

Practical Probate: Estate Planning

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I have a strong belief that estate plans should be customized for each person and family. Each person's financial situation, values, and objectives are unique. An estate plan should reflect this, and should only be done by working with a qualified estate planning attorney who does not use a "one size fits all" approach.

Most people tend to put off or completely ignore estate planning, but in the long run, those who plan are far better off. This is largely because once the events for which estate plans are created occur – incapacity, creditor issues or death – there are very few, if any options available. At that point, the options available are generally fewer and frequently unpleasant and expensive.

An estate plan is more than just a collection of documents. It should be comprehensive, using, as appropriate, wills, trusts, business entities such as limited liability companies, annuities, and lifetime transfers in a way that helps someone understand and achieve their estate planning objectives.

Estate planning objectives generally include providing for family members, charities, allowing a family business to continue operating, allowing for someone's affairs to be managed after legal incapacity without court intervention, protection against

creditors, and minimizing state and federal estate tax liability.

Let's examine some of the tools used to create an estate plan.

Wills provide for the disposition of assets that are solely in the name of the deceased person. An advantage of wills is that they cover all assets owned by the deceased person. As we go through time, we buy, sell and use assets. The assets someone owns today may be very different from the assets they own when they die. A disadvantage of wills is that they are only effective after the person for whom the will was created dies; wills have no utility to manage assets during lifetime. Another disadvantage is that a will is only effective after it's been admitted to the probate court. Most probate court matters are open to public inspection: any member of the public may access documents filed in matters that are or were before the probate court. Therefore, wills do not offer privacy.

Trusts are a means of asset ownership, and most assets can be placed in a trust. Like wills, trusts provide for the disposition of assets after death. However, trusts have important, additional features that wills do not have. Living trusts allow for management of assets during incapacity. Also, because they are generally not under the jurisdiction of the probate court, there is no public

record of the trust and the administration of the trust. This important feature keeps the assets and operation of the trust out of view of the public.

Disadvantages of trusts include the expense in creating the trust and administering it, and the fact that a trust is only effective for assets that are placed into it. This last point is often lost on those who attend living trust seminars and spend thousands of dollars to have a trust created, but who fail to transfer assets into the trust. Contrary to popular opinion, most living trusts do not reduce Connecticut probate fees.

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About the author



Dom Calabrese has been a Connecticut Probate Judge since 2002. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children's Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

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