

THINGS TO CONSIDER WHEN PLANNING YOUR ESTATE

There are a many things to consider when planning your estate. Having the following few issues decided prior to meeting with your attorney is helpful to get the process started. However, your attorney may also have insight for your specific situation that you should consider as well.

I. Fiduciaries.

Your fiduciaries are the people that will fill important positions when taking care of your estate. For each position, you should consider a first and second choice.

GUARDIAN: Probably one of the most important things is to decide who you would want to act as guardian for your little ones should something happen to both of you. The guardian will act as the day to day care giver and decision maker, this person can also act as the conservator/trustee, or you may name someone else to be in control of the purse strings. If you do name two separate persons for these positions, be sure they can work together.

POWER OF ATTORNEY (POA): This person helps you with your financial affairs while you are still alive, but don't have the capacity to make those decisions for yourself. Typically your spouse is named first, and then an alternate, but it can be anyone you choose. Some like to name even a third choice, but two is sufficient. This person (your agent) will have broad control over your assets (if you do not otherwise have a trustee, see below), so be sure it is someone fiscally responsible and someone you trust very much.

PERSONAL REPRESENTATIVE (PR): This person handles the administration and distribution of your estate after you die. They will be in charge of working with an attorney to pay creditors, handle your personal property and disburse your assets according to the terms of your estate plan. Again, typically the first choice is your spouse, then an alternate. If you name someone much older than yourself, a parent for example, you may want to choose a younger alternate, in case that first person is no longer to act when the time comes. This holds true for any of your fiduciary choices.

HEALTH CARE REPRESENTATIVE: This person will work with doctors and possibly have to make decisions about your end of life care, such as life support, tube feeding, etc. They will abide by the terms of your Advance Directive, which allows you to specify what you want to have happen in those situations. Naming someone who is local is probably best so they can physically be in the hospital if need be.

TRUSTEE: This position will only be applicable if you decide to do a trust. It is often the same person as the PR, but not required to be. Depending on the terms of your trust, this position may last longer as you can use a trust to disburse gifts over time, whereas the will only allows you to do immediate, onetime disbursements. The trustee will also act just as the POA during the time of any incapacity. If you are married and decide to do a joint trust, each of you will be named as co-trustees, with the survivor typically continuing to act on his/her own. Then, in the event neither of you are able to act, you name successors to step in (first choice, second choice, etc.).

II. Will vs. Trust.

The other primary thing to consider is whether you want to create a will based plan or create a trust. These are two very different kinds of plans, a will being the most basic, and a trust typically being a good choice for most, but a bit more expensive at the outset.

The chief benefits of a trust are as follows:

- Avoids the probate process, which can be costly and time consuming;
- In avoiding the probate process, you also avoid court involvement and the transfer of your assets can be accomplished more efficiently;
- Much more freedom in directing your assets over time or according to certain qualifications (important to consider with minor children who would otherwise receive everything at age 18);
- During time of incapacity, a trustee tends to hold more clout with financial institutions and other organizations when handling your financial matters, versus a POA.

One of the primary issues with a revocable trust is that it must be maintained. If your circumstances change, you buy a house or start a new investment, it is imperative to keep the assets in the name of the trust so they can be managed according to the trust terms. Anything left outside of the trust name will eventually be transferred to the trust using POA powers or via a pour over will (included with a trust). However, this may involve greater hassle and even a probate for things left out of trust at your death (excluding those things with direct beneficiary designations). Typically, for those who create a trust, probate is the primary thing they want to avoid. As long as you keep your trust properly funded with all of your appropriate assets (not all assets necessarily belong in your trust), your will and power of attorney should never be necessary.



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