

TAX AND WEALTH ADVISOR ALERT: WHAT IS AN ESTATE PLAN?

We are often asked, “What is an estate plan?” An estate plan can mean different things depending on your unique personal and financial situation. We structure your estate plan based on many things, such as whether you are single, married, or divorced; whom you want your estate to pass to upon your death; and the complexity and makeup of your assets. Some individuals may need more estate planning, some may need less.

Here is a list of the typical documents we include in an “estate plan.”

Revocable Trust

People often come to us asking for a “simple” Will. However, a Will-based estate plan is not always the best choice. A “simple” Will now may cause beneficiaries significant cost and delay, later, when the Will gets probated. This is why we often recommend that our clients establish a “Revocable Trust.”

A Revocable Trust is a trust that you create during your lifetime and acts as the “centerpiece” of your estate plan. The Trust is designed to help you manage your assets during your lifetime and to designate who will receive your property upon your death. You are the “grantor” or creator of the Trust and serve as Trustee during your lifetime, so you still retain control over the assets in your Trust. The Trust is both completely amendable and revocable during your lifetime.

Upon your death, your trust property is divided and distributed to your named beneficiaries, often your children. A share for a beneficiary can either be distributed outright and free of trust, or it can be held in trust for that beneficiary’s benefit. A share held in trust can be useful for a beneficiary to protect from creditors and divorce, or if a beneficiary is a spendthrift.

Married couples often create a “joint” Revocable Trust together. A joint Revocable Trust is a useful tool to minimize taxes and effectively manage a married couple’s assets, before and after death.

A Revocable Trust is particularly useful if you have minor children, you own your own

business, or you own real property in multiple states. The Trust also makes the administration of your assets more efficient if you become incapacitated.

Last Will and Testament

Even if you have a Revocable Trust in place, it is still necessary to have a Will. This is what we refer to as a “Pour-Over Will.” The Pour-Over Will serves a few important purposes. First, in the event that you fail to re-title an asset into your revocable trust, the Pour-Over Will is designed to receive those assets upon your death and “pour” them into your Revocable Trust. Second, the Pour-Over Will is the only place you can nominate a guardian for your minor children if you were to unexpectedly pass away. Finally, the Pour-Over Will distributes your personal property, such as your furniture, household items, clothing, etc. to your intended beneficiaries.

Marital Property Agreement

For married couples, we often draft a Marital Property Agreement. This agreement allows married couples to “opt in” to Wisconsin’s marital property system by classifying most of your assets as marital property upon yours and your spouse’s deaths. The Marital Property Agreement also contains a “Washington Will Provision,” which means the surviving spouse can fund the trust upon the death of the first spouse and thus avoid probate. This agreement, however, does not address divorce and is used solely for estate planning purposes.

Durable Power of Attorney

In the event that you become incapacitated as a result of an accident or illness, you can appoint an “agent” in your Durable Power of Attorney to oversee your financial affairs. We are often asked what the difference is between an “agent” and a “trustee.” An “agent” manages the assets outside of your Revocable Trust, while a “trustee” manages the assets held by your Trust. A Durable Power of Attorney offers great flexibility in administering your financial affairs and also allows you to avoid a costly guardianship proceeding.

Health Care Power of Attorney

A Health Care Power of Attorney allows you to appoint an individual to make health care decisions on your behalf in the event that you are unable to do so yourself. The document also allows you to express your wishes regarding entering a nursing home or community-based residential facility when the need arises, as well as other important end-of-life decisions.

HIPAA Release and Authorization

The Health Insurance Portability and Accountability Act was passed into law in 1996. This Act

prevents medical professionals from divulging your personal medical records to family members or other individuals. Because of this, it is often difficult for family members to gain access to your medical information in the event of an emergency. Our HIPAA Release and Authorization allows medical professionals to release your personal medical records to persons of your choosing (often family members) to help manage your care.

Deed

If you establish a Revocable Trust, an important step is re-titling your real property into the name of your Revocable Trust. Thus, upon your death, you avoid having the real estate pass through probate, and your Trustee will have the ability to maintain, manage, and/or sell your real property upon your death. This step is especially important for property owned outside of Wisconsin. If you fail to transfer your real property into your Revocable Trust, you risk needing an “ancillary” probate in the state in which your real property is located. This can be a costly and tedious step we try to avoid.