

Estate Planning Basics

By: Christian S. Kelso, Esq.

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Many people, even many lawyers, do not completely understand what the term 'estate planning' encompasses. An estate plan is simply the arrangement which designates what should happen to a person's assets when they die. An estate plan may be large or small, simple or complex, formal or informal.

Although most people do not realize it, their state actually provides them with an informal, default estate plan through its laws of descent and distribution. These laws only apply when a person has not formalized his or her wishes, typically in the form of a Will. As a general rule, these laws are designed to cater to the wishes, as defined by each State's legislature, of an average citizen, but not many people fit this definition. One way to think of it is like this: the average American has something like 2.5 children. Do you have 2.5 children?

A Will, also called a Last Will and Testament, is the cornerstone of most formal estate plans. It is a legal document by which a person can opt out of the default rules of descent and distribution prescribed by applicable state law and designate what should happen with their belongings, real estate, money, investments and other assets when they die. A Will itself can be very simple or very complex, but it will not be valid unless it is properly drafted and executed, so it is advisable to seek the advice of an attorney.

In addition to directing the disposition of assets, Wills serve several other purposes. First, they typically reduce the costs associated with probate (see below). Additionally, they provide a mechanism for parents to designate a guardian for their young children in the event both parents die. Some people also include burial or cremation requests in their Wills.

Certain trusts can also be designed as an alternative to Wills. These trusts are commonly called 'Revocable Living Trusts' and they offer a number of benefits beyond what might be accomplished by a Will. If executed and managed properly, such a trust can be used to avoid probate (see below) at least in part, if not entirely. This, in turn, provides privacy and can reduce legal costs. Trusts can also provide a seamless management and control structure for a person's assets, which can be a major benefit, for example, when a person becomes incapacitated due to dementia or stroke. Additionally, such trusts are typically more difficult to challenge in the courts than Wills are. Finally, revocable living trusts are extremely flexible, and as the name implies, they may be amended or revoked at any time.

In addition to a Will, even a basic estate plan will typically include several other pieces. Typically, these will include financial and medical powers of attorney to designate agents who may act in case the principal is unavailable or incapacitated. Financial powers of attorney come in many shapes and sizes, so the advice of a professional can be very helpful in getting the details right for a particular situation. If a separate document is not executed, medical powers of attorney should always include language complying with the Health Insurance Portability and Accountability Act (HIPAA), so that medical professionals are authorized to share their patient's private medical information with the designated agents. After all, a decision maker is not much good if federal law keeps them from getting the information they need to make a decision!

A living will, which is also known as a directive to physicians, is also commonly included in a standard estate plan. This document lays out a person's wish to be kept alive by any means necessary or allowed to die peacefully and with dignity when the end is near. In addition to setting out one's own wishes, this document can be extremely helpful to family members who might be conflicted when tough decisions are called for.

Additionally, certain documents may or may not be included in a comprehensive estate plan, depending on the circumstances. Sometimes, it is appropriate to execute a Designation of Guardian, in case there might be a future

need of guardianship (see articles on guardianship on the Resources web page). Also, those wishing to donate their body to science should execute a Statement of Anatomical Gift.