An Estate Planning Overview

A guide to **protecting your assets**, your **family**, your **loved ones**, and your **wealth**.

THE LAW FIRM OF
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Protecting You and the Ones You Love

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Personal Statement

We may only get one chance to plan our estates, and how we plan our estates will have a profound impact on our families and the ones we love. Each family has different needs and different concerns. It is important that your estate plan be designed for your particular family situations.

Estate planning is a combination of the rational mind that knows what to do with information, and the compassionate mind that teaches and listens. An estate planning attorney should never lose focus on these principles.

As a client, you have the right to expect your estate planning counselor to always strive to help you identify your greatest hopes, fears, dreams and aspirations for both yourself, and your family.

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This guide is brought to you as a service of:

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The choice of a lawyer is an important decision and should not be based solely upon advertisements.

Joint Property

There are a variety of ways to transfer your assets to those you love. Many of these ways avoid the probate courts, eliminating some cost and frustration. The most common of these are joint ownership and beneficiary designations.

How Beneficiary Designations Work

Some assets are owned by you during your lifetime, but allow you to name who should own them when you are gone. This "naming" is called a "beneficiary designation." You have probably made beneficiary designations on several occasions already, without even knowing.

The most common example of a beneficiary designation is life insurance. The form that tells the company whom to pay upon your death is a beneficiary designation. Beneficiary deeds for real estate and Transfer-on-Death (TOD or POD) designations for automobiles or bank accounts are also beneficiary designations. There are also beneficiary designations on Individual Retirement Accounts (IRAs) and Certificates of Deposit (CDs).

How Joint Ownership Works

The law divides our property into two categories when dealing with ownership. Personal Property (like cars, accounts, cash, furniture, etc.) may be owned by you alone, or by you and one or more other people. There are three items of personal property that are most common: automobiles, bank accounts, and investments. If the title to your automobile has two names (and no TOD) then it is owned jointly. The same is true for the bank account signature card, and the paperwork designating ownership of various investments (like CDs, brokerage accounts, etc.). When a joint owner dies, the deceased owner's interest passes immediately to the remaining owner(s). This works because of the contract language on the documentation of ownership.

Real Property (land) may also be owned by you alone, or with others. For Real Property, the important information is found on the deed. If the most current deed has two names for ownership, then the property is owned jointly. With Real Property, however, there are different types of joint ownership. The most popular is Joint Tenancy with the Right of Survivorship. If your Real Property is owned this way, then the surviving owner takes over the deceased owner's interest upon death—without doing anything. You will want to consult with an attorney or real estate professional to make sure you properly understand the current ownership of your Real Property.

Misconceptions

Joint ownership can be a trap. On the surface, it appears to be the right way for people who care for each other to own property. Joint ownership is also easy and convenient. Most bank officers will set up a joint account for a married couple without even asking if that is what they want. Some advisors continue to recommend joint tenancy because joint tenancy usually avoids the probate process.

Probate avoidance is not planning. It is merely avoiding probate.

The Truth

Unfortunately, the disadvantages of joint ownership may exceed the advantages. Some of the more devastating pitfalls of joint tenancy are:

- Property can pass to unintended people.
- Distribution to other beneficiaries can create gift tax consequences for the surviving joint owner.
- Probate is not avoided, it is simply delayed until the new owner dies.
- Property can immediately become available for the surviving owners' creditors.

Is It For You?

In some cases, using contract terms and joint ownership to avoid probate and transfer property can be effective and efficient. You will need to consider the amount of personal wealth you intend to transfer, the type of property you intend to transfer, and the way you intend to distribute it in making your decision. Seeking the assistance of an experienced Estate Planning attorney will help you consider the advantages and dangers, so you may make a decision that will work best for you and your family.

Your Will

Many people have felt uneasy, even guilty, for not preparing a will to provide for their loved ones. They put it off for years, only to feel a surge of relief when they finally sign one in their lawyer's office. Unfortunately, their sense of relief may not be well founded.

The complications of even an "ordinary" will are legend. If not prepared with all the necessary provisions, if not signed properly, or if another will is found (or not found), the will could be declared invalid. In addition, almost anyone can contest a will for almost any reason.

Suppose your will is legally valid. Have you really planned wisely? The ideal estate plan gives what you have to whom you want, in the manner you deem appropriate, and when you want – all while saving every last tax dollar, attorney fee, and court cost possible. There is no question about a will's ability to accomplish these goals—IT CANNOT.

In simple terms, the only aspect of your estate that your will actually controls is the property that is solely in your name. For most people, this is minimal. The list of what wills don't control is far more extensive: life insurance proceeds, jointly held property and retirement benefits (profit sharing plans, pensions and IRAs).

If you have property in your name and you do not have a will or other planning, your property automatically passes to beneficiaries named under your state's law and your property goes through probate. Suppose, on the other hand, that you have prepared a will: Does your will protect you from probate? Absolutely not! Wills must go through probate! A will is essentially your instructions to the probate judge concerning what you would like the judge to do with your property.

Probate is oftentimes a long, drawn-out, time consuming process that was created to protect creditors rather than loved ones. It can also be expensive.

Probate Costs Can Be Substantial

They are also the first to be paid. They are usually taken as a percentage of the gross value of the estate (that is, before creditors get paid). Some states (like Missouri) have a graduated scale for determining the compensation of an attorney and personal representative of an estate that starts with 5% and slowly makes its way down to 2%.

Your Will Cannot Take Care of You

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For most of us, the statistical odds of becoming totally disabled are **six times** greater than the odds of your dying in the next year. Yet our wills can do absolutely nothing to help our loved ones or us while we are disabled. It cannot provide help or direction for you or your loved ones.

Every Will is a Public Document

It, along with all its maker's assets, debts, and personal information, is made totally public on death. Making your family's financial affairs public may not be one of your personal planning priorities.

Unfortunately, probate always does just that, because it is a process designed to protect creditors, not loved ones.

Do you have minor children? If you do and your will leaves your property directly to them, you have really left your affairs and the well being of your children in the control of your local probate judge. By leaving your property outright to loved ones, regardless or their ages, you have not protected them from:

- The claims of their creditors or their spouse's creditors.
- Disability and the risk of a guardianship proceeding.
- The inexperience or inability to handle their inheritance wisely.

Wills don't cross state lines very well. If you make a will in one state and are a resident of another, the laws in your new state will interpret your will. As it happens, each state's will laws are different, which is why lawyers tell clients: "if you move out of state, be sure to have your will redone to meet the laws of your new state." Having to rewrite your will will cost you something—not rewriting it may cost even more!

The Living Trust

Estate Planning is a term frequently used but rarely defined. Proper Estate Planning should be defined as follows:

I want to **control my property** while I am alive, **take care of myself and my loved ones** if I become disabled, and be able to **give what I have to whom I want**, in the manner I deem appropriate, all while **passing my wisdom** along with my wealth.

Along with meeting your estate planning goals, planning your estate with a living trust:

- Provide instructions for your care and that of your loved ones in the event of your disability, avoiding the need for a guardianship/conservatorship.
- Avoid the need for death probate, if asset aligned.
- Keeps your planning affairs private.
- Prevents out of state probates if you own property in more than one state.
- Achieves federal estate, gift, and income tax planning which can save your loved ones hundreds of thousands of dollars.
- Provides loving instructions for the care of minor children and children with special needs.
- Allows you to determine what age and under what conditions you want your children and loved ones to inherit.
- Is difficult for disgruntled heirs to contest.
- Allows you to leave extensive instructions for the care and assistance of your loved ones after your death.
- Creates protective trusts for your minor children, disadvantaged children, and/or grandchildren (freeing them from impersonal, expensive, and time-consuming supervision of the court).
- Can protect your children's inheritance from the claims of their creditors.

"Well," you might ask, "if living trusts are so good, why does everyone seem to talk about estate planning in terms of wills?" The answer is simple: People, particularly lawyers, are conservative by nature. Wills are perceived as old and venerable and have been accepted as the way to plan. They are an institution in our society. Lawyers, for example, are taught about wills in law school; they do not receive much instruction about other planning alternatives.

Trusts have been in existence even longer than wills. Unfortunately, they are perceived as only for the very wealthy and that they are too complicated or cumbersome for most people. Nothing could be further from the truth. Living trusts are for just about everyone.

People who learn about the problems associated with wills – and how they can be overcome with living trust planning – generally embrace the living trust concept. However, there is no reason to wait until tomorrow for planning what you can accomplish today.

Counseling-Oriented Estate Planning

Estate planning law firms who are dedicated to Counseling-Oriented Estate Planning embrace the following philosophies:

- A living trust should contain your loving instructions for your own care and that of your loved ones. To meet this end, your estate planner should conduct a detailed interview with you in order to ascertain what your greatest hopes, fears, dreams, and aspirations are for you and your family.
- Your estate planning law firm should be available to answer your questions, and there should be a client care program to keep your planning current.
- Your estate plan should be custom fitted like a suit of fine clothing to meet your individual planning goals.
- Your trust should plan for every contingency and should be on the cutting edge of the law.
- Your trust should be written in simple, easy to understand language, free of legalese.

Easy to Create

With the help of your advisors and your estate planner, you can quickly and comfortably establish a living trust for yourself and your loved ones.

Easy to Change or Cancel

Your living trust can be changed or canceled at any time. You are not locked into a fixed position: After signing your name, you always have the option to "unsign" it.

Easy to Maintain Control

Your living trust receives its strength by becoming – for your benefit – the "owner" of your property. As the maker, trustee, and primary beneficiary, you control every aspect of how your property is to be used.

Easy to Appoint Trustees

Both you and your spouse can be the original trustees of your living trust. You can specify different trustees to take care of your loved ones after your death. You can name as many or as few trustees as you like. You can supply information on how they may be terminated or replaced, and you can even name their replacements.

Can Be Set Up Quickly

Creating a living trust should not take more than a few weeks to complete.

Asset Alignment

In order for your trust to meet your planning goals and to avoid probate to your assets, it is critical that your assets be aligned with the name of your trust. The process of transferring your assets into your trust or changing beneficiary designations is called "asset alignment." A trust without asset alignment is like a car without fuel—neither gets far.

A good estate planning law firm should provide you with detailed instructions and assistance in aligning your assets. Some estate planning law firms have qualified asset alignment specialist, or paralegals who can assist you during the asset alignment process.

Tax Consequences
There are no adverse income tax consequences of establishing a living trust. You do not need any special tax identification numbers nor do you need to file any special tax returns. In fact, you continue to file your tax returns just as you always have.

Affordable to Create
A living trust generally costs more than a will, but the administration after your death will be less costly. If you look at your plan with the end in mind, it becomes clear that the total cost of a living trust is generally far less than a will plus probate.

Disadvantages of a Living Trust
There are very few disadvantages of using a living trust to plan your estate. The most common criticism of living trusts is that you must also align your assets with it. However, aligning assets and administering your trust requires much less time and expense than administering a probate estate.

A Word of Caution
Proper estate planning revolves around your relationship with a qualified estate planning law firm. Unfortunately, there are many businesses and salespeople masquerading as estate planning professionals. They are inundating the public with sales schemes that involve selling wills, living trusts, and other estate planning documents without the involvement of attorneys in the design and drafting of the documents.

These people prey on well-intentioned families, the elderly, and the uninformed. They sidestep true practicing professionals and deceive the public. They are the opposite of what Counseling-Oriented Estate Planning stands for. Counseling-Oriented Estate Planning requires professional thoroughness by attorneys and other advisors, and respect for the overall wellbeing of the client and the client's family.

It aspires to the highest ethical and professional behavior that will lend competency and dignity to the client and the planning process.

Finding an Estate Planning Law Firm
Selecting the right estate planning law firm can be difficult. However, there are some pointers you can follow to help you select the right one.

Qualifications
The law firm that assists you in preparing your estate plan should be on the cutting edge of knowledge in estate planning law. Be wary of attorneys that advertise numerous areas of practice. It is impossible for an attorney to be an expert in all areas. A good estate-planning attorney will limit his or her practice to estate planning and related topics.

Ascertaining what type of professional organizations your attorney belongs to is usually a good indication of whether he or she is an estate-planning attorney. Keep in mind, however, that few organizations require that their members demonstrate a minimum level of professional competence.

It is fair to ask your attorney how they developed their expertise in estate planning as well as how many estate planning continuing legal education hours they have completed in the last year. You should also ask to review sample documents as well as copies of any articles or publications on estate planning the attorney has written.

Attorney Fees

Cost is always an important factor. However, making your decisions based solely on cost may not be wise. Attorneys set their fees in different ways. In setting fees, almost all attorneys will consider the amount of time that they will need to invest, the complexity of the plan, the location and type of assets, and the complexity of asset alignment that will be required.

An experienced estate planning law firm should be able to quote you a fixed fee after the initial interview when they know what they will need to do to prepare your plan. Avoid attorneys that charge an hourly rate for estate planning. This is usually an indication that the attorney does not have much experience in the area of estate planning and does not know how much time will be required.

Be wary of attorneys who quote fixed fees over the phone. This is usually an indication that the attorney does not custom draft documents but rather uses the same cookie-cutter boilerplate document for every client. Keep in mind that you get what you pay for. Most people do not shop for a doctor based on price. Quality is the focus. The same principle should be applied in selecting an estate planning law firm.

Client Care Programs

Once you complete your estate plan you may breathe a sigh of relief...but like good financial planning, estate planning is not a destination, it's a journey. Life happens, laws change, family circumstances change, and the experience of your attorney changes. Our firm has always offered a client care program for our clients who have trust-based estate plans to assist in keeping their estate plans current and assets aligned.

These cost-effective annual reviews help our clients understand their plans and make changes (births, adoptions, marriages, divorces, deaths, disability, legal changes) as needed so their plan never becomes obsolete. The failure to "maintain" a plan actually leads to increased costs when someone becomes unwell or dies.

Conclusion

The information contained in this booklet is general in nature. Because each person's situation is unique, it is essential to contact an estate planning professional. If you would like more information on estate planning, our office provides free educational workshops. Workshop attendees are then eligible to receive a complimentary consultation with us to discuss their specific needs.

Please contact our office today to RSVP for our next free workshop. Seating is limited and reservations are required.