

Estate Planning Part 1: The Key Components

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This article and a subsequent article to follow will review another essential part of the financial planning process that everyone should do. These articles do not provide specific legal or tax advice, and laws governing estate planning will change and can vary greatly from state to state. We hope that the information provided can be used as a starting point for family discussions, and as a basis for working with your financial advisors and a duly licensed attorney in implementing key elements of your specific estate plan.

What are the key elements of an estate plan?

Estate planning is the process of protecting yourself and your loved ones, so that you and they can survive various life emergencies and transitions. Estate planning is more than just planning for death. It includes building an estate during a lifetime, then seeing that those assets are protected in an estate that can be passed to the next generation, or in some cases to future generations. It allows you the opportunity to control your success both during life and on death. Estate planning involves organizing your paperwork, putting legal documents in place to carry out your wishes, and appointing key persons who can make decisions in response to events. There are two key components:

The “Inheritance Plan”, which focuses on controlling the inheritance of your property and distributing/managing your estate after death through wills, trusts, beneficiary designations, and asset titling. Before implementing a plan you need to consider these fundamental questions:

1. Who should inherit your assets?
2. Which assets should they inherit?
3. When and how should they inherit the assets?

These questions require an understanding of the financial needs, the maturity, and the financial knowledge of potential beneficiaries. Assets such as Real Estate and business interests are much more complex than bank accounts. Tax implications should be considered in the passing of any and all assets. If your estate is, or is expected to be over 5 million, plans might include strategies to eliminate or reduce estate taxes when assets are passed on.

The “Lifetime Plan” focuses on managing your property and healthcare while living, and maximizing control and flexibility through trusts, Durable Financial Powers of Attorney, Durable Medical Powers of Attorney, Living Wills, and Premarital Agreements.

Estate Planning is an ongoing process, and changes in your family and financial situation, as well as changes to the laws and taxes regarding estate planning, will determine how often your plans and associated documents should be revisited.

Key Estate Planning Documents You Need

There are five estate planning documents you may need, regardless of your age, health, or wealth:

1. Will
2. Letter of Instruction
3. Living Trust (may not be required)
4. Durable power of attorney
5. Advanced medical directives

Will

The main purpose of a will is to disburse property to heirs after your death. If you don’t leave a will, disbursements will be made according to state law, which might not be what you would want. Assets distributed by will go

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through “probate”, a court supervised process that ensures the orderly and timely transfer of assets. Non-probate assets are assets that pass by operation of law, thus bypassing probate. Such assets include jointly titled assets, assets with beneficiary designations, and financial accounts that have “payable on death” or “transfer on death” designations.

There are two other equally important aspects of a will:

1. You can name the person (executor or personal representative) who will manage and settle your estate. If you do not name someone, the court will appoint an administrator, who might not be someone you would choose.
2. For parents, you can name a legal guardian for minor children or dependents with special needs. If you don’t appoint a guardian, the state will appoint one for you if both parents should die. If you prefer, you can name a separate person to act as a “conservator” to manage your child’s financial assets. Parents may also want to consult an attorney about establishing a trust to manage your children’s assets in the event that both you and your spouse die at the same time. This may be especially useful for larger estates in which it may not be desired to have children get an inheritance free and clear. Assets held in or passed to a trust may also be protected from divorce, lawsuits, and creditors. A trust created at one’s death through a will is a Testamentary trust, and such assets being transferred will still go through probate. A living trust, created and funded with assets before death, can also spell out the terms by which assets would be distributed to children. The trustee of the trust would be the person administering the assets on behalf of the beneficiaries.

Letter of instruction

A letter of instruction (also called a testamentary letter or side letter) is an informal, non-legal document that generally accompanies your will and is used to express your personal thoughts and directions regarding what is in the will (or about other things, such as your burial wishes or where to locate other documents). This can be the most helpful document you leave for your family members and your executor.

Unlike your will, a letter of instruction remains private. Therefore, it is an opportunity to say the things you would rather not make public.

A letter of instruction is not a substitute for a will. Any directions you include in the letter are only suggestions and are not binding. The people to whom you address the letter may follow or disregard any instructions.

Living trust (may not be required)

A living trust (also known as a revocable or inter vivos trust) is a separate legal entity you, as the grantor, create to own property, such as your home or investments. The trust is called a living trust because it’s meant to function while you’re alive,

and can facilitate management of your assets after you have passed. You control the property in the trust, and whenever you wish you can change the trust terms, transfer property in and out of the trust, or end the trust altogether.

A living trust can be used to accomplish various purposes. Assets in trust do avoid probate, and this can provide several benefits. Depending on your situation and your state’s laws, the probate process can be simple, easy, and inexpensive, or it can be relatively complex, resulting in delay and expense. This may be the case, for instance, if you own property in more than one state or in a foreign country, or have heirs that live overseas. Transferring property through a living trust may provide for a quicker, almost immediate transfer of property to those who need it. Assets can include real estate, financial accounts, privately owned business interests, etc.

Avoiding probate may be desirable if you’re concerned about privacy. Probated documents (e.g., will, asset inventory) become a matter of public record. Generally, a trust document does not.

Any trust can be tailored to control the timing or conditions under which certain beneficiaries receive their inheritance. A living trust designed to provide beneficiaries benefits over time would turn into an irrevocable trust upon the grantor’s passing. Assets in an irrevocable trust could be protected from creditors and lawsuits. Assets could be earmarked in specific ways for children of multiple marriages.

Another reason for a living trust might be if you are facing a likely long-term disability, as a trust could be more easily managed as compared to a financial power of attorney.

Although a living trust transfers property like a will, you should still also have a will because the trust will be unable to accomplish certain things that only a will can, such as naming an executor or a guardian for minor children. Personal items, such as jewelry and collectibles, are transferred by the terms of a will.

As mentioned before, there are other ways to avoid the probate process besides creating a living trust, such as titling property jointly, or having beneficiaries on financial accounts. These are simple to do and often have no costs. The next newsletter will provide information on titling and the use of beneficiary designations.

Durable power of attorney (for financial decisions)

A durable power of attorney (DPOA) can help protect your property in the event you become physically unable or mentally incompetent to handle financial matters. If no one is ready to look after your financial affairs when you can’t, your property may be wasted, abused, or lost. The person you name is often the Executor on your estate.

A DPOA allows you to authorize someone else to act on your behalf, so he or she can do things like pay everyday expenses, collect benefits, watch over your investments, and file taxes.

There are two types of DPOAs: (1) an immediate DPOA, which is effective immediately (this may be appropriate, for example, if you face a serious operation or illness), and (2) a springing DPOA, which is not effective unless you have become incapacitated. A springing DPOA is not permitted in some states, so you'll want to check with an attorney.

Advanced medical directives

Advanced medical directives let others know what medical treatment you would want, or allows someone to make medical decisions for you in the event you can't express your wishes yourself. If you don't have an advanced medical directive, medical care providers must prolong your life using artificial means, if necessary. With today's technology, physicians can sustain you for days and weeks (if not months or even years).

There are three types of advanced medical directives. Each state allows only a certain type (or types), with Colorado recognizing all of the following legal documents. You may find that one, two, or all three types are necessary to carry out all of your wishes for medical treatment. (Just make sure all documents are consistent.)

First, a **living will (also referred to as "advance health care directive")** allows you to approve or decline certain types of life-sustaining medical procedures, such as artificial feeding and breathing. In most states, living wills take effect only under certain circumstances such as terminal injury or illness. In those states that do not allow living wills, you may still want to have one to serve as evidence of your wishes.

Second, a **medical durable power of attorney** (also known as a health care power of attorney or health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will or won't have.

Finally, a **Do Not Resuscitate order (DNR)** is a doctor's order that tells medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

Selecting an Executor (Personal Representative)

What is an executor?

An executor is a personal representative who acts for you after your death. You nominate or designate an executor in your will to settle your estate. The person chosen will act in your place

to make decisions you would have made if you were still alive. The probate court has final approval, but the court will generally confirm your nomination unless there are compelling reasons not to. An executor's responsibilities typically last from nine months to three years (although, an estate may remain open for several years because of will contests or tax problems). The functions of an executor are varied, but generally your executor:

- Locates and probates your will
- Inventories, collects, and sells (if necessary) your assets
- Pays legitimate creditor claims
- Pays any taxes owed by your estate
- Ensures all life insurance and retirement plan benefits are received.
- Distributes any remaining assets to your beneficiaries

Tip: Your executor is entitled to a fee from your estate for services rendered. The fee can be waived if, for example, a close family member is the executor.

What are the duties of an executor?

Your executor acts in a fiduciary capacity. This means that he or she must exercise a high degree of care at all times. Additionally, your executor is under court supervision, subject to its control and approval.

Some states require executors to post a bond, which is later paid back to the executor from the estate (though you may be able to waive this requirement through a will provision). In addition, your executor is personally responsible for ensuring that all the proper tax returns are filed and that any estate taxes due are paid. Finally, your executor is accountable to the court and to your beneficiaries on completion of his or her duties.

How do you select an executor?

Your choice of executor is a very important one. Ideally, you want someone you can trust, who has a close relationship to your family, who has some understanding of tax laws, and who has a keen sense of business (especially if you are a business owner).

Typically, spouses are named. Other choices include older children, siblings, or parents. Friends, attorneys, and bank or trust officers are also common. You can name multiple executors to oversee different aspects of your affairs; however, co-executors may result in an increase in paperwork and a slowdown in the probate process. Some of the attributes you should look for in a good executor are:

- Ability to serve
- Willingness to serve
- Competency

- Trustworthiness
- Appreciation of your family's needs
- Knowledge and experience

Individual versus professional

When choosing an executor, you can name an individual or a professional (e.g., an attorney or a bank trust department), or in some cases both, to handle your affairs. An individual can also hire professional assistance if needed. You should also consider and name an alternate if your first choice is unable or unwilling to perform when the time comes.

A family member or close friend has knowledge of your affairs and would take a personal interest in the settlement of your estate and the well-being of your beneficiaries. However, he or she may not be the best choice. Serving as an executor is a time consuming and stressful task. Some of the executor's duties such as preparing and filing tax returns, obtaining appraisals, and making an accurate accounting of assets and liabilities are best left to professionals. By naming a professional to manage your affairs, you gain some permanence. A professional executor is unlikely to refuse to serve or to resign. In addition, it may be easier to hold a professional executor financially accountable for mismanagement than a nonprofessional. A professional who makes money from managing estates will have the investment expertise as well as the legal, tax, accounting, and computer abilities to do the job well and efficiently. You also gain some impartiality by having a professional manage your affairs. A professional executor should be more impartial to your beneficiaries or heirs. You also reduce the risk that your executor will make hardship loans to friends. However, by nominating a professional you lose that personal touch from a friend or a relative who is not managing any other estates.

Technical Note: In general, state laws require that the person who manages your affairs be an adult U.S. citizen. Additional-

ly, your executor cannot be a convicted felon. State laws may also give special powers to your executor, or spell out what your executor can or cannot do. You can also use your will to grant your executor any special powers needed to carry out the instructions in your will.

Be aware: If you leave no will, if you do not name an executor in your will, or if your executor refuses or fails to serve, the probate court will appoint an administrator (or curator). If this happens, you have no say about who will manage your final affairs. An administrator performs many of the same functions as an executor but has much less power and authority.

Naming trustee(s) for a trust

A trustee's duties are similar to an executor, but related only to assets held in trust. You should consider the same attributes to look for as you do to decide on your executor. For a married person having a living trust, the spouse normally serves as a co-trustee or a successor trustee if the grantor of the trust is incapacitated or deceased. Like the executor, the trustee can be an individual, a professional, or a combination of both. One should name successor trustee(s) if a spouse is not available to serve as trustee.

Keeping and safeguarding valuable records for yourself and others.

The insert to this newsletter lists important information that should be safely protected and available to you and to anyone that might be called upon to manage your finances and/or settle your estate. The attached form may be used to help you and others in the future (i.e. your executor) keep track of important information. As an electronic spreadsheet, this tracking form can be expanded to include more information, and it can also produce a snapshot of your Net Worth. Please let us know if you would like us to e-mail you a copy of this spreadsheet for your use.

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Safeguarding Valuable Records

Keep critical documents and records safe and secure but accessible in a time of need. A safety deposit box or home safe (fire and flood proof) should be considered for the following documents. Copies could be stored elsewhere for convenience.

Originals of Valuable Documents

- Birth and Death Certificates
- Papers concerning Marriage, Divorce, or Adoption
- Deeds (i.e. real estate), vehicle titles, other records of ownership
- Stocks, bonds, and other Investment Certificates

Personal Property Inventory for Insurance Purposes

- Descriptions of possessions important to you
- List of Model numbers and years for major appliances and electronic items
- Photographs, CDs or videotapes showing condition and quality of your valuables
- Sales receipts help establish value of more expensive belongings

Legal Papers

- Trusts, Powers of Attorney, Divorce and child custody agreements, other legal contracts
- Passports

Insurance Policies

Wills and Related Estate documents

- Safe deposit boxes are often not suggested as some states require boxes to be sealed for some period of time after one's death. Attorney that prepared plan may be willing to retain originals.
- Make sure Executor and any powers of attorney knows location of documents and has access to any key or combination.

Tip: Create one file or document, such as the one attached, that includes key information of all documents you've placed in safekeeping. You can not only turn to it for vital facts, but it can also be used by anyone that might take over your financial affairs and/or settle your estate.

Regarding Tax Returns:

- The IRS has 3 years to raise routine questions about your return; six years if it thinks you substantially under-reported income. In case of fraud, there is no limitation at all.
- One should keep tax returns and supporting information for at least 6 years; however, complexity of returns might suggest indefinite retention.
- Keep Tax dispute records indefinitely

Other Documents to Keep Long-term (indefinitely):

- Investment records (i.e. to keep track of cost basis for older investments)
- Medical history information
- Pension/retirement plan documents and Social Security Documents (i.e. card and latest statement)
- Home ownership/sale documents and home improvement records.

Names:		Date (as of):													
ASSET/LIABILITY NAME*	Type	Account #	Fair Market Value	Cost Basis	Liabilities	Owner/Name	Beneficiaries	Contingent Benef.	Contact Person	Contact Phone	Where Docs	Comments/Log on info			
Investment Firm Name	Example: Roth IRA			\$ -	\$ -										
Bank Name	Ex. Checking														
Real Estate & Business															
Credit Cards															
Other Assets/Liabilities															
Total Non-Insurance Assets and Liabilities			0		0										

INSURANCE (company)	Type	Policy #	Cash Value (if any)	Cost Basis (if CV)	Death Benefit	Owner	Beneficiaries	Contingent Benef.	Contact Person	Contact Phone	Where Docs	Comments
Total Cash Value Insurance			\$ -		\$ -							
Net Worth			\$ -		\$ -							

* Types of Asset/Liability: Bank Accounts, Investments, IRA's, Roth IRA, Retirement Plans, Life Insurance, Business Assets, Real Estate, Personal Property, Survivorship Pension, HELOC, Car loan

Key Contacts+Estate Items	Contact Person	Contact Phone	E-Mail Address	Address	Where Docs	UserID	Password	Key location	Comments
Attorney									
Accountant									
Financial Advisor									
Personal Insurance Rep									
Executor(s)									
Will & Other Estate Docs									
Safety Deposit Box									
Home Safe									
Key Family Members									
401k/Pension									
Social Security Benefits									
Laptop									
E-mail									
Social Media: Facebook									
Other (i.e. guardian, trustee)									