ESTATE PLANNING FAQs

When Should An Estate Plan Be Reviewed?

If you already have an estate plan, it should not be considered permanent. Conditions, as well as your desires, may change. Estate plans should be reviewed at least every two-three years; however, any important change in your life demands immediate review. These changes might include:

- Birth, death, marriage, divorce or disability of you or a beneficiary;
- Large increase or decrease in the net worth of you or a beneficiary;
- Substantial change in the type of your assets;
- Change of residence to another state;
- Change in tax law.

Where should I keep my original estate planning documents?

A safety deposit box or other fire-proof vault would be best. We recommend retaining a copy in your home, in a safe, but private place so that you can review the documents without necessity of visiting your safety deposit box. It is a good idea to place a "sticky" note on the copy directing your designated successor trustee to the location of the original.

What Benefits Does A Trust Offer?

- Probate Avoidance;
- Retention of privacy of family assets and finances;
- Creditor protection for your beneficiaries;

What Happens If You Do Not Have A Will Or A Trust?

If you do not have a Will or a Trust and have not used other probate-avoiding techniques, upon your death your assets will pass according to the laws of the state which has jurisdiction over your assets.

Should I have a power of attorney for health care?

Yes, it is equally important to have a health care power of attorney, to make decisions with respect to your medical care in the event that you are physically or mentally unable to do so, as certified by two physicians. This document includes the type of provisions that used to be in what was commonly called a "Living Will," allowing you to indicate your wishes concerning the use of artificial or extraordinary measures to prolong your life artificially in the event of a terminal illness or injury. You will also use this document to indicate your wishes with regard to organ donation, disposition of bodily remains, and funeral arrangements.

How does a power of attorney terminate?

Death revokes a power of attorney. You may also cancel your power of attorney by signing a revocation. The best way to revoke a power of attorney is to destroy all copies. If the power is a non-durable power of attorney it will terminate upon your incapacity, while a durable power of attorney survives your incapacity.

Who should be designated as successor trustee of my Living Trust?

You will need to designate one or more successor trustees. These can be individuals, such as family members, trusted friends, trusted professionals, or you could designate an institution, such as a bank or professional trust company. Individuals may predecease you, while an institution will (most likely) still exist at the time of your death. Institutions provide the benefit of experience in money management and trust administration, while family members and close friends are more "personal" and have first-hand knowledge of your desires. If you choose an individual, the individual should have some business sense, or you might wish to name an individual and a professional trustee as co-trustees. The downside to co-trustees is the possibility of disagreement.

If I transfer real estate to my trust can the bank call my loan?

Enacted as part of the Garn St. Germain Depository Institutions Act of 1982 (P.L. 97 320; 96 Stat 1501) a due on sale clause cannot be enforced on a "transfer into an inter vivos trust on which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property." This exemption applies to residential real property containing less than five dwelling units {12 USC Sec. 1701j 3(d)}. The regulations list that the borrower in this type of situation must remain the beneficiary and occupant of the property {12 CFR 591.5(b)(vi)}. However, "occupancy" is not defined. Therefore, prudence suggests notifying the lending institution before the transfer.

If I have a living trust, do I still need a will?

You still need a will to capture any assets that may not have been transferred to the trust during your life. A "Pour- Over Will" will transfer assets to your trust. Once you establish a living trust, you must remember to transfer your assets into the trust. Assets that are not in your trust, that do not have beneficiary designations or are not jointly titled with another individual, will be subject to probate. You should discuss the transfer of tax-deferred assets, such as IRAs, KEOGHs or pension plans, with your attorney or accountant.

What are the duties of a trustee?

The following are some of the responsibilities required of a trustee:

- Manage the assets in your trust.
- Properly account for and continually revalue the assets in your trust.
- File federal and state tax returns.

What assets must be probated?

Generally, any assets that you own in your sole name must be probated.

What assets do not have to be probated?

Many assets do not go through probate, including assets held in a Revocable Trust, joint tenancy assets, bank trust accounts, assets such as life insurance, annuities, IRAs and retirement plan benefits that have a designated (non-minor) beneficiary
and assets passing to a surviving spouse.

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