



Estate Planning

Decision Guide

What you should know about planning for your future

What is Estate Planning? I don't have a lot of assets. Why should I speak with an expert?

Estate planning simply involves making reasoned decisions about how the property or monies you own are distributed upon your death. The simplest of estates can become a costly nightmare for survivors when there are no provisions made for an orderly distribution of assets upon death. These problems arise at a time when loved ones are least capable of dealing with complicated and messy legal matters while grieving the loss of a family member.

What is "Probate?"

Probate is simply the administrative process by which the court oversees the distribution of a deceased person's assets. The assets subject to probate are typically those owned in the sole name of the deceased which do not pass to anyone by a beneficiary designation (example: life insurance) or by co-ownership (example: joint accounts with rights of survivorship). Just because someone has a Last Will does not avoid probate, in fact simply having a Last Will which designates where assets go upon a person's death will actually ensure that those assets are subject to the rules, timelines, and costs of probate.

What are trusts? Do I need one?

Most people who do estate planning choose a basic Last Will and Testament as their main document directing where their assets go upon death. However, a trust is often a better tool to keep the ownership, management, and knowledge of one's property or assets under the control of someone chosen as a "trustee" to oversee those assets for the benefit of another person. A trust is also typically a private document which does not have to be filed or "probated" publicly upon the death of the person creating the trust. By not having to file a trust, certain fees and costs are also avoided which are normally charged by the court for overseeing the administration of an estate which passes under a Last Will. Trusts are also handy if the person(s) you wish to benefit upon death are not necessarily *capable* of managing money or would be disqualified from receiving certain benefits, like Medicaid or SSI, if they were to receive money or property outright. Trusts can also help avoid federal estate taxation of larger estates if used properly in estate plans and assist beneficiaries in maintaining eligibility for certain public benefits like Medicaid or SSI.

How often should I review my estate plan?

Estate and tax laws do change over time, as do personal situations. It's a good idea to review your estate plan with your attorney every 2-3 years or sooner if you have a significant life change.

How can I limit or avoid inheritance tax paid by my family?

With proper planning, inheritance tax can almost always be avoided. Congress' action in late 2010 to raise the individual federal estate tax exemptions to \$5 million per individual and \$10 million per



10 LSB Plaza • Lexington, NC 27292

Mailing Address: PO Box 1657 • Lexington, NC 27293-1657

Phone: 336.249.2101 • Fax: 336.249.4572

married couple during 2011 and 2012 should eradicate most folks' potential for estate tax liability, at least during the two year period during which this framework is in place. However, over 20 states still retain estate and inheritance tax thresholds which are lower than the newly enacted federal ones. Therefore, structuring an individual or married couple's estates to take advantage of the exemption amounts, state or federal, which allow estates to pass tax-free can be fairly easily accomplished if planning is undertaken in advance of serious illness or advanced age. Division of assets equally between spouses, use of trusts to shelter the exemption amount each person may pass at death tax-free, and lifetime gifting to family members or charity are all methods by which state or federal inheritance tax is avoided. Often, traditional ownership of assets, such as jointly between spouses or naming spouses as primary beneficiaries run contrary to tax-planning techniques. Therefore, an estate planning attorney should be consulted on the best ways to structure not only Wills or Trusts, but the method by which title to certain assets is owned.

When would a Guardianship be needed?

When a person becomes ill to the point they are no longer mentally or physically competent to handle their own business or personal affairs, they must rely on another competent adult to make those decisions for them. If the incapacitated person has not appointed someone as their durable power of attorney, then the only recourse is to seek the appointment of a Guardian through the Clerk of Court. This is essentially a lawsuit filed to have the person legally declared incompetent and a guardian appointed by the Clerk of Court to handle the person's financial and/or medical decision making. This can be costly and time consuming. Typically, it is recommended that a power of attorney be executed *prior to* incapacity in order to avoid the need for a Guardianship.

Donating to charity?

Donating all or part of your estate to charity can provide tax benefits.

Alternately, when you begin mandatory draws from certain retirement accounts at age 70 ½, you can make limited charitable contributions that will reduce your taxes.

What is the difference between a medical power of attorney, a durable power of attorney and a living will?

A medical power of attorney authorizes someone to have access to your medical records and make medical decisions for you *only* at a time when you are not capable of communicating those decisions to your doctors. A durable power of attorney authorizes someone to make financial, property, tax or other legal decisions for you, either at a time when you are incapable of doing so due to mental or physical infirmity or at the time specified in the power of attorney document. A living will serves as instructions to your doctor and your medical power of attorney/agent as to when you would want life prolonging measures to cease if you are terminally ill, in a persistent vegetative state (i.e., coma), or suffer from severe Alzheimer's or dementia.

Estate planning is not limited to individuals with highly valued assets. Everyone should periodically review their situation – specifically from a personal, financial, and medical perspective – and ensure they and their families are prepared for the future and the unexpected circumstances that can occur. The Estate Planning and Elder Law team at **Brinkley Walser** can speak with you about your specific situation and make appropriate recommendations.



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