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# 10 BASICS OF VIRGINIA ESTATE PLANNING

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What You Need To Be Doing Now To Leave A Legacy

CHARLES W. HAZELWOOD, III

—Attorney At Law, Hazelwood Law Firm—



# 10 Basics Of Virginia Estate Planning

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CHAPTER

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1

The State Creates The Plan

# THE STATE CREATES THE PLAN

If you do not create an estate plan, upon your death, your property will pass through intestate succession. This means that who gets your property and who administers your estate will be determined by state law.

The basic idea behind Virginia intestate succession is that your property passes to your next of kin. On paper this sounds good to many people and thus they do not take active steps to setup an estate plan. Unfortunately, it is very easy for intestacy law to cause serious problems for your loved ones.

Do not leave a mess for your loved ones. Make plans today so you can leave a legacy when the time comes.

**“Someone’s sitting in the shade today because someone planted a tree a long time ago.”**

**-Warren Buffett**

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CHAPTER

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2

What Is A Power Of Attorney

# WHAT IS A POWER OF ATTORNEY



A durable power of attorney appoints an agent to handle your personal affairs. This power can become effective immediately or upon your incapacity. One of its most beneficial uses is having one in place in case of incapacity. If a person becomes incapacitated and does not have an agent appointed, the people close to the incapacitated person will have a difficult time assisting. Often times the only avenue left for the people trying to help is to petition the court to become the guardian and conservator. This process can take time and can be expensive.

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CHAPTER

3

Medical Directive

# MEDICAL DIRECTIVE

A medical directive appoints an agent to make medical decisions on your behalf if you become incapacitated. This document should also include a living will. A living will typically states that if you have a terminal condition with no hope of survival that you do not want extraordinary means used to keep you alive. This can be personalized according to your wishes.

If an emergency situation arises, it will likely cause a great deal of chaos and uncertainty. A medical directive can give you peace of mind that decisions regarding your medical care will be in good hands if you are unable to make the decisions yourself.

- ✓ Good to have in place for emergencies
- ✓ Can help a loved one gain valuable medical information
- ✓ Makes your medical wishes clear

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4

Transfer On Death Deed

# TRANSFER ON DEATH DEED

Real estate is often the most valuable asset owned by people when they pass away. Due to its value, it is often the most fought over asset. Typically a married couple will have their real estate titled as tenants by the entirety. This means that when the first spouse passes away, the surviving spouse then owns the property.

A transfer on death deed allows a person to transfer real estate automatically to designated people. The deed is recorded among the land records, leaving a public record of your wishes. It also has the added benefit of giving the beneficiary a stepped up basis, which is better than gifting the property. This is a good mechanism to eliminate uncertainty regarding your real estate.

**“By failing to prepare, you are preparing to fail”-Benjamin Franklin**

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CHAPTER

5

Wills Vs. Trusts

# WILLS VS. TRUSTS

Wills and revocable living trusts accomplish the same goal, they designate who gets your assets upon your death and who the personal representative of your estate will be. The primary benefit of a revocable living trust is that it is easier for your assets to be distributed. This is because your estate will avoid the court oversight process known as probate. Many people have the false impression that they need to be wealthy in order to set up a trust. However, there is no minimum amount of money needed to create a trust. Generally, a trust is more expensive to create, but it may be cheaper to administer than a will.

Although it may be tempting to write your will or trust without professional assistance, this often leads to problems down the road. Just like you probably would not pull your own tooth, estate planning is best left up to the professionals.

## Wills

- ✓ Distributes assets to designated beneficiaries
- ✓ Appoints a personal representative

## Revocable Living Trusts

- ✓ Distributes assets to designated beneficiaries
- ✓ Appoints a personal representative
- ✓ Avoids probate

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CHAPTER

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6

Gifts During Life

# GIFTS DURING LIFE



Another popular form of estate planning, is to give some of your money to your loved ones during your life. This can have the effect of making your estate easier to administer down the road and your loved ones can enjoy their inheritance sooner. As of 2019, you are allowed to gift \$15,000 per person without claiming it on your tax returns. If you gift over this amount to a single person in a given year it still will not be taxed until you use up your life time exemption which is currently \$11.4 million. If you gift part of an inheritance it may be prudent to have paperwork declaring it as an advancement.

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CHAPTER

7

What Is Probate

# WHAT IS PROBATE

Probate is the process where the court oversees the distribution of your assets and the payment of your debts. It is not unusual for probate to take six months or more. Generally, whoever qualifies as the personal representative of your estate will be required to file certain documents and pay certain fees. Sometimes this process becomes too overwhelming and the personal representative hires an attorney to assist them. The rule of thumb is that if your estate is greater than \$50,000 then your estate will have to go through probate. Probate is needed for people with wills and people without wills, but people with revocable living trusts do not need to go through probate.

**“Plan for what is difficult while it is easy, do what is great while it is small” - Sun Tzu**

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CHAPTER

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8

What Is A Personal Representative

# WHAT IS A PERSONAL REPRESENTATIVE

Personal representative is a generic term for the person or entity that handles the administration of your estate.

What kind of a personal representative represents your estate depends on the estate plan that you have. If you do not do any estate planning, you do not choose who your personal representative will be, state law will decide. If you create a will, your personal representative will be an executor chosen by you, you may also select alternate executors. If you set up a revocable living trust, you will name a successor trustee and alternate successor trustees. Usually, the personal representative is entitled to a fee for their work, 5% of the estate is considered a reasonable fee.

- ✓ Handles the administration of your estate
- ✓ Can be chosen with a will or revocable living trust
- ✓ Is entitled to a reasonable fee

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CHAPTER

9

Avoiding Taxes

# AVOIDING ESTATE TAXES



People often believe that one of the main reasons to set up an estate plan is to avoid taxes. The truth is, estate taxes are generally only a concern for high net-worth individuals. However, there are many other financial reasons that people of typical means need to create an estate plan. One of the simplest financial reasons to set up an estate plan is to eliminate uncertainty. Without estate planning your estate might become contested causing delay and potentially draining the estate. Avoiding probate costs in the form of fees is another financial reason to engage in estate planning. Lastly, many people seek to shelter their assets from liability or from the costs of long-term elder care.

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CHAPTER

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# 10

Property That Automatically Transfers

# PROPERTY THAT AUTOMATICALLY TRANSFERS

A simple solution for basic estate planning that you may not be using, is naming a survivor beneficiary. Property that has a survivor named will pass outside of probate, meaning it passes more quickly and may not need to go towards paying off debt. As discussed earlier, this can be accomplished by how real estate is titled. Banks also allow you to name a beneficiary on your bank and brokerage accounts. While not a substitute for comprehensive estate planning, naming a survivor for some assets should be discussed with your financial institutions.

# CONCLUSION

Due to the perceived morbid undertones, engaging in estate planning is something that people try to avoid. Alternatively, some people simply do not care what happens to their stuff once they are gone. However, by avoiding estate planning, it can cause a significant negative impact to a person's legacy. After years of hard work and building wealth, it can all be torn down due to a lack of guidance which leads to a family squabble. Even the closest families can fall victim to fights over money and other property.

Despite its difficulty, estate planning can grant piece of mind, ease the burden on loved ones and leave the legacy your family deserves.

Our experienced estate planning attorneys are here to help you. Contact our offices in Northern Virginia or Central Virginia to begin your estate planning process.

## Northern Va

9245 Old Keene  
Mill Rd. #200  
Burke, VA 22015  
703-455-5160

## Central Va

3781 Westerre  
Pkwy. Suite F  
Richmond, VA 23233  
804-601-8259