SMART ESTATE PLANNING SOLUTIONS

Estate Planning 101

Your estate consists of all the property you own, whatever it is worth, and wherever it is located. Planning involves a systematic development and updating of goals, policies, and procedures.

Therefore, estate planning is the systematic development and updating of goals, policies, and procedures for all of the property you own, whatever it is worth, and wherever it is located.

However, estate planning isn't truly about things. It's about **people**. At the heart of estate planning, people aren't as concerned about what happens to their assets, they are more concerned about what will happen to their family.

Proper estate planning allows you to:

1) preserve your estate for your loved ones and stay in control for as long as possible;
2) direct who is going to receive your estate, including when and how much your beneficiaries will receive; and,
3) accomplish all of this while avoiding unnecessary taxes, fees, and commissions.

The online platform helps clients accomplish these three key objectives.

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The Three Basic Types of Estate Plans Created By the Online Estate Planning Platform

Everyone has an estate plan. Even if you do nothing you have an estate plan. According to one author, over half of the adult population as opted for this approach and done nothing. By not creating your own plan you simply force the legal system to distribute your wealth. Every state has statutes on how to distribute property when a person dies “intestate”. This is the technical term for dying without a will.

The question then, is not whether you will have an estate plan, but whether you will have a cost effective estate plan of your own selection, or a costly estate plan imposed upon you by law.

So what kind of estate planning documents should you put into place?

An individual’s wishes are most frequently drafted in the form of a will. You can also outline your desires in a trust.

The first few questions in the online interview determine which documents are appropriate given your unique circumstances. You will fall into one of three general categories - estate plan built around a revocable living trust, estate plan built around a simple will, or an estate plan built around Powers of Attorney.

1) Individuals that own real estate - Trust based plan.

2) Individuals that do not own real property, but who have minor children - Will based plan.

3) Individuals that do not own real property, have no minor children, and little or no financial assets - Powers of Attorney based plan.

In addition to your core documents, every will or trust plan will include: financial power of attorney, healthcare power of attorney, healthcare directives, and a HIPAA release form.

After the first few questions in the online interview, your assigned attorney determines the type of documents that are required.

Understanding Powers of Attorney

Powers of Attorney are essential documents for everyone. Irrespective of wealth or marital or family status every individual 18 years of age or older should execute both a financial and healthcare power of attorney.

Financial power of attorney names someone to make financial decisions for you when you are not able to do so for yourself.

Healthcare power of attorney names someone to make healthcare decisions for you when you are not able to do so for yourself.

If something happens rendering you incapable of making financial and medical decisions for yourself, without a valid power of attorney, your loved ones will be required to go to court and have a judge officially name a conservator to make those decisions on your behalf. This process is both time consuming and costly. More importantly, it can be avoided altogether by executing two simple documents - a financial power of attorney and a healthcare power of attorney.

Upon death your powers of attorney are null and void.

Understanding Wills

You have never seen a hearse pulling a U-Haul. The stark reality is, upon your death, all your stuff has to go somewhere. Your last will and testament provides your instructions about where your stuff is supposed to go. Your will is like a letter to the court. It is to the court, and not to your heirs, because every will must be presented to the court before it is valid. The process of administering your will is known as probate.

The person designated to administer your affairs and make sure all your stuff gets to where and whom you directed is known as your executor. The probate court oversees your executor's actions to make sure that they do everything that you requested. On average, the probate process takes about 7 to 9 months and depending on complexity of your affairs costs between 3% to 8% of your total assets. In addition, probate is a public proceeding, as such the details of your will become part of the public record.

To cut costs and time delays associated with probate, every state has a simplified probate process for individuals without real property and whose wealth is less than a specified amount - on average, approximately $50K. Using a simplified probate process makes using a will a viable option for individuals who do not own real property and have limited wealth.

(Note: Not all assets are subject to probate. Assets with named beneficiaries, such as life insurance, IRAs, 401Ks, jointly-held assets with rights of survivorship and financial accounts with POD (pay on death) designations all pass outside of the will directly to the named beneficiary and are not considered part of the probate process.)

If your circumstances are such that a will based plan, combined with proper named beneficiary designations, will not trigger unnecessary costs, the online platform will recommend that your estate plan be built around the use of a simple will. Willsare individual documents, so if you are married, your plan will contain one will for each spouse.

Finally, and of extreme importance, in addition to outlining how your assets are to be distributed, guardians for minor children are named in the will.

Changes to a will are provided in a document known as a codicil. In practice, it is usually easier to write a new will than to modify an existing one.

In order for your will to be valid, it must be signed and dated in front of at least 2 witnesses. Witnesses must be at least 18 years of age and not named as beneficiaries or be potential heirs.

Understanding Pour-over Wills

A pour-over will is only used when your estate plan is based around a living trust. If your plan included a living trust, it will also include a pour-over will.

Your living trust is the only beneficiary named in your pour-over will. Your actual beneficiaries and the details about how your assets are to be distributed are outlined in your living trust. Your pour-over will acts as a “safety net” to ensure that any assets not funded into your living trust while you were alive are transferred to your trust at your death.

Like a traditional will, a pour-over will is subject to probate process. As such you do not want to rely on your pour-over will to distribute your wealth. Your pour-over will is precautionary tool to make sure your assets are distributed as you intend.

Just as with a simple will based portfolio, guardians of your minor children are named in your pour-over will.

Same execution procedures exist for pour-over wills as for normal wills - 2 witnesses, over the age of 18 who are not named beneficiaries or otherwise potential heirs to your estate.

Understanding Living Trusts

There are three participants to every trust:

1) the individual who creates the trust, known as the Grantor;
2) the individual who manages the trust and assets owned by the trust, known as the Trustee; and,
3) the individual who receives the benefit of all the assets in the trust, known as the Beneficiary.

Any legal arrangement that has these three participants - a creator, a manager and a beneficiary - is a trust.

When you create your trust, you are all three - you are the grantor, the trustee and the beneficiary. You create your trust and name yourself to manage your trust for your own personal benefit. One way to look at your trust document is simply as the instructions you are giving to yourself.

Once your trust document is created, you must formally change title to all your assets. Your trust can only control the assets that it “owns”. You transfer ownership from yourself as an individual, to yourself as trustee of your trust. This process of transferring ownership is known as “funding” your trust.

From a legal standpoint, once you transfer your assets into your trust, you no longer hold title to anything; since your assets are inside the trust. However, even though you have relinquished ownership or your assets you still control those same assets. Your control of those assets is the same as before you put them into your trust. As trustee of your trust, you still have power to buy, sell, transfer, borrow, and do whatever you wish with “your” assets.

(Note: For the trust to avoid probate it is essential that all your assets be placed in your trust (i.e., funded). The only exception is Qualified Plan Assets - IRA, 401k, 403b plans - for income tax purposes, it is prudent that these assets be owned by you individually, not as trustee of your trust. The beneficiary designation will ensure these assets avoid probate.)

In your trust you name a successor trustee. This is the person who will manage your trust, and the assets owned by your trust, upon your death or incompetence.

The concept is quite simple, at your death, you do not own any assets, (as your have transferred all your assets to your living trust), so you have no assets subject to probate. Huge savings of time and money. At your death, the administration of your affairs simply passes to your successor trustee without any public fanfare or governmental oversight.

Your successor trustee must be of legal age. Your successor trustee serves in a fiduciary capacity. This means that, in all matters relating to the trust and your assets, the successor trustee must act with prudence and strictly in accordance with all instructions outlined in your trust.

Understanding Comprehensive Transfer Form

Your living trust can only control the assets that it owns. Transferring ownership of your assets to your trust is done on an asset-by-asset basis, one asset at a time. The process is not difficult but it does take time and require close attention to detail.

The comprehensive transfer form transfers all assets that do not have a formal title. Things such as personal property, family heirlooms, collections, etc. are specifically referred to and covered by the comprehensive transfer form.

With every trust document we create a pour-over will. The primary purpose of the pour-over will is to transfer title to assets to the living trust upon death, if assets were not transferred prior to death. Relying on a pour-over will to fund the trust requires probate, however.

Like the pour-over will, another purpose of the comprehensive transfer form is to document your intent that all assets you owned when you created your trust were to be transferred to your living trust.

There have been instances where the courts have permitted the use of a comprehensive transfer form in lieu of the pour-over will for the purpose of funding a trust. The comprehensive transfer form is a precautionary document that provides the basis for request the court to waive probate, if assets were not properly funded during your lifetime.

You should not rely on the comprehensive transfer form to fund your trust. The only acceptable way to transfer title is asset-by-asset.

Understanding Community Property Agreement

There are nine community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Alaska is an opt-in community property state that gives both parties the option to make their property community property.

Married individuals, in any of these states, can elect to own their jointly held property as community property. Upon death, holding title to your assets as community property provides significant income tax advantages for the surviving spouse. To ensure that the surviving spouse receives these income tax advantages, we create a community property agreement for all married individuals who reside in community property states.

Understanding Health Care Directives

The online platform creates numerous healthcare related documents. In addition, to a simple healthcare power of attorney that names someone to make healthcare related decisions when you cannot, we also provide the following documents for every individual:

a) **HIPAA Release Form** - authorizes healthcare providers to provide the individual you named as the agent of your health care power of attorney access to your medical records so that they can adequately perform the job they are required to do on your behalf

b) **Intent to Return** - for Medicaid to cover the expenses associated your long-term care you are required to spend down your personal assets including your primary residence. Your residence can be excluded from this if you formal declare that it is your intent to return to your primary residence if and when you become physically able to do. (This document is only included if you own your own home.)

c) **State Specific Health Care Directive** - each state has its own health care directive. State Specific Health Care Directives include the naming of health care agents (redundant with healthcare power of attorney), also includes outlining specific guidance to health care providers about your wishes about the type and level of terminal care you desire, DNR orders, whether or not you desire pain medication, nutrition, hydration, organ harvesting, etc. These issues are more medical in nature than they are legal. We provide the state specific form but feel that completing it should be done with the guidance of your medical professional not your legal or financial advisors.

Note: There is often some confusion about the term “living will”. Especially when your estate plan includes a living trust. The term ”living will” first became part of the public dialogue in 1990 when the U.S. Supreme Court confirmed our constitutional right to die in the Nancy Cuzan Case. Living will is a layman’s term, coined by the media, for the document that outlines your wishes regarding terminal care. Since the Cuzan Case the idea of creating living will has expanded beyond simply outlining your issues about end-of-life instructions and as a result the more accurate name for this document is a Health Care Directive.

Understanding the Certification of Trust

The certification of trust is a short, one-page document that outlines the key issues involved in your trust. It identifies the trust name, the date the trust was signed and notarized, and confirms that the trust is indeed a legally binding document.

The certification also identifies the grantors and trustees and confirms that the trustee has the power to act on behalf of the trust. The specific powers of the trustee are reaffirmed in full and often the “Powers of Trustee” section of the trust will be attached in full.

Nothing about your beneficiaries or details of regarding the distribution of assets is included in the certification of trust.

The certification is primarily used to transfer title of assets into the trust.

Understanding Asset Schedules

The asset schedules are located at the very end of the trust. There is one asset schedule for a single person trust. There are three assets schedules in each married trust. One asset schedule for the separate property for each spouse and one schedule for all jointly owned assets.

Listing an asset on an asset schedule does NOT fund that asset into the trust. In order for an asset to be legally owned by the trust the trust must be formally identified as the owner of record with the institution that controls or holds title to the asset.

So what is the purpose of the asset schedule? The asset schedule, when kept current, is a great recap for your successor trustee of the assets to be included in your estate. It is a starting point for identifying the assets they need to confirm exist. The asset schedules are intended to be updated no less than annually.

Asset schedules can be modified as often as needed without having to make a formal amendment to the trust document. The details needed to create detailed asset schedules are entered under an entirely separate tab entitled “Assets” in your client’s online portal. Clients should be encouraged to go in and make changes to asset listing whenever they buy or sell an asset.

The online questionnaire does not ask about the details of your client’s assets. To reinforce the need to go asset-by-asset and formally add the trust as the owner, all asset schedules show that the trust is funded with “$10 transferred from the grantor to the trustee”.

Creating a Personal Letter of Direction

A personal Letter of Direction is literally a letter you write to your beneficiaries, heirs, and those charged with finalizing your affairs upon your death. Your letter of direction does not have to meet any kind of legal format or other formal requirements. It can be handwritten or printed out on plain paper.

Unlike your will or living trust, your personal letter of direction doesn't have any legal authority, but provides you a forum to express the thoughts that you want to pass on to your loved ones, executor, and successor trustee.

Your personal letter of direction can also outline more personal desires, including such details as where you want to be buried and the kind of funeral that you want. You can specify location, funeral home or even what type of flowers you would like, or whether you would like your ashes to be displayed at the ceremony or even your own obituaries if you wish.

Your personal letter is the best place to outline the details of how you want your personal property distributed. You can use the letter to voice other personal requests that may be inappropriate for a will or trust, such as a general sentiment about how you would like your heirs to use their inherited assets.

Finally, you can elaborate on the medical conditions under which you would like to be taken off of life support in more detail than is permitted in a healthcare or medical directives. You can use your letter of direction to pass down your values, beliefs and ideals to your loved ones.

Note: The estate planning documents created using the Estate Planning Cloud platform direct your successor trustee and executor to refer to, and follow as much as possible, any instructions they find in your letter of direction.

Living Trusts vs Testamentary Trusts

The basic difference between a testamentary vs. a living trust is when the trust is set up. A testamentary trust is established or created as a result of the grantor's death whereas a living trust is established while the grantor is still alive.

A testamentary trust is part of a person's will. As a result, it cannot come into existence until the will is probated. Testamentary trusts are seldom used since avoiding probate is an essential component of a properly structured plan.

Both a living trust and a testamentary trust are revocable during the grantor's lifetime. Both types of trusts become irrevocable once the grantor dies.

Note: Technically, for married individuals who create a living trust that includes A/B Provisions, they have a testamentary trust inside their living trust, as the B Portion of the A/B trust is not established until the death of the first spouse. In this case, the testamentary trust is not created by a will so no probate is required.

Revocable Trusts vs Irrevocable Trusts

A trust is considered revocable if the grantor can modify or dissolve it during their lifetime. The grantor usually acts as the trustee of their revocable trust. Since there is no change in the grantor's beneficial enjoyment or legal access to assets placed in a revocable trust, there are no income tax advantages nor protection from legitimate creditors as a result of creating a revocable trust.

An irrevocable trust is just the opposite. The grantor relinquishes all control over the trust after it is created and funded with property and/or money. This can be preferable for tax purposes and protection from creditors. The grantor cannot legally act as trustee, and can never take property or money back unless he names himself as a beneficiary and sets terms for distributions to himself as part of the terms contained in the original trust document.

At the present time, the online platform does not create irrevocable trusts.

Note: Technically, for married individuals who create a living trust that includes A/B provisions, they have an irrevocable trust inside their revocable living trust, as the B portion of the A/B trust established at the death of the first spouse is irrevocable.

Estate Taxes and Revocable Trusts

A living trust DOES NOT provide any estate tax advantages. In addition to ensuring the orderly distribution of your assets, its primary purpose is to keep your property out of probate.

The current thresholds required to trigger a federal estate tax are very high - $10 million for single individuals and by including A/B provisions in your living trust, $20 million for married couples. As a result, few individuals have significant enough wealth to worry about triggering a federal estate tax liability.

The online platform will automatically create the A/B Provisions designed to save on estate taxes by leaving some property to irrevocable “B” trust , but allowing the surviving spouse to use it (and any income it produces) during their lifetime. That way, the surviving spouse does not legally own the property, and it won't be subject to estate tax at their death.

Some states also impose taxes on property transferred because of death. Given the extremely high federal exemptions, it is more likely that you will trigger death taxes at the state level than pay a federal estate tax.

Income Taxes and Revocable Trusts

There is absolutely NO impact whatsoever on your income taxes because you establish a revocable living trust. For income tax purposes the grantor of a living trust is treated as the owner of assets placed in the living trust irrespective of who is named as the trustee.

There is no need to obtain a separate tax ID number or file a separate tax return for your revocable living trust.

You use your personal Social Security Number as the tax ID number of your revocable living trust.

Understanding A/B Provisions

A/B provisions only apply to married individuals. The A/B provisions are dormant, until the death of one of the grantors there is only one trust - the couples revocable living trust.
It is at death that the living trust splits into two trusts - trust “A” and trust “B”.

Without being disrespectful - here is an easy way to remember which trust is for which spouse. Trust “A” is for the spouse who is still Alive, breathing Air, or Above Ground. Trust “B” is for the spouse who is Buried, Below ground, or Bit the dust.

Trust “A” is revocable and under the total control of the surviving spouse. Trust “B” is irrevocable and cannot be modified by the surviving spouse.

The large personal exemption means that most couples do not need A/B provisions within their trust for estate tax purposes. However, an A/B provisions may still be useful if:

- **You're not legally married.** Ability to use high exemptions is available only to couples whose marriages are recognized by the federal government. So if you and your partner are unmarried, you will not be able to use your partner's unused personal exemption.
- **You want to make sure your children receive your property.** Especially if you're in a second marriage, you might want to arrange things so that your surviving spouse can use your property after your death, but that it goes to your children after the second spouse's death.
- **You may owe state estate tax.** Some states impose their own taxes on property transferred at death; these taxes are in addition to the federal estate tax. Exemptions in these states are generally lower than the federal exemption. So if you live in one of these states, your estate may owe state estate or death tax, even if it does not owe federal estate tax.

A/B provisions trusts offer significant benefits, but they have drawbacks:

- **Restrictions on the surviving spouse's use of the property.** The surviving spouse has only limited rights to use trust property in the irrevocable “B” trust.
- **Cost.** When one spouse dies, the survivor will need to hire a lawyer or accountant to determine how to best divide the couple's assets between the irrevocable “B” trust and the surviving spouse's revocable living “A” trust. How the property is divided can have important income tax consequences.
- **Trust tax returns.** The surviving spouse must get a taxpayer ID number for the irrevocable “B” trust and file an annual trust income tax return.
- **Record keeping.** The surviving spouse must keep separate records for the irrevocable “B” trust property.

Role of the Trustee

The individual you name as trustee stands in a "fiduciary" role with respect to the beneficiaries of the trust, both the current beneficiaries and any "remaindermen" named to receive trust assets upon the death of those entitled to income or principal now. As a fiduciary, your trustee is held to a very high standard, meaning they must pay even more attention to the trust investments and disbursements than they would for their own accounts.

As grantor, you should make that your trustee is familiar with the trust and its provisions. Your trustee should know who else is named as trustees, who the successor trustees are, the order in which they are slated to act, and if they will be acting alone or with someone else. In addition your trustee should know where trust assets, insurance policies (medical, life, disability, long term care,etc) and other important papers are located.

Using the “People” tab in the online platform, you can share all the necessary documents information with your successor trustee with a simple click of a mouse.

Specifically the trustee acts as the legal owner of trust assets, and is responsible for handling any of the assets held in trust, tax filings for the trust, and distributing the assets according to the terms of the trust.

Role of the Guardian

The role of the guardian will essentially be the role you have now as a parent - caring for your children, acting in their best interests, and providing for them physically, emotionally, psychologically, spiritually, and culturally.

When considering who could take custody of your children, there are a number of questions to address:

- Are they willing to serve as guardian of your children?
- Do they have the maturity and stability to parent your children?
- Do they have the time and energy to take on the task of raising your children?
- Is their age or health a consideration?
- Do they know and love (or at least care about) your children?
- Do your children like them?
- Will they love your children and provide the support, comfort and nurture that your children will need?
- Will they make it possible for your children to visit their grandparents or other relatives or close family friends?
- How far away do they live?
- Do they have room for your children, or will they need extra funds to allow them to add on or buy a larger house?
- Will they need to buy a larger vehicle?
- Are their values and financial lifestyle comparable to yours?
- If your children are homeschooled, how will this be handled?
- Will one parent have to quit work in order to take care of your children?
- Do they share your religious beliefs and practices?

Role of the Agent in Your Health Care Power of Attorney

A health care agent also may be called a health care proxy or surrogate or an attorney-in-fact. Your healthcare agent is the person you choose in advance to make healthcare decisions for you in the event that you become unable to do so for yourself. Your health care agent will help make medical decisions on your behalf at the end of life or any other time you are not able to communicate, such as if you are severely injured in an accident.

State laws vary regarding the specific types of decisions health care agents can make. In general, a health care agent can agree to or refuse treatment and can withdraw treatment on your behalf. Your health care agent can use the information in your living will (also called a treatment directive), statements made by you in the past, and what he or she knows about you personally to make these decisions. For example, your agent can consent to surgery, refuse to have you placed on life-support, or request that you be taken off life support.

It is important that your choose someone you trust. Your agent needs to be willing and able to make potentially difficult decisions about medical treatment for you. Discuss your desires, values, fears, and preferences about medical care in various situations. Consider including the details about your medical wishes can be included in your final letter of instruction. The more your agent knows about you and your values, the more likely he or she will be to make the kinds of decisions you would make if you were able.

Role of the Agent in Your Financial Power of Attorney

Your agent is the person you choose in advance to act on your behalf on financial and legal matters in the event you become unable to do so for yourself. Typically this includes paying bills, making investment decisions, conducting real estate transactions and other relevant matters.

The powers granted to the agent may be broad or limited.

Since this person will have legal authority to act on your behalf, it's very important that this person is trustworthy and will act in your best interests. When considering who to name as your agent in your financial power of attorney, there are a number of questions to address:

- Do you trust this person with your important financial and other legal affairs?
- Is this person financially responsible? How do they manage their own financial and legal affairs?
- Will the potential agent charge you a fee? Family members usually perform the service gratis, but if you pick a lawyer or accountant, a fee is usually involved.
- Will this person agree to serve as your Power of Attorney agent? You should discuss your decision with them and they should agree before you officially appoint them.

Remember, if you ever become unsure of your agent's trustworthiness or if a conflict of interest arises, you should terminate your financial power of attorney and create a new one.