

2015 Consumer's Guide to Estate Planning

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Helping Seniors and their Families Plan for the Future

Elder Law ▪ Estate Planning ▪ Special Needs Planning ▪ Special Education Advocacy

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Estate Planning: Important at Any Age

Estate planning is important for people of all ages because it addresses financial, personal and healthcare decisions that have cross-generational implications for quality of life. Estate planning is just as important for younger adults as it is for older individuals. Young families, in fact, should take special care that unexpected misfortunes do not threaten the security of minor children.

An estate plan ensures that personal wishes are honored, and it should evolve with each key family event- marriage, births, deaths, home purchases. At minimum, it should address a Last Will and Testament, guardianship for minor children, any beneficiaries with special needs, insurance, investments, durable powers of attorney, and healthcare directives.

A well-drafted estate plan saves tax, court, and attorney costs. More importantly, grieving loved ones will not be burdened by unnecessary ~~red tape~~ and financial confusion.

Without careful estate planning, your beneficiaries may not receive their intended inheritance. This is especially true for individuals who are not part of a ~~typical~~ nuclear family. Increasingly, children are being raised by single parents, lesbian and gay parents, or grandparents.

Estate planning can also protect assets in the event that you require long-term care. One means of preparing for potential long-term care cost is the purchase of long-term care insurance. Such insurance can offer tax advantages, security, and the ability to remain home longer.

A Littman Krooks estate planning attorney can assist you in evaluating the many facets of your personal situation. Through careful consideration of your needs and goals, it's possible to build a plan that protects your family's interests now and far into the future.

What Documents Should be Prepared?

It is critical to make sure that your estate planning documents are prepared and implemented correctly.

Last Will and Testament (Will)

You have worked hard to build your estate and a properly written Will ensures that your wishes are respected concerning its distribution.

- Your Will directs where, and to whom, your estate (what you own) will go after your death. If you die intestate (without a Will), your estate will be distributed according to the laws of New York State. This statutory mandated distribution may not be in accordance with your wishes.
- Many people try to avoid probate and the need for a Will by holding their property jointly with their children. Although doing so can achieve that end, oftentimes people spend unnecessary effort trying to make sure all that the joint accounts remain equally distributed among their children who they wish to inherit. However, these efforts can be defeated by a long-term illness of the parent, reducing the amount in certain accounts but not creating an unequal distribution of the parent's estate. The death of a child can cause similar inequities. Holding one's property in jointly held accounts simply to avoid probate has too many unforeseen risks which can cause inequities in the final distribution of the estate and subsequently not reflecting the person's wishes. A Will is a much simpler and safer means of protecting one's wishes regarding the distribution of assets.
- Another reason to have a Will is to ensure that the administration of your estate will be a smooth process. Oftentimes the probate process can be completed more quickly and at less expense to your estate if there is a Will. With a clear expression of your wishes, there are unlikely to be any costly, time-consuming disputes over who gets what.
- In addition, a Will allows you to choose the person you wish to administer your estate and distribute it according to your instructions. This person is called your "executor." If you do not have a Will naming a person of your choice, a person will have to petition the court to be appointed the Administrator of your estate, and it may not be a person you want to serve.
- For larger estates, a well-drafted Will can help reduce estate taxes.
- A Will also allows you to appoint the person who will take your place as guardian of your minor children should you and their other parent pass away. A Will covers only probate property, which is property held in your sole name with no designated beneficiaries. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate.

Trust

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a trustee, holds legal title to property held for another person called a beneficiary. The rules or instructions under which the trustee operates are set forth in the trust document. Trusts sometimes have one set of beneficiaries during the life of the grantor (the person who creates the trust) and a second set - often the grantor's children - who begin to benefit only after the first group has died. The first group is often called the life beneficiaries and the second group the remaindermen.

Uses of Trusts

There can be several advantages to establishing a trust. One primary advantage is to avoid probate. In a revocable trust, at the death of the grantor, any property remaining in the trust at the grantor's death generally passes immediately to the beneficiaries after payment of debts and taxes, pursuant to the terms of the trust without requiring probate. This can save time and money for the beneficiaries.

Certain trusts can also result in tax advantages both for the grantor and the beneficiary. These are often referred to as credit shelter, life insurance or Crummey trusts. Other trusts may be used to protect property from creditors or to help the grantor qualify for Medicaid. Unlike Wills, trusts are private documents and usually only those individuals with a direct interest in the trust need to know of the trust assets and its distribution. Provided they are well-drafted, another advantage of a trust is that it remains effective if the grantor dies or becomes incapacitated.

Kinds of Trusts

Trusts fall into two basic categories: testamentary or inter vivos.

A testamentary trust is one created by your Will. It does not come into existence until the testator (the person whose Will it is) dies. An inter vivos trust is one created and in effect during the grantor's lifetime.

There are two kinds of inter vivos trusts: revocable and irrevocable.

Revocable Trusts

Revocable trusts are often referred to as *living trusts*. With a revocable trust, the grantor retains complete control over the trust and may amend, revoke or terminate the trust at any time. This means at any time that the grantor can take back the funds he put in the trust or change the terms of the trust at any time. Thus, the grantor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to his death.

Revocable trusts are generally used for the following purposes:

1. ***Asset management.*** They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.
2. ***Probate avoidance.*** At the death of the person who created the trust, the *grantor* or *donor*, the trust property passes to trust beneficiaries. It generally does not come under the supervision of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor's estate for tax purposes.
3. ***Tax planning.*** While the assets of a revocable trust will be included in the grantor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

Irrevocable Trusts

An irrevocable trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the grantor may establish a trust under which he will receive the income earned on the trust property but bars his access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

Testamentary Trusts

As noted above, a testamentary trust is a trust created by a Will. This type of trust has no power or effect until the Will of the decedent is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the Will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or provide for the care of a disabled child, or can hold assets in trust for young beneficiaries until they reach a certain age.

Family Protection Trusts

A family protection trust (sometimes known as a safe trust) is designed to hold the assets you transfer to your children at your death, through your Will or otherwise, into a trust for their benefit. Without transferring direct ownership to your children immediately upon your death, your children and your children's children can receive distributions from the trust assets during their lifetimes. Ultimately, trust funds can be used for your children, and their families, to provide for whatever needs they have. It helps to know that the people you have devoted your life to are the ones who will continue to reap the benefits of your love and support long after you are gone. Family protection trusts provide a smart alternative to transfer your assets to future generations with security in knowing that they will be insulated from creditors and failed marriages.

There are also transfer tax benefits to setting up a family protection trust. So long as the assets remain in the trust, the value of the trust assets is generally measured at the amount they were worth when the trust was created. Also, if the value of the trust assets appreciates while they are in trust, this appreciation is generally exempt from estate taxes.

Supplemental Needs Trust

A Supplemental Needs Trust (also referred to as a Special Needs Trust) is a discretionary spendthrift trust created for a person who is elderly or has a disability as a way to supplement the person's public benefits. These public benefits may include SSI, Medicaid, Section 8 housing, and other federally- or state-sponsored assistance programs. A Supplemental Needs Trust can be created through a testamentary trust or inter vivos trust.

Credit Shelter Trusts

Under current Federal law, the combined estate and gift tax exemption for 2015 is \$5,430,000, with a maximum tax rate of 40%. The New York estate tax exclusion amount is now \$3,125,000 for individuals dying on or after April 1, 2015 and before March 31, 2016. The New York exclusion amount increases each year until 2019, when it should link with the Federal exclusion amount. In addition, gifts made by a New York State resident between April 1, 2014 and December 31, 2019 within three years of death must be included in the New York taxable estate, thereby increasing the New York estate tax. It may be beneficial for spouses to create a credit shelter trust as part of their estate plan. When the first spouse passes away, depending on what the estate tax laws are then in effect for that year, a certain portion of the deceased spouse's estate can be put into trust for the surviving spouse to take advantage of the deceased spouse's available credit (both state and federal). The surviving spouse can receive income and principal from the trust, but as long as she does not control the principal, the money will not be included in the surviving spouse's estate when she passes away.

Power of Attorney (POA) and Statutory Gift Rider

For many people, a Power of Attorney (POA) is the most important estate planning instrument available. A POA allows the person you that you appoint as your agent to act in your stead for financial purposes as soon as it is executed. It is particularly useful when, and if, you ever become incapacitated.

The person you appoint as your agent will be able to step in and take care of your financial affairs. Without a POA, no one can represent you with regard to your financial affairs unless a court appoints a guardian. This court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship, your representative may need to seek court permission to initiate planning measures that he could implement immediately with the use of a simple POA .

If you wish to grant gifting authority to your agent, a Statutory Gift Rider is also required. This may become an important tool in estate and elder law planning. Without it, your agent is unable to gift more than \$500 total each year.

Health Care Proxy

Any complete estate plan should include a medical directive. This term may encompass a number of different documents, including a Health Care Proxy and a Living Will .

A Health Care Proxy allows you to designate another individual to make health care decisions for you if you are unable to do so yourself.

A Living Will is a document which expresses your medical instructions. For example, your Living Will can state that you would like life support to be withdrawn if you are terminally ill or in a vegetative state. A broader medical directive may include the terms of a Living Will, but also provide instructions if you are in a less severe state of health but are still unable to direct your health care decisions yourself.

Financial and Insurance Planning

A portfolio that combines insurance policies with investments can prepare your family for both unforeseen hardships and eagerly anticipated milestones.

Pensions are fast disappearing, requiring most individuals to carefully plan for the financial needs of their retirement. A 401(K), IRA or portfolio of other investments are best established early in life so that they can accrue over time and outlast market volatility. Littman Krooks can work closely with the financial advisor of your choice to ensure that your investment strategy is consistent with your overall estate planning goals.

Life insurance can help beneficiaries handle day-to-day expenses, pay a mortgage or support a college education. It can also defray funeral expenses and estate taxes. Depending on the type of policy, a life insurance policy may be borrowed against during one's lifetime.

Disability insurance protects against income loss resulting from accident or illness. It can help bridge temporary periods of unemployment or can provide lifelong support.

Long-term care insurance is becoming increasingly important as baby boomers age and the burden on Medicaid increases. Currently the only publicly funded program supporting long-term care, Medicaid is likely to change in response to strained government budgets. Long-term care insurance is relatively attractive for individuals in their 50s or 60s and can result in tax advantages. Careful planning can help protect your estate for your loved ones.

This document is not a substitute for legal advice. You should review your personal estate planning needs with a competent estate planning attorney.

We hope this information has been helpful.

**If you have questions about any aspect of your estate planning,
please contact us. We have an office near you.**

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