so can have dire consequences. It is crucial to converse with an estate planning attorney who will explore all of the scenarios that may arise and ensure that your goals, including those discussed below, are addressed accordingly.

Avoiding the Courts

Anyone who has had to supervise the administration of an estate understands the value of avoiding the probate court system. In certain situations, assets that are jointly owned (such as a couple’s home) or have a designated beneficiary (such as a life insurance policy or retirement account) can pass to those beneficiaries easily enough. However, what will happen to the asset if the joint owner or beneficiary is not living at the time of transfer or is going through a divorce or bankruptcy? Without proper planning, such scenarios will require court involvement and may expose your assets to your beneficiaries’ creditors.

Additionally, unclear drafting or lack of contingencies may lead to conflicts that have to be settled through litigation, not only incurring legal costs but also destroying relationships. Your wishes must be addressed by your estate planning attorney and accurately reflected in your documents through clear drafting and the utilization of

available drafting techniques. This will reduce the likelihood of your documents being contested and conflict amongst your loved ones during an already difficult time.

Protecting Your Loved Ones

When a couple has spent decades saving and providing for their children, they assume that upon the first parent's death, his or her assets will easily pass to the spouse and then the children. However, both of these assumptions are incorrect and require proper planning.^{1,2}

As mentioned above, a proper estate plan can also protect your children from losing their inheritance to a future divorce, bankruptcy or other creditors. By holding assets in trust and empowering the trustee to delay distributions when necessary, your children's inheritances can be protected not only from outside threats but also from their own poor decisions.³ Subtle differences in trust language can determine whether a creditor will be able to reach the trust assets to satisfy the beneficiary's debt, so it is extremely important that the trust is drafted correctly. Additionally, by delaying or eliminating the ages of withdrawal for your beneficiaries, you can ensure that they will remain motivated and will not receive a financial windfall before they are responsible enough to handle it.⁴

Minimizing Taxes

Estate, gift and generation-skipping transfer taxes are significant (federal tax rate of up to 40% in 2014) and can force an immediate liquidation of assets if your estate is not prepared. With proper planning during your life, your taxable estate can be reduced, minimizing such tax liabilities. This is accomplished through the utilization of available annual and lifetime exemptions and planned giving techniques. By working with an estate planning attorney, your estate plan can be structured to minimize taxes while ensuring that the greatest portion of your estate possible will reach your loved ones.

Your Peace of Mind

Your estate planning should be an ongoing relationship with your estate planning attorney. There may be a reason that you have procrastinated; it can certainly be a difficult topic to think about.⁵ However, the goal is to plan for the unpredictable and proper estate planning can provide significant options and benefits beyond simply designating the recipients of your hard-earned assets. It is best to meet with your estate planning attorney and discuss your family and financial situations in order to gain a better understanding of the legal hurdles if you do not have an estate plan and the benefits of having a proper plan in place. While it can be an uncomfortable topic to think about, planning your estate to ensure that your wishes are clear and to ease the transition for your loved ones will provide significant peace of mind to you and your family.

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1. Under Illinois law, if an individual is survived by a spouse and descendants, then half of his estate will pass to his spouse and the other half will pass to his descendants. For further detail on this topic, please see "Definition of the Month: Intestate" in the August 2010 Newsletter.
 2. Assets owned individually without a beneficiary designation must pass through the probate process even if the decedent had a Will and is survived by a spouse.

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3. For a detailed discussion of this topic, please see “Protecting Your Child’s Inheritance” in the May 2011 Newsletter.
 4. For a detailed discussion of this topic, please see the June 2014 Newsletter, *Estate Planning to Keep Your Children Motivated*.
 5. For a detailed discussion of this topic, please see the April 2014 Newsletter, *The Costs of Procrastinating on Your Estate Planning*.
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Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Trust and Estate Administration and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish has served as Vice President of Professional Development for the Indian American Bar Association and board member of the Young Professionals of Evanston.

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