

The Importance of Estate Planning

My Knowledge Transfer Plan, Chapter 15

A cobbler with no shoes is just unheard of, and a funeral director without an estate plan should follow suit. How can you – someone who confronts daily the reality of death – ignore the fact that all of us are going to die at some point?

If you respect the fact that you will die someday, then you have the right/obligation to plan how you want to transfer your assets to those around you. This article offers some insight into the key points of estate planning.

ASSET TRANSFER METHODS

There are usually a few things you'll want to accomplish when creating your estate plan, the first of which involves determining who should be protected by the use of your assets until your death. Next, decide how to provide for the transfer of those assets to the intended parties. Lastly, you will want to figure out how to reduce the taxes and costs associated with transferring those assets.

Now, most people think an estate plan consists of wills, trusts and insurance, but estate planning is more involved than that. There are three ways to transfer your assets upon your death.

By Titling

This method is the easiest to understand. If you title property as joint tenancy, it means that you and another party (or parties) own the property equally during your lifetimes.

Joint tenancy with right of survivorship means that upon the death of one party, the property passes automatically to the surviving party (or parties). This is



also easy to understand and often laughingly referred to as a “poor man’s estate plan.” If your property is titled joint tenancy with right of survivorship, your legal will does not override this transfer to the surviving party (or parties) or affect it in any way.

Another form of titling is sole property, which means you own the property in your name, all by yourself. Anything you own in your name will be transferred upon your death by your will.

Tenants in common assumes two or more people own an asset/property. They might own it equally (50/50), for instance, or in any percentage upon which they mutually agree, such as 60/40, 70/15/15, etc. Upon the death of a tenant (party), his or her interest is then governed by their legal will while the other tenants continue with their ownership.

The last form of titling an asset, tenants by entirety, is the same as joint tenancy with right of survivorship, but it’s used only for married couples. Upon the death of one tenant, the property passes to the surviving member of the couple.

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By Contract

If you have life insurance with a named beneficiary, then upon your death, the proceeds will go to the

stated beneficiary since a life insurance policy is a legal contract.

Now suppose your life insurance says the beneficiary is Mr. Smith, for example, but you want to give those proceeds to Mr. Jones via your legal will. Well, your will cannot come into play in this case because the transfer by contract controls the matter.

Other examples of asset transfer by contract include some business arrangements, such as a buy-sell agreement. Such contracts will dictate how and what is transferred, with no influence by anything written in your will.

By Will

Your will is a legal document that governs only the transfer of property/assets owned in your name.

Unfortunately, I recently witnessed an estate and business screw-up. Via the husband's legal will, he left the funeral business and its real estate to his children. The real estate was titled as joint tenancy with right of survivorship with his second wife, however, and she was not the mother of his children. She chose to sell the real estate to a developer, which basically forced the children to move the 75-year-old business to a new site.

TRUSTS

Many people incorporate a trust into their estate plan, which is a hybrid document that basically controls assets. There are many different features to a trust, including:

- Funded or unfunded
- Revocable or irrevocable
- Created during your lifetime or upon your death (testamentary).

In estate planning, many business owners establish a trust that is funded during their lifetime and therefore has an estate-distribution plan built into it. In this case, you could be the trustee of the trust while you're alive; upon your death, the trust would be funded with your assets and a new trustee appointed.

You can also serve as the beneficiary of that trust during your lifetime and, upon your death, appoint other beneficiaries. This is called a living trust, which is beneficial in that it will reduce the cost of probate. Probate is the act of transferring the title of assets from one party to another upon the first party's death. Generally, the fee for probating an estate is 4%-5% of the assets transferred. In other words, if your estate holds assets worth \$1 million, then the probate fee could be \$40,000-\$50,000!

Keep in mind that part of the purpose of estate planning is getting your assets to the parties you wish them to benefit. That said, imagine you plan to

leave your kids a large amount of money. How prepared are they to manage this money? Will they just consume it? As mentioned earlier, you can establish ahead of time a testamentary trust that, upon your death, can help the children who inherit that money to manage it.

ESTATE TAX

In the past, we dealt with federal and state taxes when passing on our wealth. Today, there is still a federal estate tax, but it's only levied on any amount of roughly \$13 million or more for a single individual and about \$26 million or more for a married couple. Only 0.15% of all estates will file a federal estate tax return and only about half of those will actually owe federal estate taxes.

On the state level, the District of Columbia and 17 states levy inheritance and/or estate taxes: Connecticut, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington. States set their own estate tax rates, so in these 17 states and the District of Columbia, the costs of estate planning are a factor.

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OTHER SUGGESTIONS

- If you have identified who will buy your business after you die, then enter into an agreement with them now. This document could deal with the transfer of the business and the real estate on a contingent basis. A buy-sell agreement outlines the terms and conditions of a business transfer, including the price, terms, collateral and other factors that will protect you and the buyer.

- I like to create a hypothetical probate situation to help my clients. Imagine you died yesterday but could still direct the transfer of your assets today. Who would you want to get what, and when, and how? When considering the "what," you should think about the specialized nature of some of your assets, not the least of which is your business. To make this easier, imagine that instead of a funeral home, your greatest asset is a Stradivarius violin. Now, suppose that of all your children, only one took violin lessons. Would you leave this valuable



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asset to all of your children or just to the child who could appreciate it?

- Likewise, I recommend you leave the business and its real estate only to those active in the business. Better yet, sell it to those active children. That way, the bulk of your estate will be liquid (cash), which can be split up without any confusion involving those specialized funeral home assets. Thus, if you wish, all the kids could inherit equally.

- Almost 40 years ago, one of my first articles in this magazine was titled "Being Equal Is Not Being Fair." Decades later, I can't fit into the pants I wore while writing that piece, but I still advocate every word of that article today. Do not leave the children active in the business with partners who are not active. Do not leave the kids inactive in the business with the real estate. That is lazy planning. The kids active in the business need the business and the real estate.

- Finally, I remind you that while you might have a good friend who has been your attorney for many years, this is the time to deal with a specialty attorney. Estate planning involves too many issues and you need to make sure you get it right. Remember, you don't want people crying at your funeral for the wrong reason!

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