Frequently Asked Questions About Estate Planning

Here are some frequently asked questions about estate planning:

What is estate planning?
Many people believe that estate planning is only for people who are particularly wealthy, have elaborate schemes in mind for passing their money to their heirs, or for people who are acutely ill and contemplating their death. This could not be farther from the truth!

Estate planning is for every husband, wife, mother, father, grandparent, business owner, professional, or anyone else who has someone they care about, are concerned about providing responsibly for their own well being and for the well being of those they love, and for anyone who seeks to make a difference in the lives of others after they're gone. Estate planning is not 'death planning'; it's 'life planning', and an essential and rewarding process for individuals and families who engage in it.

When done properly, estate planning requires that a highly trained individual lead you through one or more in-depth meetings to uncover your hopes, fears, and expectations for yourself and for those who are most important to you. This process almost always requires the preparation of several sophisticated legal documents, but those documents themselves are not 'estate planning.' Planning is a process, represented by a complete strategy that is properly documented and maintained by a professional who has taken the time to get to know you, and who is committed to continuing to serve you.

What is will based planning?
Many young families put off estate planning because they are young and healthy, or because they don't think they can afford it. But even a healthy, young adult can be taken suddenly by an accident or illness. And while none of us expects to die while our family is young, planning for the possibility is prudent and responsible. Also, estate planning does not have to be expensive; a young family can start with a Last Will and Testament and term life insurance, then update and upgrade as their financial situation improves. A well drafted Last Will and Testament will include the following:

Naming an Administrator
This person will be responsible for handling final financial affairs–locating and valuing assets, locating and paying bills, distributing assets, and hiring an attorney and other advisors. It should be someone who is trustworthy, willing and able to take on the responsibility.

Naming a Guardian for Minor Children
Deciding who will raise the children if something happens to both parents is often a difficult decision. But it is very important, because if the parents do not name a guardian, the court will have to appoint someone without knowing their wishes, the children or other family members.

Providing Instructions for Distribution of Assets
Most married couples want their assets to go to the surviving spouse if one of them dies. If both parents die and the children are young, they want their assets to be used to care for their children. Some assets will transfer automatically to the surviving spouse by beneficiary designations and how title is held. However, an estate plan is still needed in the event this spouse becomes disabled or dies, so that the assets can be used to provide for the children.

Naming Someone to Manage the Children's Inheritance
Unless this in included in the estate plan, the court will appoint someone to oversee the children's inheritance. This will likely be a friend of the judge and a stranger to the family. It will cost money (paid from the inheritance) and the children will receive their inheritances in equal shares when they reach legal age, usually age 18. Most parents prefer that their children inherit when they are older, and to keep the money in one 'pot' so it can be used to provide for the children's different needs. Establishing a trust for the children's inheritance lets the parents accomplish these goals and select someone they know and trust to manage it.

Why do you need to maintain your estate plan?
Your estate plan is a snapshot of you, your family, your assets and the tax laws in effect at the time it was created. All of these change over time, and so should your plan. It is unreasonable to expect the simple will written when you were a newlywed to be effective now that you have a growing family, or now that you are divorced from your spouse, or now that you are retired and have an ever increasing swarm of grandchildren! Over the course of your lifetime, your estate plan will need check-ups, maintenance, tweaking, maybe even replacing. So, how do you know when it's time to give your estate plan a check-up? Generally, any

change in your personal, family, financial or health situation, or a change in the tax laws, could prompt a change in your estate plan.

What is a durable power of attorney?
Who will make decisions for you if you are unable to make them for yourself? Who will have the power to sign documents on your behalf, or make sure your bills get paid?

Without a durable power of attorney, someone who is mentally incapacitated must be taken to guardianship or conservatorship court to have a decision maker named for them by a judge. A carefully written durable power of attorney will allow you to name someone you trust to make decisions for you if you become disabled to the point of no longer being able to make those decisions yourself.

How do you plan for estate taxes?
Under current federal law most Americans do not have a federal estate tax problem. Under the 2010 Tax Relief Act (formally abbreviated as TRUIRJCA 2010), every individual has a $5 million federal estate tax exemption. If you do not need that entire amount, the balance of your exemption is 'portable' to your surviving spouse when they later die. So for married couples, it's fairly easy to shelter $10 million from federal estate taxation with little or no planning done in advance.

Many states, however, impose a separate estate tax that is often more widely applicable than the federal estate tax. Because the state and federal estate tax systems are often out of sync, it is important to coordinate your estate plan in a way that maximizes your estate tax planning opportunities to ensure that you pay as little in estate tax as possible.

Moreover, proper tax planning in the estate planning context must contemplate income tax planning opportunities ' for you and for your heirs ' as well as capital gains, generation skipping transfer, and other tax systems.

How does annual gifting affect taxes?
A lifetime gifting program allows you to avoid gift, estate and generation-skipping transfer tax on transferred assets. Under the Internal Revenue, Code, you can transfer up to $13,000 per year, per person, to anyone without incurring gift tax or generation-skipping transfer tax. A married couple can give twice that amount, or $26,000 per person, per year. With a lifetime giving program, you transfer this

amount annually to the individuals of your choice, typically children, grandchildren and other close family members.

For example, if you give $13,000 per year to two beneficiaries for five years, you will have removed nearly $130,000 from your estate for estate tax purposes (excluding asset growth). After 10 years, you will have removed more than $260,000 and $650,000 after 25 years. Not surprisingly, the amount removed from your estate is increased significantly with each additional $13,000 beneficiary.

Annual exclusion gifts can also be used to shield transfers to an irrevocable trust from gift and generation-skipping transfer tax. The beneficiary must have the right to withdraw up to $13,000 of the transferred funds, but if that right is not exercised, the gifted funds can then be used to purchase life insurance on the life of the transferor or for other investments. This trust can be a multigenerational estate tax exempt trust or it can become a family 'bank' for: (1) education; (2) business acquisitions; or (3) home purchases, among other things.]

Medical care and tuition paid to assist family members or any other individual may be made in addition to the annual exclusion gifts. As long as the gifts are made directly to the medical facility or educational institution, donors can exceed the $13,000 annual exclusion amount without imposition of gift taxes.