



ESTATE PLANNING

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Goals of Estate Planning

- **Give** what I have: to whom I want, the way I want, when I want to
 - **Care for self** during lifetime (incapacity, healthcare decisions)
 - **Care for/protect others** (surviving spouse and children at death)
 - **Minimize** or eliminate probate
 - **Fulfill** your charitable intentions
 - **Pass on values** and ideals to children and grandchildren
 - **Maximize assets** distributed to your loved ones
 - **Protect assets** from creditors for generations to come
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What is your Estate?

- Money (Savings, Investments, etc.)
 - Life Insurance
 - Home, Real Estate, Business
 - Personal Property, Equipment, Collections, Pets, etc.
 - Intellectual Property
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Key Definitions

- **Probate Court:** court proceedings that conclude all the legal and financial matters of the deceased
 - Also includes court proceedings during life that may be needed to name a guardian/conservator
 - **Taxes:** gift, income, and in some states, property and inheritance taxes
 - **Intestate Estate:** an estate where the decedent did not have a Last Will and Testament
 - **Testate Estate:** an estate where the decedent had a Last Will and Testament
 - **Last Will and Testament:** An instruction to the Probate Court as to how you want your estate managed and distributed
 - **Revocable Living Trust:** An agreement between a Settlor/Grantor and a Trustee (most likely you) to create an entity that can hold your assets and transfer them after death without Court involvement. Can be amended during your lifetime. Not an asset protection vehicle
 - **Powers of Attorney:** A document that grants authority to another person to act on your behalf regarding health and financial decisions
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What is Estate Planning? Why is it Important?

- It is the act of preparing a plan to govern what happens to your assets after you die.
- Reduces or eliminates family discord and fear.
- It is also the act of preparing a plan to govern what happens to you in the event of incapacity.
- What happens with no estate plan in place?

Here's an example: Prince died without a Will

- He Died in April 2016 at age 57 without a will.
- Almost 700 people initially claimed to be heirs.
- Intestacy laws in the State of Minnesota governed.
- One sister and five half-siblings were determined to be the lawful heirs. Unlikely that these individuals were his preferred beneficiaries.
- Prince was a private person. His estate litigation was not. Fight for control of estate.
- 6 years of litigation, much of which could have been avoided. Heirs died during the process.

Moral of the Story

- Even rich and famous people don't want to face the task of estate planning.
 - Prince did not get to choose a trust person or entity to be in charge.
 - Prince's valuable assets and legacy likely went to individuals he would not have chosen himself.
 - Prince's private life was no longer private.
 - Thousands of dollars were spent on litigation and countless hours wasted.
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Estate Tax

- 2001 - U.S. Citizens and Residents had to pay federal estate tax on estates larger than \$ 675,000
- 2011 – exemption was increased to \$5 million
- 2023 – exemption increased to \$12.9 million

The States of OH, IN and KY do not have an estate tax. Other states do. *Estate tax is distinct from income tax.*

Questions to Consider

- Do you have a will or a trust? Has it been reviewed in the last 3-5 years?
 - Do you have any jointly titled assets?
 - Does your current plan provide your heirs/beneficiaries with asset protection against creditors, divorce, and lawsuits?
 - Are you concerned about any delays and costs your estate might incur if it goes through probate when you die?
 - Are all your heirs 21 or older and financially responsible?
 - Is this your first marriage? Do you have step-children?
 - Are you concerned with family disputes arising from inheritance issues?
 - If you were to become disabled, are you certain that your healthcare and financial wishes will be honored?
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The Basics: Typical Estate Planning Documents

- Last Will & Testament
 - Revocable Living Trust (with a “pour-over” will)
 - Durable Power of Attorney
 - Health Care Power of Attorney
 - Living Will
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Last Will & Testament

- An instruction to the Probate Court on who should be in charge and where your assets should go. Overrides intestacy laws.
 - If you have minor children, you can also designate who will care for your children.
 - If you do not have a will, a court will make these decisions for you. (Laws of Intestacy)
 - Does not avoid Probate Court!
 - Probate is a Public, not Private process.
 - Probate is complex – Usually need to hire an attorney.
 - Probate can be a long process – Often taking at least six months to a year.
 - Probate can be expensive!
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Revocable Living Trust

- A legal document that authorizes a trustee (often the person who creates the trust) to hold title and manage assets during the person’s lifetime and direct the disbursement of assets after death.
- Can be revised up until death.
- Avoids probate.
- Puts protections in place for beneficiaries after your death.
- Usually used with a “pour-over” will that will move anything not already in the trust upon death to the trust for distribution.
- To be fully effective the trust must be funded — title of property is changed to the trust once it is created. **This is the area that often causes the most problems!**

Use a Revocable Trust to:

- Create provisions for your spouse or significant other upon your death.
 - Create provisions for your minor children upon your death.
 - Create provisions for your adult children upon your death.
 - Protect your assets from creditors and predators of your spouse and children.
Control beyond the grave.
 - Choose who is in charge and reduce family conflict.
 - Add provisions regarding pets and charitable giving.
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Irrevocable Trust

- A legal document that authorizes a trustee (**NOT** the person who creates the trust) to hold title and manage assets during the person's lifetime and direct the disbursement of assets after death.
 - Cannot be revised by the Grantor after creation.
 - During Grantor's lifetime, allows trustee to make disbursements to lifetime beneficiaries.
 - Avoids probate.
 - Puts protections in place for beneficiaries after your death.
 - Can be part of an asset protection strategy when planning for the future
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Planning for Incapacity

Financial Decisions

- Allows you to designate someone who can make financial decisions for you.
- You can designate that it will only go into effect upon some triggering event, such as incapacity.
- Without such a document, when an individual becomes incapacitated, it will likely be necessary to have a court name a guardian to make these decisions.
- Can be used to name guardians for minor children during incapacity.

Medical Decisions

- Gives legal authority to another person to make decisions about your health care if you are unable to make them yourself.
- This prevents the courts from getting involved if there is disagreement between family members and/or the medical community as to what actions you would want taken.

Living Will

- Sometimes known as Advanced Directives.
 - Allows you to make your wishes known as to end-of-life medical care.
 - This can help your loved ones know what you would like to have happen if you are ever in a position that you are unable to express your wishes — removes guilt when difficult decisions must be made.
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TIPS FOR PROTECTING YOU AND YOUR LOVED ONES

- Complete your Estate Plan. Don't be like Prince!
 - Have a good power of attorney for finances and medical decisions in place.
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