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ESTATE PLANNING GUIDE

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ESTATE PLANNING 101

Estate planning plays an essential role in preparing for your retirement. Lots of hard work has gone into building up your assets. You want to ensure your loved ones benefit from your financial legacy, from your kids to your grandkids. We're talking about avoiding costly blunders like leaving your prized stamp collection to your ex-wife.

Here's the deal: estate planning isn't just for the ultra-wealthy; it's for anyone who wants their wishes to be honored after they're gone.

It might be time to talk with your trusted financial advisor about how to smoothly pass on your legacy. Whether paying for education or preserving the family home, understanding what wealth means to each family member will help structure your estate plan. Remember, it’s not just about money. It’s more about helping your family to handle your financial legacy responsibly. Your estate plan is a key component of your retirement puzzle.

In this guide, we will explore the ins and outs of estate planning, from selecting the right beneficiaries for your retirement accounts to keeping your plan up to date. It’s a roadmap for your financial legacy, minus the confusing detours.

We’ll start with the five essential documents for a well-thought-out estate plan.

THE FIVE ESSENTIAL ESTATE PLANNING DOCUMENTS

Regardless of your age or financial status, it's vital to establish an estate plan to protect yourself and your assets, not only during your lifetime but also after your passing. Before consulting with your attorney and financial advisor, it is helpful to understand the documents they might suggest for you.

1. Revocable Living Trust

A revocable living trust plays a significant role in estate planning. ***It is a preferred tool as it avoids the probate process and saves***

time and money. By transferring your assets into a revocable living trust, you ensure the continuing management of your financial matters for your lifetime and beyond. Assets held within the trust are exempt from the probate process because this legal entity persists beyond your passing. It also reduces the risk of personal information becoming public record.[1]

Every revocable trust involves three essential roles: the grantor, the beneficiaries and the trustee. The grantor, typically yourself, establishes the revocable living trust and transfers assets into it. The beneficiaries, often including you and your family, receive income and/or principal per the trust's terms. The trustee, who can be you, a family member or a corporate trustee, is responsible for managing the trust assets.

You reserve the ability to modify the provisions of a revocable trust at any point in your life, provided you possess the capacity to do so. If you serve as your own trustee, you maintain control over your investments and financial affairs. In this scenario, your account may be titled as "(Your Name), Trustee of the (Your Name) Revocable Living Trust Dated (Date)." ***It should be noted that an attorney may include a pour-over will as a secondary option to a trust if the trust were to fail for any reason.***

2. Will

A will serves as a set of instructions for the distribution of individual assets to your family and other chosen beneficiaries upon your passing. Your attorney can tailor these arrangements to align with your specific requirements. Within the document, you nominate a personal representative, also

called an executor, entrusted with settling final expenses and taxes, followed by the equitable distribution of your assets.[2]

If you have minor children, a will remains the sole means by which you can designate a guardian to care for them in your absence. For a will to be legally effective, it must be submitted to probate court following your passing. Probate is part of a legal process designed to manage and facilitate the orderly transfer of your assets upon your passing. The court assumes the role of overseeing the settlement of debts and the equitable distribution of your assets. Typically, your chosen personal representative will require the services of an attorney to navigate this process.

It's crucial to recognize that a will's authority only comes into play after your passing.

A will cannot address the management of your assets in cases of severe illness or incapacity. This stresses the significance of having other estate planning documents to manage the risks associated with such circumstances effectively.

3. Durable Power of Attorney

A durable power of attorney is a legally binding document where you designate someone else to act as your representative. This individual is referred to as your agent or attorney-in-fact.[3] You can allow your appointed agent to have extensive or limited authority over your affairs. The selection of this person should be made wisely because they will generally have the ability to handle tasks such as selling, investing and managing your assets. A general power of attorney ceases to be effective upon your incapacitation or passing. However, a durable

power of attorney remains in force during periods of incapacity, serving as a crucial financial safeguard. It's important to note that a durable power of attorney does terminate upon your death.

4. Healthcare Power of Attorney

A healthcare power of attorney gives someone the authority to make medical decisions on your behalf in situations where you cannot do so.[4] When combined with a living will, this document can prove invaluable in preventing familial disputes and the potential need for legal intervention should you ever lose the capacity to make your own healthcare choices. It is worth noting that this document is sometimes referred to as a healthcare proxy.

Additionally, you can also designate other family members to have HIPPA authorization.

This will grant those individuals with healthcare information at your incapacity. Many people add their spouse and children to the HIPPA authorization so their family can make informed decisions together. While multiple family members can have HIPPA authorization, the healthcare power of attorney is the one who ultimately gets to make any healthcare decisions.

5. Living Will

A living will communicates your preferences regarding the utilization of life-sustaining treatments in situations involving terminal illness.[5] It outlines your desires without giving decision-making authority to anyone else. This document might be combined with a healthcare power of attorney in certain states, commonly known as an advance directive or healthcare declaration.

UNDERSTANDING BENEFICIARY DESIGNATIONS:

Key Insights for All

While many of us associate estate planning with wills or living trusts, it's critical to recognize that, in numerous instances, these documents won't dictate the distribution of assets like life insurance, annuities, IRAs, retirement plans and various employee benefit plans. Instead, your beneficiary designations determine the recipients of these assets. Below are ten vital considerations to remember

when establishing, assessing or modifying your beneficiary designations.

1. Ensure Beneficiary Designations Are in Place

Designating a beneficiary is an essential step that allows you to maintain control over your assets. Ensuring, upon your passing, that the assets in the account are smoothly transferred to the individual(s) you've chosen. Failing to specify your beneficiary(ies) can lead to these inevitable outcomes:

Default Beneficiaries: In certain instances, the governing agreement may establish default beneficiaries. For example, in some cases, an IRA Custodial Agreement specifies that the account will be passed first to the owner's spouse in the absence of a named beneficiary. If there is no surviving spouse, it goes to the owner's surviving children. If

there are no surviving children, it ultimately goes to the estate. While such provisions can be helpful, they may not align with your intended beneficiaries.

No Default Provisions or Qualifying Individuals: If the governing agreement lacks default provisions or if it does but no individuals fall into those designated categories, the account typically becomes part of the probate estate. This scenario can result in delayed distributions, increased administrative expenses and less favorable income tax treatment.

2. Designate Primary and Secondary Beneficiaries

It's wise to designate a secondary beneficiary in the event that the primary beneficiary passes away before you. Once more, providing clear

and specific instructions that can help prevent unintended or undesirable outcomes.

3. Life Changes

Regularly review your beneficiary designations and make necessary updates in response to significant life events like births, deaths, marriages or divorces. Forgetting to keep these designations current could lead to assets being transferred to unintended recipients or excluding individuals you may have intended to include.

4. Review the Instructions

Beneficiary designation forms are not all the same and can significantly differ. These forms and governing agreements may have notable differences across various financial institutions and asset or account types. It's crucial not to rush through the process by simply inserting names. Instead, take the time to examine

and understand the beneficiary designation form thoroughly.

5. Align Your Will and Trust Documents

When you make amendments to your will or trust, it's vital to have a discussion with your attorney regarding your beneficiary designations. Since these designations function independently from your will or trust, it's crucial to understand the interaction of all components within your estate plan as a cohesive entity.

Assets commonly transferred based on beneficiary designations include:

- **Individual Retirement Accounts (IRAs)**
- **Various Retirement Plans:**
  - 401(k), 403(b), and 457 plans
  - SEP and SIMPLE IRAs
  - Pension plans

    - Employee stock ownership plans ESOPs)
- **Life Insurance Policies**
- **Annuities**
- **Diverse Employee Benefit Plans:**
    - Group term life insurance
    - Stock options
    - Restricted stock
    - Phantom stock or stock appreciation rights (SARs)
    - Employee stock purchase plans (ESPPs)
    - Nonqualified deferred compensation NQDC) plans
    - Transfer-on-Death (TOD) Accounts

6. Designating Individual Beneficiaries for Specific Assets

This is best explained with an example. Let's take the case of an individual who opened

three separate accounts and designated a different child as the beneficiary for each one. As time passed, certain accounts experienced greater growth compared to others. Some beneficiaries received more than originally intended, while others received less.

7. Avoid Designating Your Estate as the Beneficiary

In most situations, this approach produces suboptimal outcomes because it subjects non-probate assets to probate proceedings. For IRAs and qualified retirement plans, there may be unfavorable income tax implications. An estate, being a legal entity and not a human individual, does not meet the criteria of a designated beneficiary. As a result, in most instances, taxable distributions must occur within a smaller timeframe compared to when

an individual (or an eligible look-through trust) is designated as the beneficiary.

An exception to this rule: If an IRA or qualified plan holder designates the estate as the beneficiary and passes away after reaching the Required Beginning Date (usually at age 72), distributions are determined based on the remaining life expectancy of the deceased owner. Interestingly, this life-expectancy payout can extend beyond the 10-year limit that typically applies to distributions for most non-spouse individuals.

8. Exercise Caution When Designating a Trust as a Beneficiary

Before designating a trust as the beneficiary for IRAs, qualified retirement plans or annuities, it is best to seek advice from your attorney or CPA. There are instances where the governing document or tax regulations, such as the

Required Minimum Distribution (RMD) rules, might call for accelerated taxable distributions when a trust is designated as the beneficiary. At the same time, there are valid reasons to opt for a trust, such as when beneficiaries are minors, in second-marriage scenarios or for better control over fund access, it is imperative to understand the associated tax implications in advance.

When the SECURE Act was enacted, it altered the mandatory distribution rules for defined contribution plans and IRAs.[6] It is important to reassess any pre-existing trust planning related to IRAs and qualified plans. Even if your trust documents were originally designed to facilitate life-expectancy payouts, they may no longer function as intended due to the new rules applicable to deaths occurring after December 31, 2019. Consequently, assets might be distributed to the trust beneficiary

much earlier than desired, potentially leading to increased income tax implications for the trust or its beneficiary.

In summary, trusts drafted before the SECURE Act may present challenges, calling for a thorough review of your beneficiary designation strategy with your attorney to ensure your estate plan aligns appropriately with the current regulatory landscape.

9. Tax Implications and Prospects for Strategic Planning

A wide range of assets can be conveyed through beneficiary designations. Teaming up with a seasoned tax advisor can be invaluable. They can offer tailored planning suggestions fitted to your unique circumstances.

Here are a few hypothetical scenarios of how beneficiary designations can be refined:

Eleanor, a highly accomplished corporate executive, is strategically planning her financial future. She has chosen to designate a charitable organization as the primary beneficiary of her life insurance policy, which is a substantial asset in her portfolio. In addition, Eleanor holds a valuable portfolio of nonqualified stock options. She has assigned her children as beneficiaries under this arrangement. The approximate values of both assets align closely.

Eleanor's financial advisor recently provided valuable insights, suggesting that a few easy adjustments to her beneficiary planning could potentially yield a more advantageous tax outcome. The recommendation involved naming her children as recipients of the insurance benefit, allowing them to benefit from tax-free proceeds. While directing the nonqualified stock options—typically subject

to taxation—towards a charitable organization with tax-exempt status.

Charles, a widower who has gracefully settled into retirement, has a substantial qualified retirement plan from his previous employer, making it a cornerstone of his financial strategy. Charles has a disciplined approach to draw only the Required Minimum Distributions (RMDs) from the plan. He intends to pass these distributions to his beloved daughter, Isabella, who holds the status of designated beneficiary.

During a recent consultation with his estate planning attorney, Charles communicated his desire to provide Isabella with the opportunity to maximize the tax-deferral benefits after his passing. The attorney highlighted the impact of the SECURE Act of 2019. The act changed the rules, requiring a 10-year distribution period for

Isabella instead of the previously available life-expectancy payout.

The attorney explained the standard practices of employer-sponsored plans. These plans often offer extended distribution options for former employees and their spouses. Still, they may subject non-spouse beneficiaries to more accelerated distribution methods. Charles' attorney emphasized that the employer-sponsored plan must facilitate a direct transfer of inherited plan assets into an inherited IRA for non-spouse beneficiaries.

His attorney advised a thorough review of the specific terms of his plan to determine the available distribution options for non-spouse beneficiaries. If the plan permits similar distribution flexibility, Isabella may opt to retain the funds within the employer's plan. If the plan enforces swifter distributions for non-

spouse beneficiaries, Isabella could consider transferring the assets to an inherited IRA following her father's eventual passing.

10. Employ Disclaimers as Needed, but Exercise Caution.

A recipient may have reasons to reject assets that would otherwise come their way. Such a decision can stem from various factors, including estate planning considerations, concerns related to income taxes, the need for estate equalization or redistribution or an effort to rectify an unintended outcome that might otherwise occur. In certain situations, it is possible to alter the distribution of assets or address errors in beneficiary designations by employing a disclaimer—a legally binding document enabling the designated beneficiary to irrevocably decline the asset. It is essential to note that the beneficiary disclaiming the

asset cannot dictate its final destination. Instead, when a beneficiary disclaims an asset, it passes to the next eligible individual listed on the beneficiary form. If there are no other designated beneficiaries, it follows the default provisions of the contract. Disclaimers entail intricate legal and tax considerations and require careful consultation with an attorney and a certified public accountant (CPA).

IN CONCLUSION

Embarking on the estate planning journey is a crucial step toward ensuring the financial security and well-being of your loved ones after you're gone. It's a responsible and caring act that provides peace of mind, allowing you to shape the legacy you leave behind.

Throughout this guide, we've explored the essential components of effective estate planning, from crafting wills and trusts to designating beneficiaries and considering potential tax implications. While this guide serves as a valuable starting point, it is

essential to remember that estate planning is not a one-time event but an ongoing process that should evolve with your life circumstances and financial situation.

Two critical takeaways from this guide deserve particular emphasis:

Consult Tax Professionals and Attorneys: Estate planning is a complex endeavor, with tax laws and regulations that can change over time. To maximize the efficiency of your plan and minimize tax liabilities, it is highly advisable to seek guidance from qualified tax professionals and experienced estate planning attorneys. They possess the expertise to navigate the intricate tax landscape, ensuring that your assets are protected and your beneficiaries receive the most favorable outcomes.

Frequently Update Documents: Life is dynamic, and your financial situation, family structure and goals may change over time. It is essential to revisit and update your estate planning documents regularly. Whether due to significant life events like marriages, divorces, births, deaths or changes in your financial portfolio, keeping your wills, trusts, and beneficiary designations up-to-date is crucial to reflecting your current wishes accurately.

By consulting experts and maintaining your estate planning documents, you can ensure that your intentions are carried out effectively and that your legacy remains a source of support and security for your loved ones. Your commitment to regular updates and professional advice will help you adapt to changing circumstances, reduce potential legal complications and potentially minimize tax

burdens, preserving your assets for the benefit of future generations.

Estate planning is a continuous process that requires careful consideration, professional guidance and adaptability. It is an expression of love and responsibility toward your family and heirs. Ensuring that they are well taken care of when you are no longer able to do so. Remember, your decisions today will shape the future for those you care about most. So, take the time to plan comprehensively, consult with experts and keep your documents current – your legacy and your loved ones will thank you for it.

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