

Keeping up on your estate plan: Stop, check-in, take inventory

Taking time to review and reassess your estate plan on a regular basis is an important habit to adapt once you've put planning into place. Stop, check-in, take inventory.

Think about the answers to these questions:

- Who will handle your affairs in the event of incapacity? Do you have a health care directive?
- Are proper beneficiaries named on insurance policies, retirement accounts, and other accounts?
- Do you have children who are minors or have special needs?
- If something were to happen to you, do you have a clear objective as to how you want your assets to be distributed and to whom?
- How are other assets titled?
- Do you have an estate plan?

There are many reasons why individuals need an estate plan. A common misconception is that only the ultra-wealthy need an estate plan. Your "estate" consists of everything you own at the time of your death, including your home, personal property, investments, bank accounts, interest in a business or partnership, retirement plans, and other assets. An estate plan specifies how your assets are distributed and who is in control of making certain decisions if you were to become incapacitated and upon your passing.

What are Powers of Attorney and why do I need them?

A durable power of attorney for property (POA) allows an individual to appoint an agent to handle their financial affairs in the event of disability. This would include things like payment of bills (any assets held within a trust would be managed by the successor trustee). Similarly, healthcare decisions would be made by an appointed agent under a Power of Attorney for Health Care.

Take action: If you have these documents, it is advisable to review the named agents to ensure they are still appropriate.

What is a Will?

A will is a public document that transfers separately owned property under a court appointed probate proceeding. A will does not supersede transfers that occur automatically, such as joint bank accounts, jointly held real estate and assets with beneficiary designations. The will also names guardians for minor children. An executor is the named individual or third party appointed to carry out the terms of the will.

Take action: If you do have a will and your children are still minors, when was the last time you reviewed the named guardians or other powerholders? Are these individuals still appropriate?

Do I need a Revocable Trust?

Many individuals feel that because the current 2024 Federal Estate Tax exemption is \$13.1 million that an estate plan is not needed unless their wealth exceeds this amount. ¹ This is not always the case.

- For example, residents of Illinois could have an estate subject to state estate taxes while not having an estate subject to federal estate tax. Currently, the Illinois estate tax exemption is different than the federal exemption amount. The Illinois state estate tax exemption is \$4 million.²

If your assets are held in your individual name, with no beneficiary designation, not in joint title, and with no will, the assets will be distributed pursuant to the intestacy laws of the state you live. In the event your assets pass pursuant to your will and you have no living trust, they will be distributed as provided in the document, but may be subject to state probate proceedings. The probate process may be worth avoiding.

The probate process can lead to unnecessary costs that could otherwise be avoided with the execution of a living trust. In addition, a will is a public document, whereas a trust is private.

What does a trust do?

During one's lifetime:

- the grantor retains full power of the assets in the trust
- the trust is NOT treated as a separate tax entity for income tax purposes
- the trust is revocable

In the event the individual becomes incapacitated, the named successor trustee would take over the administration of the trust assets, including distributing funds to the individual, his/her spouse, and their dependents pursuant to the terms of the governing instrument.

Upon the grantor's death, the trust becomes irrevocable. The terms of the trust provide the "control from the grave," which directs how assets are distributed or retained in trust for their family members, charitable organizations, or other individuals. While individuals may not feel it is necessary for assets to be retained in trust at first thought, consider the following:

- If your assets were distributed today, would your named beneficiaries be able to manage the assets?
- You may want to consider retaining assets in trust for some period of time to allow for creditor protection.
- Assets in trust may not be includable in the beneficiary's estate.
- A trust may aid in preserving assets for the beneficiary's lifetime.
- A trust may provide for beneficiaries with special needs without disrupting government aid.

What if I died without a Will or Trust?

Your assets would pass by "intestate," meaning:

- They would pass through probate
- They could pass by beneficiary designation
- There is potential for court appointed guardians and/or conservators

Consider the following - if assets are held jointly with your spouse, upon one's passing the assets would be held for the surviving spouse. Sounds great, right? What if the surviving spouse remarries and does not retain any of the assets for your surviving children?

Having an estate plan is not only a tax planning vehicle, but also a way to ensure you and your loved ones are provided for in the manner you desire.

Take Action: As your wealth advisor, Mesirow is here to help facilitate the appropriate conversation with counsel and discuss what other planning strategies may be appropriate for you and your family.

Published March 2024

1. <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>

2. <https://verticesco.com/all-you-need-to-know-about-the-estate-tax-exemption-in-2024/>

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