

Miller Cohen, PLC



Estate Planning 101

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WHO NEEDS AN ESTATE PLAN?

EVERYONE!

PURPOSE OF PLANNING

- ▶ To have a say in what happens to yourself, your loved ones, and your assets, when you cannot.
- ▶ Sets up a structure which minimizes conflicts between family members and allows smooth transition of assets.
- ▶ Added bonus: inventory of your assets
- ▶ If you don't plan:
 - Probate court judge gets a big say, including guardian(s) of children
 - People you don't want or don't know may be put in charge
 - Legislature has an estate plan for you
 - Assets can end up with people you don't expect
 - Assets can be distributed to your children before they are ready
 - Forgone opportunities to save taxes and protect assets
 - Loss of privacy
 - Family member disputes over assets more likely

WHAT DOES AN ESTATE PLAN INCLUDE?

- ▶ Will
- ▶ Revocable Trust
- ▶ Durable General Power of Attorney
- ▶ Durable Health Care Power of Attorney
- ▶ Advance Directive for Health Care/Organ Donation/HIPAA
- ▶ Memorandum of Trust
- ▶ Statement of Disposition of Tangible Personal Property
- ▶ Re-titling of Assets
- ▶ Beneficiary Designations
- ▶ Guardianship Designations
- ▶ Life Insurance/ Irrevocable Trust

WHERE THERE IS NO WILL

- ▶ No named beneficiaries
- ▶ No named guardian
- ▶ No named personal representative
- ▶ No testamentary trust
- ▶ What's the big deal? Means the legislature decides who gets your assets, who is the guardian of your children, who is the personal representative of your estate, and how and when your assets are distributed.

THE WILL

- ▶ The will is the instrument that directs how your assets are to be distributed and your debts, taxes and expenses are paid after your death.
 - ▶ Personal representatives
 - ▶ Guardians of minor or incapacitated children
 - ▶ Beneficiaries
 - ▶ Testamentary trust (Q-tip trust for spouse, Family trust)

GUARDIANS

For people with minor or incapacitated children, this is the most important reason for establishing an estate plan. Otherwise, a court looks to state statutes for order of priority meaning that there may be someone on that list that you may not want to be guardian.

REVOCAABLE OR “LIVING TRUST”

▶ Trust Agreement

- Centralized asset management during life and even long after death
- Provides for succession of management (Trustees)
- Extremely flexible
- Probate avoidance (if funded)
- Protection of vulnerable beneficiaries from themselves
- Provide for charitable intentions
- Estate tax reduction for married couples

▶ Does NOT

- Provide asset protection for creator
- Protect against costs of long-term care (nursing homes, Medicaid)
- Affect the creator's income taxes

▶ Pour-Over Will (for assets not transferred to trust prior to death)

WILL VS. REVOCABLE TRUST

Characteristic	Revocable Trust	Will
Avoidance of probate	x	
Cut-off of creditors/claims in probate process		x
Avoidance/reduction of estate taxes	x	x
Orderly administration of property prior to death	x	
Protection of minors and spendthrifts	x	x ¹
Privacy	x	
Expense prior to death	x	
Expenses after death		x
Immediate and continuous access to cash flow	x	
Provide for method of management of client's assets prior to death but after mental deterioration (Avoid guardianship)	x	
Avoidance of Will Contest	x	

¹If property is given in trust.

Trustees

- ▶ Self
- ▶ Family members
- ▶ Friends
- ▶ Professionals
- ▶ Institutions
- ▶ Beneficiaries as Trustees
- ▶ Guardians as Trustees

BENEFICIARIES

WHO ARE YOU GOING TO PROVIDE FOR AND HOW MUCH?

- ▶ Children
- ▶ Charities
- ▶ Other family members

IF YOU HAVE A REVOCABLE TRUST . . .

Is it funded?

--If not, then your pour-over will must be utilized to transfer assets to revocable trust and your pour-over will has to be probated to make such transfer.

GENERAL DURABLE POWER OF ATTORNEY

- ▶ This document handles your financial matters.
- ▶ Financial matters handled by attorney-in-fact.
- ▶ When does it become effective (immediately, upon incapacity, or when activated in writing by maker)
- ▶ Provides for nomination of guardian/conservator (same as attorney-in-fact generally)
- ▶ Important for assets not owned by revocable trust

GENERAL DURABLE HEALTH CARE POWER OF ATTORNEY

- ▶ You appoint someone to make health care decisions for you when you are unable
- ▶ HIPAA Authorization (Health Insurance Portability and Accountability Act of 1996 regulations effective April 15, 2003 --Authorizes doctors, hospitals, other medical professionals, and health insurance companies to speak with and share information with people you specify.

ADVANCE DIRECTIVE FOR HEALTH CARE

- ▶ You appoint someone, called a health care proxy, to carry out end-of-life decisions you made in such document.
- ▶ 3 conditions
 - Terminal condition** (Incurable and irreversible that will result in death within 6 months)
 - Persistently unconscious** (Irreversible where thought and awareness of self and environment are absent)
 - End-stage condition** (Caused by injury, disease or illness, which results in severe and permanent deterioration indicated by incompetency and complete physical dependency)
- ▶ HIPAA Authorization

ADVANCE DIRECTIVE FOR HEALTH CARE

► Your end-of-life choices

--No life-sustaining treatment, except artificially administered nutrition and hydration (if unable to take food and water by mouth)

--No life-sustaining treatment, including artificially administered nutrition and hydration

--Life-sustaining treatment, and artificially administered nutrition and hydration (if unable to take food and water by mouth)

STATEMENT OF DISPOSITION OF TANGIBLE PERSONAL PROPERTY

- Specific bequest of personal property in the revocable trust
- Personal property memorandum
 - Allows you to gift items such as jewelry, artwork, etc., to specific people

BENEFICIARY DESIGNATIONS

- ▶ Properly designating beneficiaries of Life Insurance and Retirement Plans (IRAs, 401(k)s, etc.) at death is an important part of the estate planning process
- ▶ For many, your Retirement Plan is the largest asset
- ▶ Children as beneficiaries (children generally entitled to receive distributions directly once they turn 18)
- ▶ Trusts work well as beneficiary of Life Insurance
- ▶ Be cautious about naming trust as beneficiary of Retirement Plan
 - Complicated rules and if not done properly IMMEDIATE income tax consequences could result
 - Typically, I designate trust as beneficiary only if minor children, a spendthrift, or a spouse of second marriage

RE-TITLING OF ASSETS

- ▶ Quit claim deeds
- ▶ Assignments

MINOR CHILDREN

- ▶ Appointment of a guardian
- ▶ Establishment of a trust - minor children cannot inherit outright

DISABLED CHILD

Supplemental Needs Trust

LIFE INSURANCE

- ▶ Liquidity - taxes, succession planning
- ▶ Creating estates
- ▶ Replace income

WHAT IS A PROBATE?

The purpose of probate is to transfer assets and deal with the creditors of the decedent.

Sometimes, you may want a probate to cut-off creditor claims.

PROBATE PROCESS

- ▶ Petition to have Will allowed and Personal Representative appointed
- ▶ Inventory and marshall of assets
- ▶ Give notice to creditors, heirs-at-law, and beneficiaries
- ▶ Pay income and estate taxes (if any)
- ▶ Pay debts of decedent
- ▶ Make distributions to beneficiaries
- ▶ Make final account and close estate

What assets go through probate?

- ▶ Whatever assets are held purely individually at death
- ▶ Examples: Real property, mineral interests

What assets do not go through probate?

► Non-probate assets

--Jointly held with right of survivorship assets with one or more surviving joint owners

--Assets with a Death Beneficiary Designation with living takers— Life Insurance, IRAs, Qualified Retirement Plans, annuities, some brokerage accounts and CDs, some U.S. savings bonds

--Life estates

--Assets owned by trusts

FOR MORE INFORMATION REGARDING PLANNING, CONTACT:

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