YOUR ESTATE PLANNING GUIDE

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Discover the advantages to Illinois and Missouri estate planning and strategies to create your best estate plan.

Shanise Evans, J.D., MBA

with Craig R. Hersch

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YOUR ESTATE PLANNING GUIDE

THE
FAMILY
ESTATE & LEGACY
PROGRAM™

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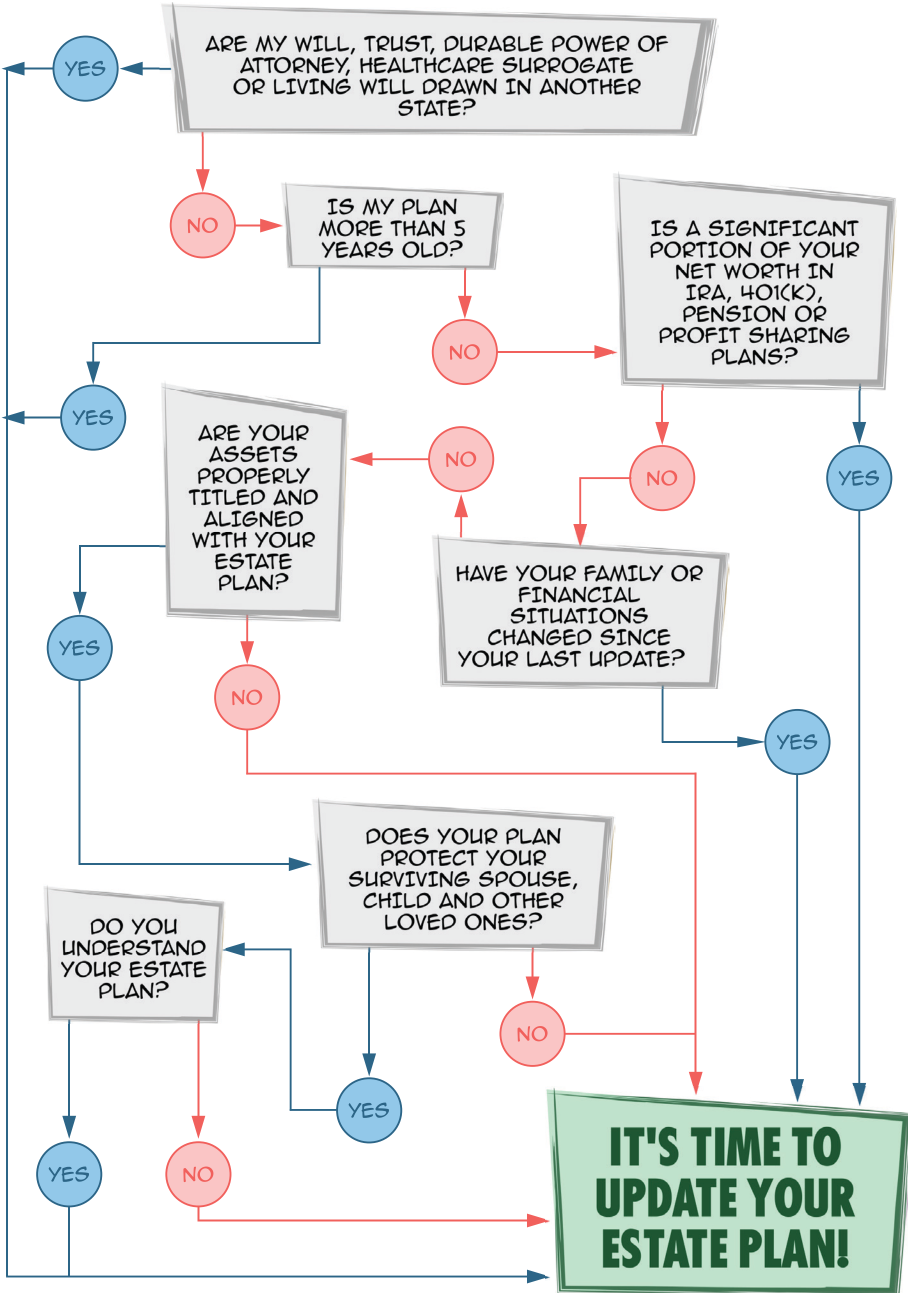
DOES MY ESTATE PLAN NEED TO BE UPDATED?



Preface

What is Estate Planning?

Estate planning is the process of arranging and managing your assets during your lifetime and determining how they will be distributed after your death. It involves creating a comprehensive plan to ensure that your financial and personal wishes are carried out effectively, while minimizing taxes, expenses, and potential conflicts among your beneficiaries.

Here is an overview of the key elements involved in estate planning:

Will: A will is a legal document that specifies how your assets should be distributed after your death. It allows you to name beneficiaries for your property and assets, appoint an executor to manage the distribution of your estate, and designate guardians for minor children if applicable.

Trusts: Trusts are legal arrangements that allow a third party, known as the trustee, to hold and manage your assets on behalf of your beneficiaries. Trusts can help you avoid probate, minimize estate taxes, protect assets, and provide for the long-term management of your wealth. There are various types of trusts, such as revocable living trusts, irrevocable trusts, and special needs trusts, each serving different purposes.

Power of Attorney: A power of attorney is a legal document that grants someone the authority to act on your behalf in financial or legal matters. It allows you to appoint a trusted person, known as the agent or attorney-in-fact, to make decisions and handle your affairs if you become incapacitated or are unable to do so yourself.

Advance Healthcare Directive: This document outlines your healthcare wishes and appoints a healthcare proxy, also known as a healthcare power of attorney or a durable power of attorney for healthcare. It enables the appointed person to make medical decisions on your behalf if you are unable to communicate or make decisions due to illness or incapacity.

Beneficiary Designations: Assets such as life insurance policies, retirement accounts, and certain bank accounts may require you to name beneficiaries. It's important to review and update these designations regularly to ensure they align with your overall estate plan.

Tax Planning: Estate planning also involves considering potential tax implications. This includes understanding estate taxes, gift taxes, and generation-skipping transfer taxes, as well as exploring strategies to minimize tax burdens on your estate and maximize the value passed on to your beneficiaries.

Charitable Giving: Many individuals include charitable giving as part of their estate plan. This can involve setting up charitable trusts or making specific bequests to charitable organizations in your will. Estate planning is a complex process, and it's recommended to consult with an experienced estate planning attorney or financial advisor who can help you navigate the legal and financial aspects and develop a plan that reflects your specific goals and circumstance.

Chapter One

Will vs. Trust

Anyone with any degree of net worth that would otherwise be subject to probate should investigate whether a revocable living trust, sometimes referred to as an "inter vivos" (or lifetime) trust, would be beneficial.

So let's review the differences between a will and a trust. A will, we all know, is a document that states who you want to administer your estate (your personal representative) and how your estate is to be distributed. The will has no other function. The will is a public document, in that after your death it is filed with the probate court. Anyone can look at your will.

Who can view your probate inventory is supposed to be limited to "interested parties" such as beneficiaries and creditors. It is easy to file a claim against the estate to view the inventory. A false claim would be objected to and dismissed, but not before the claimant had the opportunity to review the probate estate inventory.

Keeping Your Estate Private

Most individuals with significant net worth do not want their estates so easily accessible by the public in this age of identity theft and preying on the susceptible. Your spouse and family can be exceptionally vulnerable at the time of your death, so this is not a time when anyone with any degree of wealth would want his affairs made public.

Some married couples have separate individual trusts while others have joint trusts. Whether a married couple should have a joint trust or have separate individual trusts is a product of several factors, including whether they have different beneficiaries, have wealth they want to preserve for multiple generations, and whether they are in a long term or second marriage.

I say that trusts are private because absent a dispute among beneficiaries, trusts are not filed with any public court or other institution. No one can go down to the courthouse (or log online into court records) to read your trust following your death. Similarly, the trust inventory is not filed with the probate court. The only parties privy to the trust inventory following your death are the beneficiaries and the trustee, and perhaps, the IRS.

You Maintain Control Over Your Trust Assets

When you create a trust, you transfer your assets to the trust. This does not mean you lose control over them. In almost all revocable living trusts, you serve as your own trustee as long as you are able and willing. You handpick your successor trustee. You name whom you want to serve as the party who will manage your investments. Your successor trustee might be your spouse, an adult child, or other close friend or relative.
It may also be a bank or trust company.

A "revocable" trust means just that. At any time you can amend, alter or revoke the trust. The assets remain yours for your lifetime; they are just owned by you through your trust. The taxpayer identification number for your trust is your social security number for as long as you are alive. This means that no other income tax returns other than the 1040 are filed during your life.

When you die with a revocable living trust, there is a trust administration process that your trustee is responsible to conduct prior to making distribution of the trust assets. This is not a court-supervised process and is therefore not as time consuming as no one waits for a judge to act or for a court calendar to clear.

Your Will Becomes a Safety Net

When you create a revocable living trust, your attorney will also draft a "pour over" will for you. A pour over will acts as a safety net. In order for your trust assets to avoid the probate process, the assets must be transferred into your trust. (See Chapter Three to review how our unique process, The Family Estate & Legacy Program® directs those transfers.) If any assets somehow didn't get transferred into your trust, the pour over will catches them and puts them in at your death. There would be a probate process on those assets, but not on the others that made it in.

Trusts Support You if You Become Incapacitated

Trusts also shine over wills when you consider how well they work in the event of your incapacity. Assuming you've placed your assets inside of the trust, in the event of your incapacity your successor trustee seamlessly steps in and acts for you. You either resign or are removed as your own trustee, and the person or party you have named in your stead can manage your trust assets.

Contrast this to when you have a will. Your will does not control your assets during your lifetime. So if you become incapacitated, you need to rely on your agent named in a durable power of attorney document, assuming you have one that is valid and up to date.
The problem with relying solely on a durable power of attorney is banks and brokerage firms are wary of liability when powers of attorney are presented. If a bank accepts a power that is revoked, for example, they could be held liable to the account owner for any losses she incurs because of its use. This means that a bank or brokerage firm may spend a considerable amount of time performing due diligence to ensure the power presented is valid. This due diligence takes time. Time may or may not be of the essence should you become incapacitated.

This is not to say that durable power of attorney documents are not useful. They are. That is why we include them as a part of your estate-planning package. Powers of attorney certainly work for assets outside of your trust, which can include annuities, IRA and 401(k) accounts and life insurance, to name a few examples. Relying solely on a durable power of attorney document to take care of your legal and financial affairs in the event of your incapacity is not as preferable as having a revocable living trust in your arsenal, however.

Documents Become Stale

Even if you have documents from another state, estate plans often fall out of date because of changes to the laws or changes to your family or financial circumstance.

In my next chapter I'll review just a few of the changes to the law that have occurred over the last several years, and why those changes merit updates to your plan.

KEY TAKEAWAYS

- WILLS ARE SUBJECT TO PROBATE
- WILLS ARE PUBLIC DOCUMENTS AND SUBJECT YOUR ESTATE INVENTORY TO PRYING EYES;
- TRUSTS ARE PRIVATE DOCUMENTS – THE ASSETS INSIDE OF THE TRUST FOLLOW A SIMPLER, LESS EXPENSIVE TRUST ADMINISTRATION PROCESS;
- TRUSTS SHINE IN THE EVENT OF YOUR INCAPACITY

Chapter Two

Legal Changes Merit Vigilance

We always ask new clients to bring a copy of their existing estate planning documents to our initial meeting. Then we literally have to blow the dust off before reading them after ten, fifteen or even twenty years in a safe deposit box.

"So, do you still want your sister Marie to act as a legal guardian for your children should you both die?" I playfully ask the grey-haired septuagenarians sitting across the conference table from me.

"Our youngest son is 43 years old," the wife says, blushing slightly.

With that revelation, we all have a good chuckle. Nevertheless there are serious reasons to make sure your estate plan remains up to date. In this chapter I will review five recent changes in the laws that merit careful vigilance inside of your estate plan.

Trust Code

Some states overhauled trust code in 2006 and continues to make changes almost annually. Court cases interpreting the statutes also modify the trust and estate laws.

Failure to keep up with those laws may cause unintended consequence to your estate plan. The descent and devise of your homestead is a prime example. While these laws date back to the nineteenth century, they are new and unknown to many.
There are other issues addressed in the state statutes too numerous to detail

here. A thorough review of your goals and concerns will bring out which of the trust laws we will use to meet your objectives.

Decoupling of the State Death Tax from the Federal Estate Tax

Before 2005 the federal estate tax laws coincided with the state death tax laws. If your estate paid a state death tax, for example, a corresponding deduction was given against the federal estate tax. There was, in fact, a standard state death tax deduction provided for on the federal return.

Many states had something known as a "pick up" tax, meaning that the amount of that portion of the federal estate tax allocated to the state death tax deduction would be remitted to the state. This pick up tax did not increase the total amount owed; rather the state shared in the amount that otherwise would be paid to the federal government.

That changed in 2005, resulting in what is called "decoupling". The federal estate tax return no longer provided for state death tax deductions.

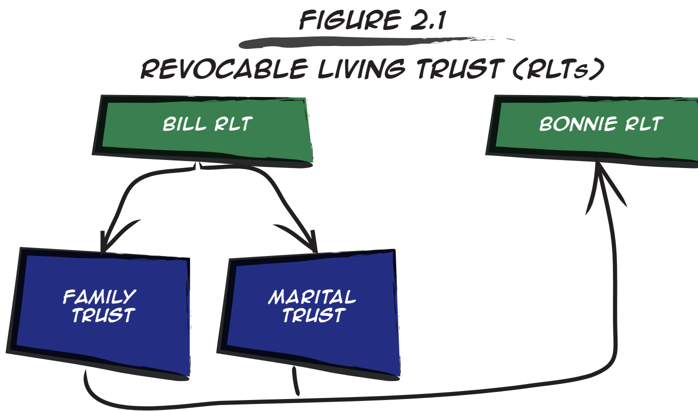
You'll find that some states, like Florida, impose no estate or inheritance taxes while other states, like New Jersey, Minnesota and Massachusetts have severe state death taxes. The federal exemption is typically high but in many states the individual death tax exemption is much lower.

New Jersey's state death tax threshold is $675,000, Minnesota's is $1.6 million and Massachusetts's is $1.0 million. What this means is that a taxpayer could have an estate well below the federal exemption, yet still have to pay state death taxes because her estate exceeded these lower amounts.

Most estate plans of married couples are drafted in such a way so that even if their estate value is high enough to warrant a federal or state death tax, it isn't paid until both spouses are deceased. Assume, for example, that Bill and Bonnie are married. Their attorney helped Bill and Bonnie divide their assets between their two trusts so that no matter who died first, their estate tax exemptions would be entirely applied. (This is no longer necessary in many cases, as I'll discuss in the "Portability" section below).

Assume that Bill dies first. Bill's revocable living trust breaks into two

"testamentary" trusts upon his death as indicated in the below diagram. The "Family Trust," otherwise known as a "Credit Shelter Trust," is funded with assets up to the amount of his estate tax exemption on the date of his death. Any overage is directed to the "Marital Trust". Both trusts are held for Bonnie for the rest of her lifetime. Bonnie may also be the trustee of the trust, controlling investment and distribution decisions.



By dividing his revocable living trust into a Family Trust and a Marital Trust at his death, Bill's estate uses up his federal estate tax exemption yet pays no tax because the Marital Trust qualifies for the marital deduction. Trusts that qualify for the marital deduction do not pay tax until the surviving spouse dies.

A formula in Bill's trust accomplishes this division. These same formulas are often found in wills where revocable trusts are not used. But here's the rub – if the formula only addresses the federal estate tax exemption and is not drafted in such a way as to consider the lower state death tax exemption, then state death tax could be triggered ***on the first spouse's death!***

This is also true for the formulas found in wills.

"Bill" and "Bonnie" were New York residents who owned five rental properties in New York State that they rented to third parties. At the time of Bill's death, his estate planning documents drafted before this decoupling

law took effect, were not updated.

The formula clause in Bill's trust was based upon the federal exemption, as commonly done. Because New York's state death tax threshold was lower than the federal exemption, his "Family Trust" was over funded for the New York State death tax, triggering a significant tax payment due on Bill's death.

Bonnie had no choice other than to sell one of the rental properties to pay the tax. These rental properties provide Bonnie with her retirement income, so the sale of a property to pay a tax was quite devastating to her.

What's so terrible about this whole mess was that a simple two-sentence addition to the formula clause in Bill's estate plan could have remedied the problem. No New York state death tax would have been paid at Bill's death.

Even after decoupling, many attorneys still use a federal-based formula; particularly attorneys who practice in states that do not impose a state level death tax. This can be a problem for Florida residents who own real estate in states that impose a state level death tax. Without proper drafting, real estate owned in a state that imposes a death tax will trigger the tax if the value of the real estate exceeds the state's exemption amount.

This highlights the urgency of updating your estate planning documents with knowledgeable, qualified estate planning attorneys when you either own real estate in a state that imposes a death tax, or are a resident of such a state.

Portability

Under the pre-2012 federal estate tax law, if a spouse died without using his estate tax exemption, it was lost forever. To illustrate, assume that Thomas and Rita jointly owned all of their assets with rights of survivorship. When Thomas dies, everything he owned is now owned by Rita. Even if Thomas's estate is worth billions, because of the unlimited marital deduction there is no tax on his death. But at Rita's death, their entire net worth would be taxed in her estate. Thomas's exemption was lost because they jointly owned all of their assets with rights of survivorship.

The way to remedy that situation in the pre-2012 law was to divide their assets and implement a "Family Trust" or a "Credit Shelter Trust"

That all changed in 2012 when "portability" became permanent (or at least as permanent as the federal estate tax law can be). With portability, even if the first decedent spouse didn't set up a testamentary Family Trust to use his exemption, the unused portion can be transferred to his spouse. This is accomplished when the estate files a Federal Estate Tax Return Form 706 and makes an appropriate election on that return.

So if the federal estate tax exemption is $5.45 million at Thomas's death, and he hadn't used any of his exemption during his lifetime and jointly held everything with Rita at his death, his entire unused exemption could be transferred to Rita resulting in her having a $10.90 million exemption at her death.

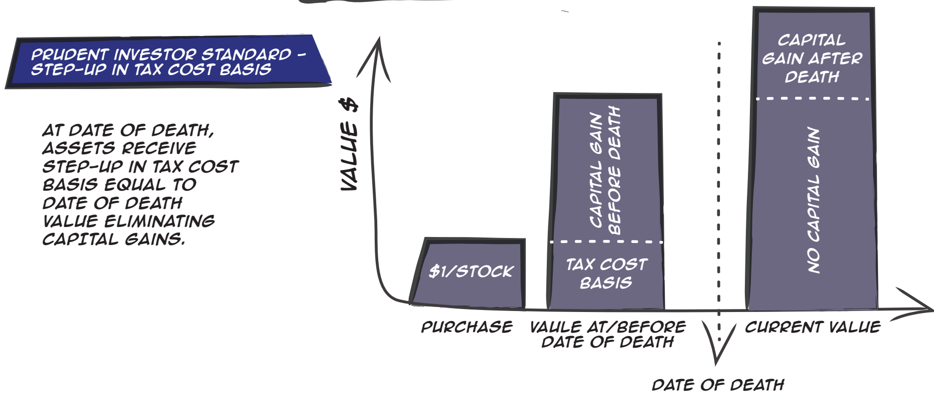
Failure to Update Could Result in More Capital Gains Tax

If your estate plan predates portability, or if your attorney didn't consider the effects of portability on estates less than the current exemption amount, it's possible that your beneficiaries won't enjoy the maximum capital gains tax savings.

If dividing assets between spouses' trusts is no longer necessary to achieve estate tax savings, doing so with standard planning ("Family Trust/Credit Shelter Trust") fails to consider the best way to use the step-up in tax cost basis that our estate assets receive at our passing.

Allow me to explain: assume that I purchased a share of Company A stock on the New York stock exchange for $1/share. My tax cost basis in those shares of stock is therefore $1/share. Over time, the value of that stock increased to $10/share. If I sold the stock during my lifetime at $10/share, then I would realize a $9/share capital gain ($10 selling price minus $1 tax cost basis) and pay taxes on that gain when I filed my annual income tax return.
If instead I died still owning those shares at $10/share, my estate receives a "step-up" in tax cost basis equal to the fair market value as of the date of

my death. If my estate and/or my beneficiaries sell the stock the day after my death for $10/share, then they realize no capital gain and pay no capital gains tax.



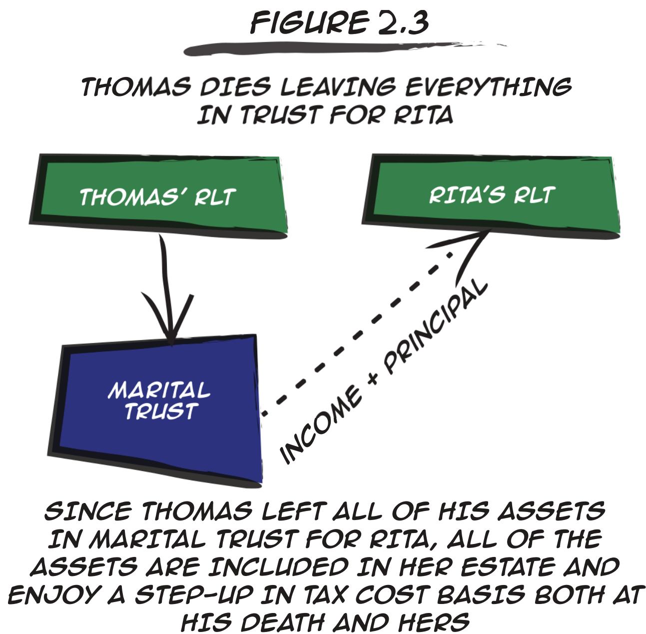
Here's how an estate might pay more tax rather than less. Assume that Thomas has a trust worth $2.5 million at the time of his death, and that Rita has a trust worth $1.5 million. At his death, Thomas's trust becomes a Family Trust that benefits Rita. Rita filed a federal estate tax return on Thomas, even though his estate was not above the filing threshold. She received his unused exemption credit of $2.95 million (let's use a $5.45 exemption minus $2.5 fair value of his estate at his death), so her total exemption is now $8.4 million ($5.45 plus Thomas's unused exemption of $2.95).

Assume further that Rita survives Thomas by 12 years, and in that time frame Thomas's trust has grown from $2.5 million at the time of his death to $3.5 million at the time of Rita's death. During that same time period, Rita's has grown to $3 million.

When Rita dies, her estate benefits from a step-up in tax cost basis to $3 million. If her estate or her beneficiaries were to sell the assets in her trust at $3 million, there would be no capital gains tax paid. Further, Rita's estate is far below her exemption of $8.4 million, so no estate taxes are paid either.

While Thomas's trust enjoyed a step-up in tax cost basis to $2.5 million at his death, there was no corresponding step-up of the Family Trust assets at the time of Rita's death, when under the Portability law his trust could have been designed to do so. Consequently, the $1 million of unrealized appreciation between the time of Thomas's death and Rita's death could have been wiped out.

Thomas's trust, for example, could have included a Marital Trust for the benefit of Rita instead of a Family Trust.

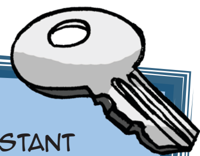


While a Marital Trust would not have used Thomas's exemption from federal estate tax, the use of his exemption was unnecessary given this fact pattern. By creating a testamentary trust that qualifies for the marital deduction, Thomas's trust assets receive a step-up in tax cost basis both at his passing and then again at his wife's death. This eliminates the capital gains tax exposure that is generated during that time frame.

My illustrations here are simplified to explain these complex tax issues. The point I make here is how portability turns traditional estate planning methods on their head when one of the considerations is to minimize taxes – both estate taxes and capital gains taxes.

There are many other laws you should be aware of that have changed in the last few years. I've established very clearly why sticking your estate planning documents in a drawer without keeping them up to date could cause adverse consequences.

In the next chapter I'll review what you need to know about updating all of your durable power of attorney, health care surrogate and living will documents.



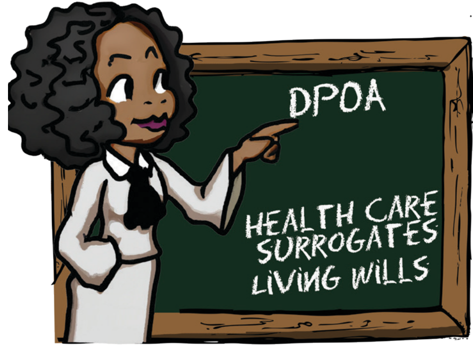
KEY TAKEAWAYS

- THE TRUST LAWS AND THE TAX LAWS ARE IN A CONSTANT STATE OF CHANGE
- KEEPING UP WITH THESE LAWS CAN HAVE A REAL ECONOMIC EFFECT ON YOUR LOVED ONES
- THERE'S NO FORMULA THAT APPLIES ACROSS THE BOARD – WHAT'S GOOD FOR ONE FAMILY MAY BE ENTIRELY INAPPROPRIATE FOR ANOTHER
- HAVING A QUALIFIED, KNOWLEDGEABLE ATTORNEY WHO KEEPS UP WITH THESE CHANGES IS PARAMOUNT TO YOUR PLAN'S SUCCESS

Chapter Three

Durable Power of Attorneys, Health Care Surrogates, Living Will

Your will and trust are not the only estate planning documents that should be both reviewed and updated. As each state's laws are different for wills and trusts, they are also different for durable power of attorneys, health care surrogates, and living wills. The laws that govern these important documents often change.



Durable Power of Attorney

A DPOA is an important document that everyone should have as a part of his or her estate-planning portfolio. The grantor of a Durable Power of Attorney names someone who can legally act for the grantor in any number of ways. The person who is granted the power to act is known as the "attorney-in-fact" or "agent." For simplicity's sake I will refer to the grantee of the power as the "agent."

The DPOA may allow the agent to write checks to pay bills, sign deeds, complete beneficiary designations, enter into and/or enforce contracts, open accounts, close accounts, and direct investments.

DPOAs cease upon the grantor's death. In other words, once the grantor of the DPOA dies, the document is no longer effective. The "Durable" in the name "Durable Power of Attorney" means that the powers survive the grantor's ***incapacity***. A General Power of Attorney, in contrast, would cease once the grantor becomes incapacitated such as through dementia or Alzheimer's disease.

Most estate plans use the DPOA since the thought is that the power holder would normally only act if the grantor of the power couldn't.

Springing Durable Powers of Attorney

Successor DPOAs are very difficult to use from a practical standpoint.

Consider that any bank, financial firm or broker acting under a DPOA will be suspicious of the document from a liability standpoint. Consider the scenario where daughter Gina walks into her father's financial advisor's office holding the DPOA and says "I need to transfer $20,000 out of my father's money market account today."

My financial advisor looks at the DPOA, worried that if it is not authentic he could be liable for following Gina's direction. So he asks Gina, "Why are you using the power? Can I call your dad to see if this is okay?"

"Dad's in the hospital and isn't able to talk. I need to write checks to pay a bunch of his bills and that is why I am here," Gina answers him.

Dad's financial advisor then reads the DPOA – and points to the first line that says his wife Patricia is the first power holder and not Gina.
"It says here that your mother is the first power holder and that you can only act if she can't," he says.

"My mom is out of the country and can't take care of these things now," Gina says.

"I'm sorry," financial advisor says, "I have to be very careful as I may have a lot of liability here if for some reason you aren't supposed to act," he says. "I will give this to my firm's legal department to sort out."

Gina is frustrated and worried that she won't be able to pay her father's bills on time. "How long will this take?" she asks.

"I don't know," the financial advisor replies.

From there the whole thing can become a circus. The attorney for the financial firm may say they need written proof that Patricia can't act, or she is unwilling to act. It can take days if not weeks to resolve.

Concurrent Durable Powers of Attorney

So what's the alternative? What we suggest is that each person you wish to name as your agent under a DPOA have an individual DPOA document that just names them. While there is a possibility that if you have two different parties acting under a DPOA that they conflict with one another, I will tell you anecdotally from personal experience I have seen little (if any) of that in my practice.

With that said, if you name more than one party as a DPOA in separate documents it is wise to tell the individuals you are naming of the fact that each has a separate, concurrent power, and you expect them to work together and to consult one another. Or, if you prefer that one only act when the other couldn't, that would be a verbal arrangement.

Remember that anyone acting as an agent under a DPOA has a fiduciary duty to the grantor of the power. She should only act in the grantor's best interests. If you fear that someone you name won't do that, or won't work in conjunction with another as you would request, then I would say you shouldn't be naming that person in such a powerful document to begin with.

Superpowers Require Initials

Another important point to the new statute is the requirement that certain powers must be initialed to be effective. The banking and financial firm lobbies became concerned that clients weren't truly aware of many provisions buried in multi-page documents. It is not sufficient for your document to state that your agent can do anything you can do.

The powers must be specifically stated, and as said above, certain "superpowers" require the grantor to initial. These superpowers include the power to make gifts from the grantor's assets, the power to create and amend trusts, and the power to create and amend beneficiary designations.

Even those with revocable trusts, however, often own assets outside of the trust such as IRAs and annuities. If the original account owner becomes incompetent you still need a durable power of attorney to take care of those accounts, along with a host of other issues, such as enforcing contractual and legal rights, preparing beneficiary designations, performing tax planning, signing tax returns, and so on.

I hope you don't come away from this chapter believing durable power of attorney documents are not crucial to anyone's estate plan. They are. That's why I'm emphasizing keeping the crucial durable power of attorney document up to date.

Health Care Directives

Besides the durable power of attorney, your complete estate plan includes advance directive documents including the health care surrogate and living will. The health care surrogate names someone to make important health care decisions for you. It allows your surrogate to sign admissions forms to hospitals, rehabilitation and long term care facilities, as well as to interact with your medical professionals including making decisions regarding your care.

Living Will

The living will document, sometimes referred to as "the right to die" document, enables you to make end-of-life decisions while you are competent regarding the withholding or withdrawing of life-prolonging procedures so long as you meet the statutory precondition.

The Illinois living will law provides that you must be in an "end stage" terminal condition, or in a "persistent vegetative state" with no hope of recovery. This condition must be certified by two physicians and is signed off on by the surrogate named in your living will, who is also your health care surrogate.

Terri Schiavo was a woman central to one of Florida's (and the nation's) most famous living will cases. Terri lived in Dunedin, Florida (near Clearwater). She suffered a massive heart attack in 1990 and was resuscitated only to be left comatose in a persistent vegetative state. She had never signed a living will.

Her husband argued that she would not have wanted to live on in this manner and petitioned to have her feeding tubes removed. Her parents disagreed with the medical diagnosis and went to court to stop her husband's direction. After a seven-year court battle, along with her case being made the subject of state and federal politicians comments, including then President George W. Bush, her tube was removed and she died in 2005.

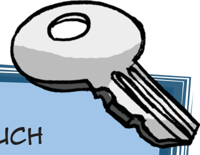
No one wants the end of his or her life to become the circus that Terri Schiavo's case became. The living will document minimizes that possibility. By signing a document indicating what your direction would be if you met the legal preconditions, you are in charge. You let your loved ones know exactly what you would want in such an unfortunate situation.

Documents Valid in Other States

If you are a resident of Illinois then your advance directive documents should comply with Illinois law. Sometimes I'm asked by a client, "If I'm at my residence in Massachusetts and end up in a hospital there, wouldn't I need Massachusetts documents?"

The answer to that question is, "No." So long as you have documents compliant with your state of primary residence, then any state where you may end up in the hospital will accept your health care directives.

The Family Estate & Legacy Program® includes a review and an update of all of your advance directive documents at the time we update your estate plan. Moreover, as you can see from this chapter, keeping up with the changes in these laws is as important as the changes that affect your will and trust.



KEY TAKEAWAYS

> STATE LAWS AFFECT YOUR ADVANCE DIRECTIVES SUCH AS YOUR DURABLE POWER OF ATTORNEY, HEALTH CARE SURROGATE AND LIVING WILLS;

> THESE LAWS CHANGE FREQUENTLY, SO IT IS IMPERATIVE TO KEEP THESE IMPORTANT DOCUMENTS UP TO DATE AND COMPLIANT WITH YOUR STATE OF RESIDENCE;

> YOUR ADVANCE DIRECTIVE DOCUMENTS THAT ARE COMPLIANT WITH YOUR STATE OF RESIDENCE ARE ALSO RECOGNIZED IN ALL 50 STATES

Chapter Four
Protection for Yourself, Your Spouse and Your Beneficiaries

At this point in the book, it is my hope I've convinced you that estate planning should not be a "let's take the old documents out of the safe deposit box to review them every 10 years" proposition, particularly for anyone with any degree of net worth. While working with your legal team to update your plan, I suggest that you also consider adding three key ingredients that your plan may not already have:

- Protection
- Asset Alignment
- Client Care

When I refer to "protection" I separate them into three components – protection for yourself, protection for your spouse, and protection for your beneficiaries such as your children and grandchildren.

"Asset Alignment" speaks to having your assets owned in the right "basket". As you'll learn in Chapter Eight, if you never get around to transferring your assets into your revocable trust, you might as well not have a trust.

"Client Care" refers to keeping your legal documents up to date with the ever-changing estate, trust and tax laws, as well as with your personal and financial situation.

Ensuring that these three elements are functional inside of your estate plan should provide you and your loved ones with comfort and clarity. In this chapter we examine the element of protection and then discuss Asset Alignment and Client Care in the following chapters.

Protection for Yourself

Many clients mistakenly believe that by creating a revocable living trust, they protect their assets from the claims of divorcing spouses, predators and creditors. This isn't the case. When you transfer assets from your name into your revocable trust, you only change the form of ownership. Because you own the trust, the trust assets are still considered yours, therefore you can change the terms of the trust whenever you want, and you control the disposition of trust assets.

Revocable trusts use your social security number as the tax identification number, so there's no separate income tax return to file as long as you are alive. All the income of the trust appears on your federal Form 1040 just as it always has.

Because assets inside of your trust remain legally yours, the trust does not shield you from liability.

This came to light when a client of my firm accidentally killed a motorcyclist while driving her car. A retiree, she had moved to cut expenses, limiting her automobile insurance coverage to 100/300/50, meaning she had coverage of $100,000 bodily injury liability insurance per person, $300,000 total bodily injury liability insurance per accident, and $50,000 property damage liability per accident.

She unfortunately also dropped her umbrella insurance policy. Umbrella insurance is extra liability insurance that stacks on top of your home, auto and boat coverage. It helps protect you from major claims and lawsuits. In today's litigious age umbrella policies are critical to protect your assets and your future. A $2 million umbrella policy, for example, will provide additional coverage above the limits of your liability policies. Usually you must increase your home, auto, and boat coverage to the maximum limits when purchasing an umbrella policy. For most people, umbrella policies are very affordable.

Our client's insurance wasn't adequate to cover the losses associated with her accident. Much to her and her adult children's surprise, this meant that

her other assets, including those assets funded into her revocable trust, were at risk in the negligence lawsuits following the incident. The lesson to be learned is to carry adequate insurance, and even if you are retired it makes sense to carry an umbrella insurance policy.

Disability Protection

While your trust does not offer liability protection, it offers other types of protections for you. A well-drafted trust includes extensive disability provisions. Since most clients serve as their own trustee, the primary danger often relates to cognitive decline.

I can best illustrate this issue by relating another incident we saw in my office not too long ago. I received a call from one of my client's adult children, "Kevin".

"Shanise," he said, "I think we have an issue with Dad."

"What's that?" I asked.

"Well, I am down visiting from Michigan," he began, "and when I arrived here yesterday I found a big pile of unopened mail on his kitchen table. There were unopened bank and brokerage statements and bills. I became worried and asked if I could open them up and see what was there."

"I understand your worry," I said. "Maybe we need to get a bill paying service."

"I haven't told you the worst part yet," Kevin said. "When I opened his bank statement I found a $10,000 check written to his housekeeper. He clearly wrote out the whole check – it wasn't written in anyone's hand but his own, and the signature is his. But get this – when I asked him about it – and showed him the copy of the check – he didn't remember it at all."

"Do you think he may have said that to avoid telling you that he really wanted to give her the money?

Maybe he's lonely and got attached to her and felt generous."

"No, I really don't. Dad's 93 and I've noticed him slipping. What do you think we ought to do?"

"Well, it's probably time to remove him as his own trustee on the various accounts. You're the successor trustee so we'll begin the Transitional Event Process™ that we've built into his trust. We'll see if your father wants to resign, or if he is resistant we need to take him to a neurologist to get a clear diagnosis on his condition. Meanwhile I'll work to see if we can recover the money he gave the housekeeper."

"Sounds like a plan," Kevin said, somewhat relieved.

Don't take it for granted that your estate plan contains the proper disability protections we used in my client's case. Many trusts contain inadequate provisions to effectively deal with this type of situation.

Defining Disability

First, how is disability defined? Many trusts require a physician to sign a statement that would remove the client from acting as his own trustee. I've had to alter how I draft these provisions because physicians are afraid of liability and won't sign them. So instead I include a provision that requires a physician's diagnosis along with something I refer to as a "disability panel."

This disability panel can include any group of trusted relatives or friends whom the client believes will make informed decisions regarding the client's cognitive decline. If this panel sees that the client could pose financial harm to himself (such as writing $10,000 checks to the housekeeper) then the panel can remove the client so that the next successor trustee steps in.

Sometimes clients will express concern that their disability panel will remove them even though they are still capable to continue on as their own trustee. Anecdotally I'll tell you during my entire career to date (more than 27 years) I can't recall that ever occurring. I can, however recall several instances where the family suspected a problem and waited too long to make the change.

Further, we make it clear in the trust instrument that although the successor trustee is serving, so long as the client is alive he is the primary beneficiary and the trust assets are not to be used for the ultimate beneficiaries until the client has passed away.

There are related issues to consider, such as when a client is financially supporting someone else, or is making gifts to his loved ones for medical or educational expenses. In those instances, it's important to include provisions allowing the successor trustee to continue on as the client would have, even though the client is no longer capable of making those decisions.

Giving Your Successor Trustee Help

Another protection for the client that can and should be drafted into the trust instrument concerns the ability of the successor trustee to enlist help when they need it.

An example of this is when you name your daughter Becky to serve as your successor trustee. Let's say that Becky is married with two children along with working in her career. If you were to suddenly need her to step in and serve as your trustee, Becky may be unprepared to take on a host of important responsibilities including writing your checks, paying bills, ensuring money is moved into the proper accounts to do so, watching over your investments, and filing your tax returns. Becky could most likely use some help. So your trust can allow her to appoint agents, or even name a co-trustee temporarily. While most trusts already provide that the trustee can employ professional agents, I don't see many that allow someone like Becky to hire and fire co-trustees.

The reason Becky may want a co-trustee and not an agent rests with the amount of liability and responsibility she can transfer to another party, such as a bank or financial firm. Sharing the responsibility while remaining control and oversight, along with the ability to hire and fire the co-trustee could be an important power you would want to serve as a protective devise in the event of your incapacity.

Protection for Surviving Spouse

Protecting yourself isn't the only thing that your trust can and should do. Another consideration is to protect the inheritance you leave your surviving spouse. Unlike the trust you create for yourself, it is possible to protect what you leave your spouse against predators, creditors, bad decisions and a variety of other dangers.

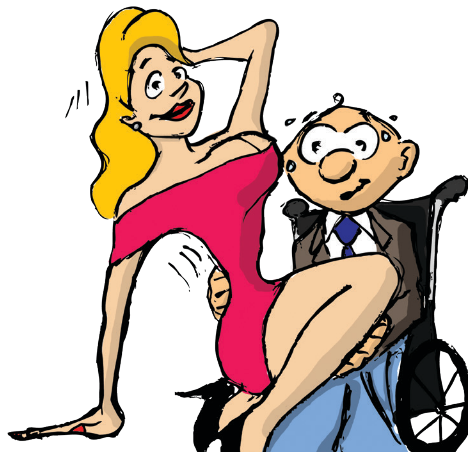
One of the most significant decisions you and your spouse will make together is the choice of who your successor trustee will be. Spouses will usually name each other. But is that always the wisest choice?

If your spouse has no experience managing money and you've been a do-it-yourselfer, then you may be setting her up for some big problems. She's likely to search for a financial planner. Who knows whether she ends up with a quality professional who only has her best interests at heart? Wouldn't it be wise to also name a successor co-trustee with her in the document so that is one less decision she would have to make in a time of crisis?

Protecting Inheritance from Remarriage

If that isn't an issue – what about protecting your surviving spouse from remarriage troubles? One of the PowerPoint slides in my presentation to prospective clients on this issue shows a picture of J. Howard Marshall and Anna Nicole Smith.

Most people know that story. The Texas multi-millionaire who became infatuated with a lady he met at a Houston strip club, marrying her. We all know how that story played out.



Most of us, even those in second marriage situations, hope that our hard-earned estate will benefit our spouse, but then revert to our children and grandchildren when our spouse dies. With Mr. Marshall, his new wife was considerably younger than his children. Even if he created a marital trust for her lifetime, by the time she would be expected to pass away his children also may not likely be around to enjoy any of their inheritance. As it turns out, Anna Nicole died young. Her drug-addict son was in on her bounty and he died young from an overdose.

Blended Family Issues

While the Marshall/Nicole-Smith example is not all that common, there remain a host of very legitimate issues in blended family situations. When a surviving spouse is not the parent of the deceased's children, tying them together through the use of marital trusts can be problematic.

Who is the trustee of the marital trust going to be? If it is the spouse, what if he does whatever he wants and doesn't let the children know? The spouse has reason to do this as he wears two hats. The first hat is supposed to be as an impartial trustee while the second hat is that of a beneficiary. Those two hats have an inherent conflict of interest.

This doesn't mean you shouldn't name your spouse as your successor trustee. What I'm pointing out is that much thought should go into that process to protect your intent as to how you would like to take care of your surviving spouse, and what specifically you'd like to leave your children and when.

If, for example, you want your spouse to be the highest priority, even if your trust could be exhausted taking care of her for the rest of her life, then it is important that the trust instrument precisely say so. Without language in the trust stipulating what your intent is, it is left to judges and others to decide. Without clear direction, the trustee, whoever that is, has a legal duty to balance the interests both of the lifetime income beneficiary (typically the surviving spouse) against the remainder beneficiaries (those who get what's left after the surviving spouse dies).

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Accounting to the Children

There are even other issues you want to protect your spouse from. One example is an accounting requirement to the remainder beneficiaries. Most state laws require the trustee of a testamentary (after death) trust, such as a marital trust, to account to the remainder beneficiaries (often the children) what will happen in the trust each year. Having a will instead of a trust doesn't circumvent this problem as wills also create testamentary trusts for the surviving spouse.

An accounting opens with the balance at the beginning of the year, discloses capital gains and losses realized, income received, distributions made (usually to the surviving spouse), expenses paid, significant transactions and ending balance.

Most of my clients don't want their surviving spouse to live with this requirement. There are legal means to avoid it, but they must be drafted into the will or trust itself. Failure to do so could subject the surviving spouse to financial scrutiny for the rest of his or her life.

These are just a few of the issues that clients should consider to protect their surviving spouse. The facts of your particular situation will reveal what protections and therefore which steps to consider for your spouse.

Protecting Children and Grandchildren

Most wills and trusts I review from my new clients seem, at the surviving spouse's death, to distribute everything outright to the children, unless they are young, in which case the assets are held in trust until the children attain a certain age, such as 30 or 40 before being distributed outright.

I believe that when this happens you've missed a major opportunity in the estate plan. Allow me to explain what I mean.

Protecting Spendthrift Beneficiaries

One of the most common concerns raised by my clients in my conference room centers on whether their children will squander or waste their inheritance. This concern has merit. A Key Private Bank study found that the average inheritance is fully consumed within 17 months. This study included Inherited IRA accounts that could have been stretched out over the lifetime of the beneficiary, but were completely withdrawn, resulting in the early recognition of income (and corresponding payment of income tax) and losing tax-deferred growth.

Protection from Creditors

Protecting from spendthrift tendencies is not the only danger. Proactively protecting your children from creditors could be another issue. When the real estate market crashed in 2007, for example, several of my client's adult children suffered through foreclosure proceedings when they purchased homes at the height of the market and then lost their jobs. When a foreclosure sale occurs on the steps of the courthouse, there are often deficiencies between the amount of the loan outstanding and the sales price. This results in a deficiency judgment against the borrower that accrues interest over time.

Beneficiaries who inherit assets outright when they have an outstanding deficiency judgment (or any other judgment) against them risk losing the inheritance to the judgment creditor. There are all kinds of judgments that could linger for years against your intended beneficiaries, including student loan debt, business deals gone sour, alimony, child support, negligence and malpractice cases just to name a few.

To protect your loved ones' inheritance from these dangers isn't all that difficult, only a change of your mindset from leaving the inheritance outright to leaving it in a continuing trust, otherwise known as a "testamentary", or after-death trust.

Tailor to Specific Needs

Testamentary trust provisions are built inside of your revocable living trust and spring into effect upon your death, or upon the death of the survivor of

you and your spouse depending upon the terms. There is no "boilerplate" or "one-size-fits-all" trust. A testamentary trust may be drafted to meet your specific goals and concerns.

If, for example, a spendthrift beneficiary is your concern, then you are likely to name a third-party trustee to manage the investments and consider the distributions to that beneficiary. A third party trustee might be an investment firm, bank or trust company, an attorney, CPA, or other trusted professional, a competent friend or other family member.

Don't Set Family Up for Conflict

Be careful that you do not name a son or daughter to act as a gatekeeper to one (or more) of their siblings' inheritance.

To illustrate, assume that you named your son Bob to act as trustee over his sister Jennifer's trust share. Jennifer asks Bob "I need $40,000."

Bob asks, "Why do you need this money?"

"What's it your business?" Jennifer replies.

"Because Mom and Dad selected me as your trustee and I need to know as I have a duty to protect your inheritance from you spending it away."

"I just need it, okay?" Jennifer says in an agitated voice.

"Well then, no, I'm not distributing it to you!" Bob says.

You can see how these situations can put a strain on the relationship. Don't do it to your kids.

Liberal or Conservative Distribution Provisions

When you direct your attorney to draft these trusts you leave behind for your children and grandchildren, you'll want to discuss how tight the purse strings might be. You can direct, for example, that the trust annually earned income (the interest and dividends), may be a required distribution to the

spendthrift beneficiary, but it doesn't have to be. The testamentary trust could be written to allow for discretionary distributions, meaning that the beneficiary must request a distribution and justify the reason for it.

You can have the testamentary trust written to direct the trustee to be liberal with distributions or more tight-fisted. In one situation I had a client who wanted the inheritance to primarily benefit her daughter's retirement years. She therefore had me draft the testamentary trust to only distribute for educational purposes, or for health or support emergencies until her daughter attains age 65. Until that time any extraordinary distribution requests had to be fully justified, and the daughter had to show that she had no other income or assets of her own to satisfy the request. Once the daughter attains age 65, however, the provisions of the trust loosen, allowing the trustee to even make distributions for travel, clothing and other enjoyable pursuits.

More Reasons for Testamentary Trusts

Continuing testamentary trusts are even a great idea for those beneficiaries who do not need a gatekeeper, and who may be superb at managing their own money. No one knows what the future brings. Divorce[1], bad business deals, a malpractice case or a host of other dangers could threaten a child's inheritance. Further, for those über-successful beneficiaries, outright inheritances could only add to existing estate tax issues. Leaving your daughter, the neurosurgeon your wealth might only create additional estate taxes when she dies.

How about the circumstance where you leave wealth to your son, but upon his death he leaves everything he owns to his wife who later remarries? Here the family wealth you have accumulated may not end up with your grandchildren, rather it could all end up benefitting a family tree you don't even know.

In all of these instances, building a continuing testamentary trust for your beneficiaries will serve to protect the inheritance from these dangers. Instead of naming a third-party trustee gatekeeper, however, you can name the beneficiary as his own trustee. So long as discretionary distributions are

1 Recent case law subjects trust distributions to alimony and child support claims. Trustees may be able to frustrate claimants by accumulating income inside of the trust. These are issues that should be thoroughly discussed with estate planning counsel during the planning stage.

limited to provide for "health, education, maintenance, and support," even if the beneficiary controls the investment and distribution provisions, the assets should remain better protected and outside of her estate for federal estate tax purposes.

Separate Shares vs. Pooled

When you build a testamentary trust for your beneficiaries, you should direct your attorney to draft a separate trust share for each beneficiary as opposed to having a pooled trust for all. Your beneficiaries are likely to have separate goals, concerns, assets, risk tolerance, need for income and so on. Upon your death, or the death of the survivor of you and your spouse, the assets will be divided proportionately into the separate trust shares, with each being governed separately from that point forward.

Opportunity Lost

Some clients say "I don't want to go through the hassle of creating a testamentary trust inside of my trust and having my children deal with those complexities. If they want a trust, they can create one like I am right now and put their assets into that trust." Allow me to address both points.

First, while each testamentary trust will have its own separate tax identification number and therefore need to file a separate tax return, governing the trust shouldn't be all that difficult. Your attorney can provide the initial instructions, with your CPA or tax return preparer doing their job annually. Trust formalities are important, but rarely pose considerable problems.

Second, your children can't easily create protected trusts for themselves as you can for them. That ability, for the most part, dies with you. If you haven't created protected trusts inside of your own estate plan, then your family will have lost out on that opportunity. Recall a few pages ago where I informed that your revocable trust offers no protections for yourself. The same holds true when your children create their own revocable trust.

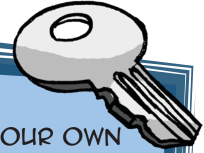
Giving Children Power to Appoint

Finally, clients sometimes object to testamentary trusts as "reaching out from the grave." While a valid concern, there are provisions you can include which mitigate that entirely. You can give your children and grandchildren (and any other beneficiary) a "power of appointment" over their trust share at their death. What this means is that the current beneficiary can alter the default beneficiaries you name for each trust share (normally down the generational line).

An example of this is where you leave assets in trust for your son, Bob. On Bob's death the assets are to be held and distributed to or for the benefit of Bob's children, Cindy and Dan, who become the "default beneficiaries". If nothing else happens, when Bob dies the trust share splits in two for Cindy and Dan.

You choose, however, to leave Bob a power of appointment so he can leave amounts to his spouse, Bonnie, or alter the proportions or amounts he leaves to his descendants, or he can even leave the entire amount to charity. Bob can exercise this power of appointment inside of his will or trust.

So what have you done when you left amounts in a testamentary trust for your children naming each child as the own trustee for his or her own share with a power of appointment to each child at their death? You have given your child the ability to control both the investment and distribution decisions related to his own inheritance along with the ability to also direct the inheritance upon his death. Sounds like an outright distribution doesn't it? In effect, it is not that far off from an outright distribution, but it can provide the protections we reviewed here together.



KEY TAKEAWAYS

- REVOCABLE TRUSTS WON'T PROTECT YOU FROM YOUR OWN LIABILITIES. YOU SHOULD ENSURE THAT YOU HAVE ADEQUATE INSURANCE, INCLUDING UMBRELLA POLICIES
- REVOCABLE TRUSTS CAN, HOWEVER, PROVIDE VALUABLE PROTECTIONS IN THE EVENT OF YOUR DISABILITY LEAVING YOU UNABLE TO MANAGE YOUR OWN FINANCIAL AFFAIRS
- YOUR TRUST CAN ALSO BE BUILT TO PROTECT YOUR LOVED ONES SUCH AS YOUR SPOUSE, CHILDREN AND GRANDCHILDREN. THIS IS DONE THROUGH TESTAMENTARY TRUSTS BUILT INSIDE OF YOUR TRUST THAT SPRING INTO EFFECT AT YOUR DEATH;
- THE OPPORTUNITY TO PROTECT YOUR LOVED ONES IS LOST IF YOU DON'T HAVE THOSE PROVISIONS INSIDE OF YOUR OWN DOCUMENTS;
- THERE IS NO "ONE SIZE FITS ALL" PROVISION THAT WILL WORK. THE BEST TRUSTS ARE DRAFTED AFTER CAREFULLY CONSIDERING EACH FAMILY'S CIRCUMSTANCES

Chapter Five
Asset Alignment

One of the most overlooked assets of estate planning, and in particular with trust planning, is the transfer of the assets to the trust. This can be best illustrated with a true story that occurred in my office just a few years ago when a very nice couple visited me having moved to Illinois from Wisconsin. Their Wisconsin attorney, had just completed a revision of their revocable trusts, durable powers of attorney, health care surrogates, living wills and related a pour over will.

They wanted me to represent them since they had become permanent Illinois residents. However, they were quick to say they had the utmost of confidence in their Wisconsin attorney who they assured me had taken the necessary steps to update their documents to Illinois law. This couple simply wanted to meet with me towards obtaining my help in the future should something happen to either of them.

"Normally I would review your documents and your assets to ensure that your plan is up to date and congruent with your intent now that you live here," I said.

"No thank you. We'll call you when we need you," the husband replied.

That was the last I heard until recently when the wife called me to tell me of her husband's passing. I asked her to provide me current deeds and financial statements so we could implement the testamentary trusts found within their revocable trusts.

That's when we discovered that nothing was ever transferred into either her trust or his trust. "The assets in your husband's name alone will be subject to a probate proceeding in order to get them into the trust for you," I advised.

"But we were told that our trust avoids the probate process," she said.

"It does. That's only when the accounts and properties are titled into the trust name," I continued. "Here, there are accounts in your husband's name. So his pour-over-will catches those assets and deposits them into his revocable trust, but only through a probate process does that occur."

Needless to say, the wife was very aggravated with all the obstacles that appeared before her during a most difficult time – after losing her husband. All of these problems could have been avoided with a review of the trust and the assets and corresponding action taken before anything happened to the husband.

Instruction Sheets Without Follow Up

While you might be thinking that the Wisconsin attorney could have done more, one doesn't know the extent and scope of his representation. Perhaps he wasn't engaged to also transfer the assets to the trusts he created. There are attorneys who simply hand the client an instruction sheet how to transfer their assets to the trust with no further instruction or follow up.

In fact, my firm used to only hand out an instruction sheet. Clients would tell us they will make the transfers themselves, or rather rely on their financial advisor to so assist. They didn't want to pay us to complete this important step.

Shown in Chapter Seven, The Family Estate & Legacy Program® includes a specific step transferring your assets into your trust. We do it for you. The reason we insist on accomplishing this most important task is because of our experience with clients who try to do it on their own. When we left it up to the clients by furnishing detailed instruction sheets, we found that one of three things happened: the transfer of the assets didn't get completed; it got completed but incorrectly; or it was only halfway completed.

Assets that Should Be Transferred to the Trust

What types of assets need to be transferred into your trust? Your banking accounts, investment accounts, residences and properties, business interests, including closely held business and partnership interests, and titles to vehicles and boats, except that two personal automobiles are exempt from probate in Florida.

As I pointed out with the Wisconsin couple, when the assets aren't properly transferred, adverse consequences can result.

Beneficiary Designations Important

It's not just the transfer of the assets that may be at issue. Some clients own significant IRA, 401(k) and pension accounts, and some also own annuities. Those accounts name a beneficiary which on its face appears to be easy to accomplish. Your will and revocable living trust rarely govern those accounts, but as clients accumulate more and more of their net worth inside of those types of accounts, the estate planning behind them, including preservation of the assets and income tax planning, becomes vitally important.

Estate and income tax planning with annuities and retirement account assets is beyond the intended scope of this book since I will publish another book on that topic. However, keep in mind that "Asset Alignment" may also include completing your beneficiary designations so they fit hand-in-glove with your entire estate plan.

Which Trust Should Receive the Assets?

One issue related to the transfer of the assets is into which trust do you transfer? Some estate plans between married couples forces a choice between transferring the assets into husband's trust, wife's trust and splitting them into proportions of each.

Now that the estate tax rules include "portability" provisions, allowing for unused estate tax exemptions to be transferred from the deceased spouse to the surviving spouse, how to split the assets between a married couples' revocable trusts isn't as consequential as it once was for estate tax purposes.

That doesn't mean that determining which trust to fund the assets into is without consequence. The death of the grantor of a trust results in a step-up in tax cost basis, meaning that the fair market value at the date of death determines the new cost basis for capital gains.

Assume, for example that David bought Coca Cola stock in a regular investment account (as opposed to an IRA or 401(k) account) at $1/share. Assume further that the current price of Coca Cola stock is $10/share. If David sells the stock, he recognizes a $9/share capital gain ($10 sales price less $1 tax cost basis). If David instead died owning the stock whose price on the date of death was $10/share, and the stock was bequeathed in trust to his wife, Rachel, then she inherits the stock at $10/share. If she subsequently sells the stock for $10/share, then she recognizes no capital gain.

Which trust the assets are funded into may have income tax consequences as described above, and there still could be other kinds of issues. Consider, for example, a situation where husband and wife are in a second marriage with children from prior marriages whom they wish to include inside of their estate plan. Therefore, husband's trust and wife's trust contain different beneficiaries. When this is the case, which assets are funded into what trust will have real economic effect to the beneficiaries.

Spousal Elective Share Issues

Yet another Asset Alignment issue relates to spousal elective shares. Most states, including Illinois, impose laws that require spouses to leave one another a certain percentage of their estate depending upon a variety of factors. Failure to leave your surviving spouse the minimum required amount could cause the surviving spouse to consider the election to take their minimum lawful share instead of what the estate plan otherwise provided to him or her.

The elective share law may be circumvented with a valid nuptial agreement, but absent such an agreement, the aligning of the assets into the different trusts may have broad ramifications if there is a possibility that either spouse's estate plan could violate the statute.

Finally, there could be trusts other than revocable living trusts involved. If a client institutes an irrevocable life insurance trust (ILIT) as part of her estate plan, then it would be important to change the ownership and beneficiary designations of the polices intended for that trust. Determining which assets go to what trust would have broad ramifications in instances such as this.

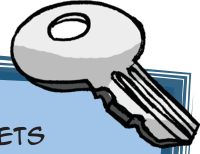
We Fund Your Trust for You

As you can see, Asset Alignment is an important element to estate planning, and this is why The Family Estate & Legacy Program® includes a Asset Alignment module. It doesn't end there. How many of us will have the same specific bank accounts, investment accounts, real properties, and other assets today we had five years ago? How do we ensure that our newly acquired assets are properly funded into our trusts?

Not only does your personal financial situation change, but the trust laws and the tax laws also change constantly. Review and change whom you selected to serve as your disability trustee or your death trustee. Perhaps you have new children or grandchildren you want to include in your estate plan since you signed your documents.

The list goes on. Sticking your estate plan in a drawer to gather dust year after year begs for problems. How do you keep up with the changes you not only know of, but those that you don't?

We'll address that in the next chapter.



KEY TAKEAWAYS

- YOUR ESTATE WON'T AVOID PROBATE IF YOUR ASSETS AREN'T PROPERLY FUNDED INTO YOUR TRUSTS;
- ATTORNEYS WHO GIVE YOU A ASSET ALIGNMENT INSTRUCTION SHEET AREN'T REALLY COMPLETING YOUR ESTATE PLAN;
- IT'S NOT JUST ABOUT TRANSFERRING THE ASSETS, IT'S ALSO ABOUT WHICH ASSETS GO WHERE;
- IRA, 401(K) AND ANNUITY BENEFICIARY DESIGNATIONS SHOULD FIT HAND IN GLOVE WITH YOUR ESTATE PLAN;
- THE FAMILY ESTATE & LEGACY PROGRAM® INCLUDES AN ASSET ALIGNMENT STEP TO ENSURE THAT YOUR PLAN IS COMPLETE

Chapter Six

Client Care

You can't avoid rapid change in today's world. Those little silicon chips that appear in everything from our automobiles, to our Smartphones to our home thermostats have dramatically changed how we live, mostly for the better. If you consider what your life looked like a mere five years ago and what it looks like today, chances are you find it amazing how different your personal life is today than it was then.

In Chapter Two we reviewed several legal and tax changes that merit vigilance to keep your estate plan up to date. But your personal situation changes too, doesn't it? Residences are bought and sold, investment and retirement accounts are opened and sometimes moved from one firm to another. Children grow up and grandchildren are born.

All of these changes affect your estate plan. Yet, how long has it been since you've dusted off those documents to take a look with a qualified professional? Two years? Five? Ten? Twenty?!

Don't do that!

Now is the time to take a fresh look at your estate planning documents. The estate, trust, durable power of attorney, health care surrogate and living will laws have all undergone significant change in recent years. Failure to keep up with those changes could cause significant, costly headaches for you and your loved ones.

Do you remember whom you've named as your personal representative in your will or as successor trustee in your trust? If you've named a bank, brokerage or financial institution, are you still happy with that decision? Does that institution still exist or has a national firm with whom you no longer have any accounts swallowed it?

Alice's Story

A few years ago I had a client, "Alice" who had been with her stockbroker through three financial firm changes. She didn't really care which firm he worked at because she had great confidence in his abilities. And he did a fine job for her.

It was fortunate that Alice came in to my office. As a part of our plan review, we asked her to bring copies of her brokerage accounts. As it turns out, in the haste to move with her advisor from the old firm to the new, his assistant filled out all the paperwork placing the accounts in Alice's name individually, as opposed to as trustee for her revocable trust. They had unfunded her trust. If Alice had died those accounts would have had to go through the probate process.

We also found that while Alice's IRA moved to her advisor's new firm, she hadn't completed new beneficiary forms. Consequently, under the standard custodial agreement governing the account, the default beneficiary was Alice's estate. While Alice's children were the beneficiaries of Alice's estate plan, the result would have been disastrous.

When an estate is named as the beneficiary to an IRA, all the income is recognized in the year following the account holder's death, as opposed to the beneficiaries being able to stretch out the distributions over the course of their lifetimes, deferring the recognition of taxable income and achieving continued tax deferred growth. Since Alice's IRA was over $500,000, more than 40% would have been lost to income taxes alone, not to mention the opportunity cost of no tax deferred growth over her children's lifetimes.

We worked with Alice's financial advisor to properly fund her regular investment account into her revocable trust. Alice completed forms naming Alice's children as the proper beneficiaries to her IRA.
Disaster averted.

KEY TAKEAWAYS

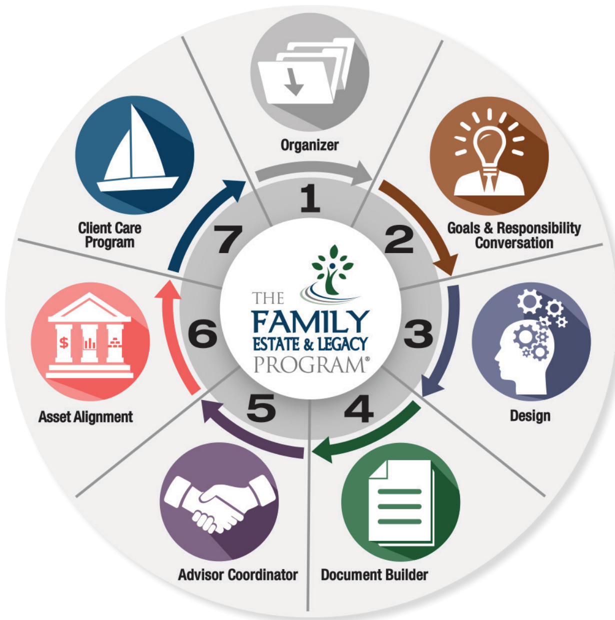
- STICKING AN ESTATE PLAN IN A DRAWER FOR YEARS INVITES PROBLEMS;
- LAWS CHANGE, YOUR PERSONAL SITUATION CHANGES. YOUR ESTATE PLAN NEEDS TO KEEP UP WITH THESE CHANGES;
- MOVING TO A NEW STATE REQUIRES AN UPDATE TO YOUR PLAN

Chapter Seven

The Family Estate & Legacy Program

We've covered a lot of ground throughout these pages. You've learned why it is important to view your estate plan as an ongoing project as opposed to a once-a-decade (or less) exercise. We've explored how a good estate plan may not only provide protection, comfort and clarity for your spouse, children, grandchildren, and other loved ones, but can also save you money, taxes and afford you important protections during
your lifetime.

So how do you go about choosing an attorney and a law firm that will navigate these difficult legal, tax and financial waters? To assist you with this important choice, I've created a unique, trademarked process entitled The Family Estate & Legacy Program®. This is a seven-step process that takes you from where you are today to where you need to be for now and into the future.



Organizer

The first step is our Client Intake Process including our Life and Legacy Client Organizer. You may already be familiar with tax organizers that CPAs send out prior to filing your annual Form 1040 Federal Income Tax Return. Our Life and Legacy Client Organizer is similar, except it is geared to gather the information necessary for you to make informed decisions relative to your estate plan. For us, as your legal team, the organizer serves to provide us relevant information to maximize your results.

Completing a personal balance sheet is an important element of our organizer. Some new clients push back at this requirement, wondering why we need this information to plan your estate. Realize that a good estate plan is fashioned to the family situation and the type and value of assets they own. An estate plan for someone whose IRA is a larger portion of their net worth, for example, will look very different than an estate plan for a client who may have commercial real estate, which will look different than one in which a family business makes up a large portion of the net worth. The type of assets and their relative values determines the legal strategies that may or may not work for you and your family.

The attorneys and legal teams working under The Family Estate & Legacy Program® understand that spending valuable meeting time gathering information isn't the best use of time. When the Life and Legacy Client Organizer is instead completed ahead of the initial meeting, the attorney and his client are likely to have a more productive initial consultation.

We ask that your completed Life and Legacy Client Organizer be delivered to us via email along with a copy of your current wills and/or trusts at least three business days prior to the initial consultation.

Goals & Responsibility Conversation

We start our initial consultation with a conversation eliciting your goals and concerns. Why are you updating your documents? Did you recently move to Illinois? Has your family or financial condition changed? Did you read about tax laws that may affect your family? Are you concerned that one of your children's spouses may have their eyes on your child's future inheritance?

What is it that prompted sitting down with us? We want to hear the answer to that question.

That's because we realize how important it is to listen to your goals and concerns before launching into a discussion as to the advantages of revocable trusts or what provisions you might consider for your will.

It's refreshing to be heard, and to voice the concerns you may have about your estate plan. Once those goals and concerns are thoroughly discussed, your legal team is ready to identify legal and tax opportunities available to you and your family.

A knowledgeable professional will break down the many moving parts that go into a first class estate plan, and explain your choices in simple, easy to understand language. One of the most significant issues that many attorneys don't spend enough time on is specifically who will act in what capacity inside of your estate plan.

In your revocable living trust, for example, you are normally your own trustee until you are no longer capable of serving. So then who should act? Your spouse, perhaps? Is he or she equipped to manage your investments, run the family business or conduct your affairs as you have throughout your lifetime? If not, how should the legal document be drafted to provide him

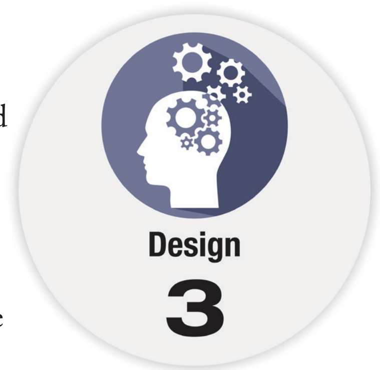
or her all the help needed? Many are wary of banks and trust companies, for example. Be reassured there are ways to accomplish these goals without your beneficiaries having to plead to some corporate institution for a distribution.

How are you going to protect yourself during a period of incapacity? Think about those crucial issues to your welfare, who your successor trustee will be, who will hold your durable power of attorney, and who will be making health care decisions for you. Moreover, what powers do you wish to confer on those you name, and what restrictions will be important?

When you leave amounts to your children, other considerations come to the forefront, depending upon their age, financial savvy, marital status and a host of other factors. Too frequently do attorneys gloss over these issues. In The Family Estate & Legacy Program® we take the time to explore all the possibilities, many of which you may not have previously considered.

In fact, another book on this very subject – Selecting Your Successor Trustee is a part of The Family Legacy Series® used to explore this important topic in depth.

Design



Based upon your Life and Legacy Client Organizer and the results from our Goals and Responsibility Conversation, we design your estate plan together. We will work together to design a will or trust package that meets your needs, given your family and financial situation, and your goals and concerns. There is no such thing as a "one-size-fits-all" estate plan. The Design element will consider the types of assets you own, how you own them, and the relative tax consequences of your holdings in creating your individualized plan.

Typically, your plan will include a revocable living trust, pour over will, durable powers of attorney, health care surrogate, living will, pre-need guardian and a host of other ancillary documents necessary to effectuate a solid foundation.

For those clients who wish to protect large IRA balances for their loved ones, a Retirement Plan Legacy Trust may also figure into the mix.

While many clients may all have these documents, the contents of each document will be specific to you and your loved one's needs. Married clients may have a variety of marital/credit shelter trusts depending upon their goals and the relative values of their estate. Clients who leave amounts to their children and grandchildren may have continuing trusts to protect the inheritance they leave their loved ones.

All of those marital, credit-shelter, and continuing trusts will have different provisions depending upon the client's goals and concerns. Some distribution provisions may be drafted more liberally, allowing distributions for most any purpose while others may be drafted to be conservative towards protecting a spendthrift beneficiary, or other issues.

Upon zeroing in on a plan, a fixed fee quote is provided. There is no need to worry about how many hours you are spending with the attorney and legal team. The goal of The Family Estate & Legacy Program® is to provide you comfort and clarity. If you feel that every phone call, every email, and every other contact with the firm will result in a higher fee, you may be unwilling to ask all of your questions.

It's important to us you feel you have adequate time to consider your options during this estate planning process.

Once you sign the Service Agreement, we are on to the next stage.

Document Builder

We build all of your documents and send you a written summary and flowchart. The summary and flow chart gives you an easy-to-read, quick reference of your plan. If you want the actual trust drafts, we will forward those to you, but prefer that we meet with you to review them.

Our experience is that when we forward the trust drafts themselves (as opposed to the summary and flow chart), our clients feel they must first read and understand the entire documents before they visit with the attorney again. While we strive to write documents that can be easily understood, there are legal and tax concepts that require us to use language found in the statute books or in the tax law that aren't intuitive for those not well versed in these laws.

That's why we want to take the time to review the actual documents with you. And if it takes more than one review session, we'll do that.

Once you see the design in black and white, you can change certain details. That is why the review sessions are so valuable.

Once your documents receive your approval, we'll proceed towards signing. Once signed, your documents will be scanned and coded into our system, and organized into a binder complete with tabs, the summaries and flowcharts.

But we're not done yet.

Advisor Coordinator

We realize that you may have a trusted CPA or financial advisor that you would like included in this process. We're happy to include anyone you want. If they are local, they can attend our conferences. If not, or if

it is otherwise more convenient, we can conference call them into our conferences.

Remember our most ultimate goal is to provide you comfort and clarity. One giant obstacle to this goal is when a client is receiving conflicting advice. This problem is eliminated when those individuals that you trust are involved in your estate planning process, taking part at every opportunity. We value their input.

For those clients in transition that are looking for a trusted CPA or financial professional, we can recommend trusted and reliable firms to you. Since we've been practicing in our communities for decades, we know those who may serve you well.

Asset Alignment Process

Aligning (or "funding") your assets into your revocable trust is time consuming, tedious, and fraught with technicalities. It's natural for clients to procrastinate funding their trusts, but assets that aren't properly funded won't avoid the public probate process. So we build into The Family Estate & Legacy Program® a Asset Alignment Process that takes care of these details.

Unlike many firms who hand you a sheet of instructions how to transfer (or "fund") your assets into your revocable trust, we do it for you. Our team includes dedicated Asset Alignment assistants who are well versed in the intricacies of each different financial firm's requirements. They work with you to ensure that everything is in the right "basket" so your estate plan runs smooth.

This is another way that our unique process provides you confidence, comfort and clarity.

Client Care Program

One feature of The Family Estate & Legacy Program® of which we're proudest is our Client Care Program. This unique feature is built to provide you a cost effective way to ensure that your documents do not fall out of date with the ever changing legal, tax and financial world.

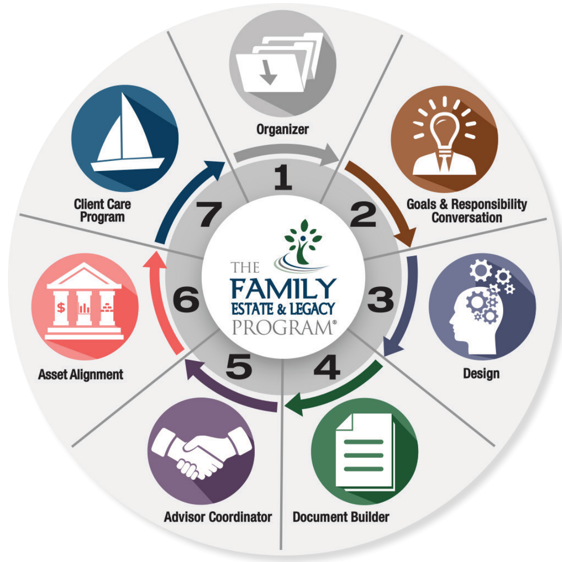
Many clients stick their estate plans in a drawer for years, if not decades. This often leads to disaster when the client becomes sick or dies. We know that you don't want to visit with your estate-planning attorney every year, so we created a way for us to come to you.

The Client Care Program works to ensure that your plan keeps up with the changes to your family and financial situation. When you open a new account or acquire a new asset, our team will work with you to ensure that it's titled correctly and fits into your plan.

Near the end of each calendar year, you'll receive a written review of your estate plan. We'll advise as to changes in the trust and tax laws, and if such a law affects your plan, Client Care includes the update. Your estate plan is all about you so the year-end review will provide you the opportunity to tell us about any changes to your family or financial condition that may also affect your planning.

Epilogue

Getting Started



Hopefully these pages have encouraged you to get the most out of your estate plan. If you are interested in beginning your Family Estate & Legacy Program® journey, please contact our office to receive your Initial Client Package. We will send you an email to get things started and ask that you complete three easy steps:

Attend Our Workshop or Watch the Video

Our firm gives workshops several times a year outlining important and relevant estate planning issues we want you to consider and be prepared to discuss at our initial conference.

The initial client digital package contains a link to the video if you can't attend the workshop or if one isn't being provided soon. The video can be viewed on your laptop, tablet or smart phone.

Complete Your Client Organizer

It is important that we receive a completed Client Organizer at least three business days prior to our initial conference. The information you provide us is confidential and is very important in order for us to provide you proper legal advice. We can forward you a hard copy of the Client Organizer, or a digital one is available with the Initial Client package email you can download and print out to complete.

Email us Copies of Your Current Planning Documents

When getting us your Client Organizer, please email us PDF copies of your:

- Current will;
- Trust with any amendments;
- Irrevocable trusts;
- Federal Gift Tax Returns Form 709, if applicable;
- Federal Estate Tax Return Form 706 for your spouse, if applicable

If you don't have access to all of these documents, please get us what you can. Please send these items to our email address at:

info@evanslegacylaw.com

About the Author

Attorney Shanise Evans' practice focuses on helping families, business owners, and charities have peace of mind that their values, wealth, and legacy are protected today and for years to come. With over 21 years of experience, she excels in guiding her clients through the often-confusing maze of financial and legal decisions to enable them to effectively plan and reach their goals. Her considerable legal expertise includes family protection, wealth preservation, charitable gift planning and nonprofit creation and governance, values-based planning, as well as planning strategies for unmarried couples and divorced individuals. In addition, Shanise combines her legal expertise and acute business acumen to assist her clients in planning for the creation, growth and success of their businesses.

Her work with high-net-worth families, business owners and charities extends from her previous experiences as an *Associate Trust Counsel* at A***. G. Edwards Trust Company***, an *Attorney and Wealth Strategist* with ***Edward Jones***, and a *Fiduciary Advisory Specialist* at ***Wells Fargo***. Shanise also has significant expertise in the nonprofit sector, as she has previously assisted clients with charitable gift planning as a *Vice President* at ***Bank of America Merrill Lynch*** and assisted in directing the planned giving programs at ***Northwestern Medicine's Northwestern Memorial Hospital Foundation*** and ***Saint Louis University***, in which she educated and advised individuals on various charitable gifting techniques, as part of their overall estate and gift tax planning.

Shanise is a member of the Wealth Counsel, a national organization of trusts and estates attorneys and other legal, tax and business professionals who design sophisticated planning techniques for families and businesses. She actively serves on the boards for the Greater North Shore Estate & Financial Planning Council, as well as the Lake Forest-Lake Bluff History Center. Shanise is also a member of the following organizations: Chicago Estate Planning Council (Diversity and Networking Committees); Illinois State Bar Association (Trusts & Estates Committee); and the Missouri Bar (Probate and Trust Law Committees).

As Shanise has a true passion for educating and serving her community on the value of wealth generation and the importance of leaving a legatcy for the efficient and meaningful transfer of that wealth, she is available for speaking engagements and has routinely presented before various professional and nonprofit community organizations.

Shanise received her law degree from ***Saint Louis University School of Law*** and her *MBA* from the ***Saint Louis University John Cook School of Business***. She also received her degree in *Business Administration/ Marketing* from ***Truman State University***. In addition, as she is a member of both, the Illinois and Missouri Bars, she routinely advises and assists clients in both states. Shanise lives in the suburbs of Chicago with her husband and family and loves to attend sporting events, as well as the many wonderful cultural attractions around the Chicagoland area.

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Estate Planning Mindset Scorecard

Turn the page to see the Mindset Scorecard and read through the statements for each mindset. Score yoruself based on where your mindset falls on the spectrum. Place each column's score in the column to the far right and add it at the bottom.

Review the scores and contemplate what scores you would like to have when moving forward with the estate planning process.

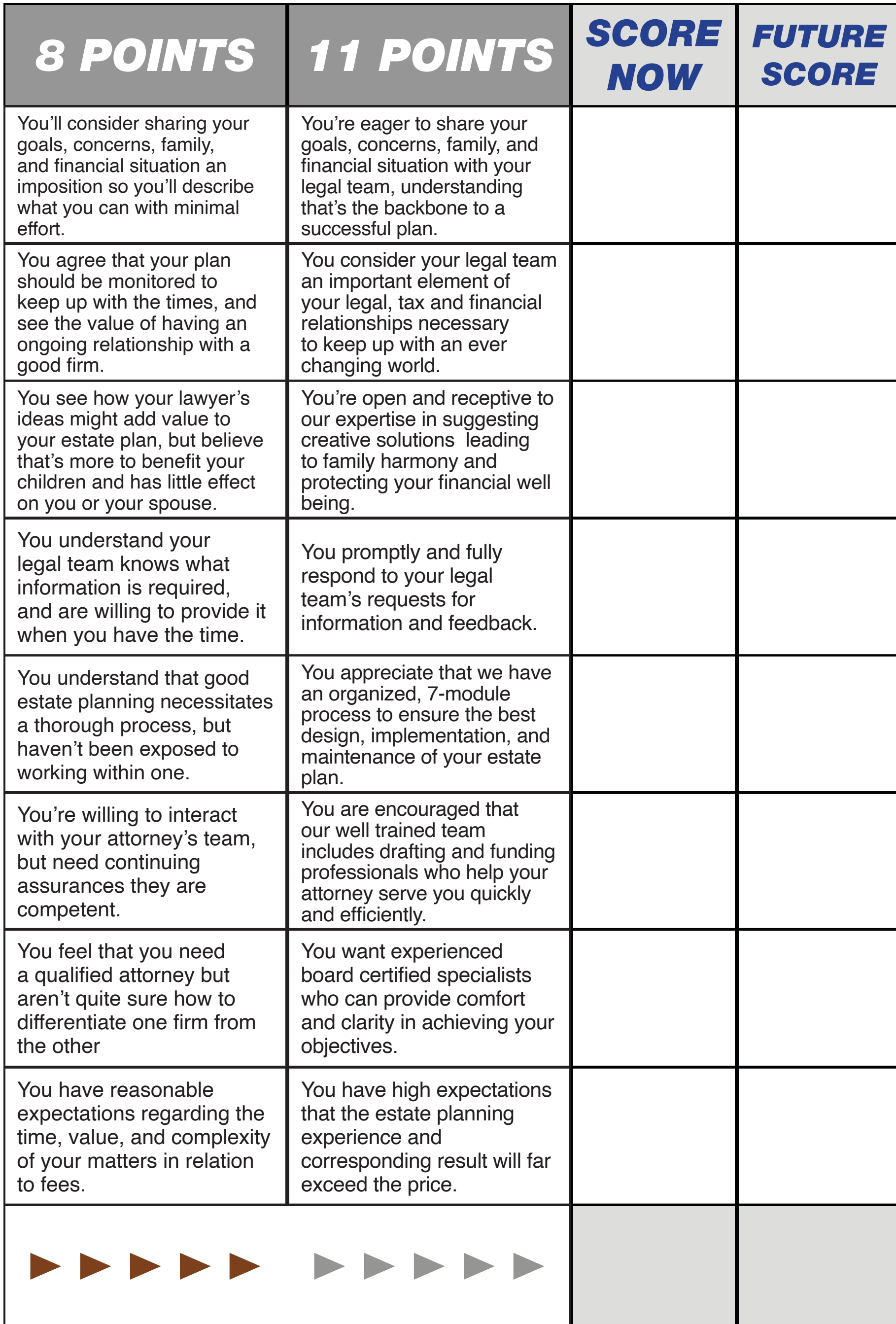
Compare your scores with the ideal scores to see where you'd like to be before deciding to mtyvove forward with your estate plan.

Turn to the last page of the book to see your mindset results!

YOUR MINDSET QUIZ

MINDSET	2 POINTS	5 POINTS
TRANSPARENT THINKING Are you willing to share your goals and concerns with us?	You see no point in sharing your goals, concerns, family, and financial situation with your legal team.	You're reluctant to share your goals, concerns, family and financial situation, giving your legal team only what they ought to know.
RELATIONSHIP DRIVEN How do you view your relationship with your legal team?	You consider your estate plan to be a simple transaction that should be a one-time event every ten or fifteen years.	You believe that you should update your estate plan every few years, and that one lawyer is as good as the next.
RECEPTIVE Are you receptive to your lawyer's ideas?	You know exactly what you want in an estate plan and consider online document preparation as good as what any attorney could do.	You believe that a good lawyer may have some useful ideas, but most of those won't apply to your situation anyway.
RESPONSIVE How responsive are you to your legal team's requests for information?	You suspect that your legal team only asks for asset and family information so that they can charge higher fees.	You decide what information your legal team needs and provide them only what you consider absolutely necessary.
APPRECIATE PROCESS Do you consider estate planning a simple transaction or a useful process?	You believe that estate planning is a one-step transaction that doesn't require much thought.	You're willing to answer a few questions, but become annoyed with all the steps your attorney asks of you.
TEAM ORIENTED Do you value interacting with a competent, well-trained estate planning team?	Since you are paying the attorney you expect only him to answer all of your questions. You won't interact with his team.	You're reluctant to share your goals, concerns, family and financial situation, giving your legal team only what they ought to know.
RECOGNIZES EXPERTISE Do you view all attorneys as having roughly the same skills and expertise?	You believe that most attorneys are interchangeable, and there's not much difference between them.	You reluctantly work with your attorney's team when you have to, but would prefer that you speak directly with him on most matters.
EXPECTATIONS What are your expectations regarding turnaround time and fees?	You expect all of your work to be completed yesterday, at little cost and done perfectly.	While you recognize that some attorneys are better than others, you don't believe you need the best for your situation.

YOUR MINDSET QUIZ



8 POINTS	11 POINTS	SCORE NOW	FUTURE SCORE
You'll consider sharing your goals, concerns, family, and financial situation an imposition so you'll describe what you can with minimal effort.	You're eager to share your goals, concerns, family, and financial situation with your legal team, understanding that's the backbone to a successful plan.		
You agree that your plan should be monitored to keep up with the times, and see the value of having an ongoing relationship with a good firm.	You consider your legal team an important element of your legal, tax and financial relationships necessary to keep up with an ever changing world.		
You see how your lawyer's ideas might add value to your estate plan, but believe that's more to benefit your children and has little effect on you or your spouse.	You're open and receptive to our expertise in suggesting creative solutions leading to family harmony and protecting your financial well being.		
You understand your legal team knows what information is required, and are willing to provide it when you have the time.	You promptly and fully respond to your legal team's requests for information and feedback.		
You understand that good estate planning necessitates a thorough process, but haven't been exposed to working within one.	You appreciate that we have an organized, 7-module process to ensure the best design, implementation, and maintenance of your estate plan.		
You're willing to interact with your attorney's team, but need continuing assurances they are competent.	You are encouraged that our well trained team includes drafting and funding professionals who help your attorney serve you quickly and efficiently.		
You feel that you need a qualified attorney but aren't quite sure how to differentiate one firm from the other	You want experienced board certified specialists who can provide comfort and clarity in achieving your objectives.		
You have reasonable expectations regarding the time, value, and complexity of your matters in relation to fees.	You have high expectations that the estate planning experience and corresponding result will far exceed the price.		
►►►►►	►►►►►		

MINDSET QUIZ SCORING

THE DO-IT-YOURSELFER

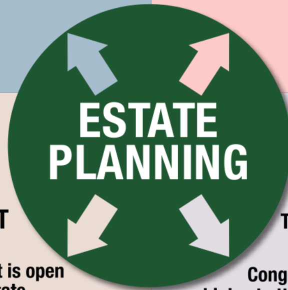
You view the creation of a will or trust package as a simple transaction that should not take much time or effort. If you choose to work with a law firm, you may be happiest looking for a firm with a steeply discounted rate structure – that usually means a "one size fits all" estate plan, which you feel is adequate. You may be happiest working within a web-based online document preparation resource or with a generalist lawyer who is adept at putting together simple wills.

SCORE <28

THE MINIMALIST CLIENT

While you may seek a law firm to assist you with your estate plan, you believe that your situation is simple and routine. You don't believe that a highly qualified estate planning attorney can add much value to your situation, so you're not looking to establish a long-term relationship with any particular lawyer or law firm. You are most content getting the transaction accomplished with as little effort on your part as possible. You may be quite satisfied working with a low level law associate or working directly with a paralegal at a firm that caters to clients who share this viewpoint.

SCORE 28-51



THE SIGNATURE CLIENT

Congratulations! Your mindset is open to get the most out of your estate planning experience! You are a good candidate for working within our firm's seven-step unique process, THE FAMILY ESTATE & LEGACY PROGRAM® to address your concerns and achieve your goals. You can easily envision the value created by having a team guided by board certified trust and estate attorneys open your eyes to opportunities that you didn't know existed and taking the steps necessary to protect yourself and your loved ones when navigating the ever-changing will, trust and tax laws. You seek a long-term relationship with a highly qualified and specialized estate planning firm that will provide you and your loved ones with comfort and clarity now and into the future.

SCORE 52-75

THE TRANSFORMATIVE CLIENT

Congratulations! Your mindset is the highest attainable and is likely to result in a successful estate planning experience! You'll soon realize the value of working within our seven-step unique process, THE FAMILY ESTATE & LEGACY PROGRAM® created by board certified attorneys specializing in estates and trusts. You can easily envision how a team of trained professionals can provide comfort and clarity while adding continuing value as your estate plan adjusts to an ever changing legal, tax and financial world in addition to meeting the needs of evolving family dynamics. Further, you want to build a relationship with our highly qualified team giving you and subsequent generations of your family a strong group of trusted advisors to rely upon. You'll be intrigued with the various options that you may not have known existed, often resulting in tax savings for you and your loved ones, as well as protecting their inheritance from a variety of dangers.

SCORE >75

Attorney Shanise Evans' practice focuses on helping families, business owners, and charities have peace of mind that their values, wealth, and legacy are protected today and for years to come. With over 21 years of experience, she excels in guiding her clients through the often-confusing maze of financial and legal decisions to enable them to effectively plan and reach their goals. Her considerable legal expertise includes family protection, wealth preservation, charitable gift planning and nonprofit creation and governance, values-based planning, as well as planning strategies for unmarried couples and divorced individuals. In addition, Shanise combines her legal expertise and acute business acumen to assist her clients in planning for the creation, growth and success of their businesses.

For more information about Illinois and Missouri residency and estate planning:

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