

ESTATE PLANNING IS FOR EVERYONE

By: Attorney Jesse Beier



For most people, the term “estate” conjures visions of stately mansions, fountains, private jets, and other luxuries associated with the superrich. However, if you own anything when you die, you have an estate. Your estate includes personal property, real estate, bank accounts, retirement accounts, life insurance, and business interests. Putting a basic estate plan in place can help ease the burden on your family, provides protection for minor children and establishes a plan in case of incapacity.

What is an estate plan?

In its simplest form, an estate plan names an

executor and directs who you want to receive your possessions after you die. However, good estate planning accomplishes much more than that, including:

- ◆ Planning for incapacity with instructions in a health care directive.
- ◆ Ensuring competent management of assets at death or during incapacity.
- ◆ Avoiding probate.
- ◆ Minimizing taxes and court costs.
- ◆ Naming guardians for minor children.
- ◆ Safeguarding loved ones with gambling, substance abuse, or mental health issues.
- ◆ Reducing the chance of estate disputes amongst heirs.

- ◆ Providing for family members with disabilities without invalidating the individual’s ability to receive government benefits.
- ◆ Planning for succession of a family business at retirement, disability or death.

What happens if I die without an estate plan?

It is easy to delay addressing this question. However, if you die without an estate plan (dying “intestate”), state law dictates the distribution of your property. Each state has its own intestacy statute establishing a priority of inheritance between a surviving spouse,

ESTATE continued on PAGE 5

children, parents, siblings, and more distant family members. If no family members can be found, all of your property goes to the state. Dying intestate can present a substantial hardship for your family and has the potential to cause contentious disputes. Documenting your intentions through your estate plan ensures that your wishes are met and avoids potential hardship for your family.

What is a will?

In its most basic form, a will is a document that directs how your property is to be distributed at death; nominates your personal representative, or the person charged with overseeing the administration of your estate; and names a guardian for minor children.

What is probate?

Probate is the court-supervised process of administering an estate. Depending on the complexity of the estate, the probate process can be fairly simple and require limited court involvement. On the other hand, some probates can easily become complicated and costly and take years to resolve. A common misconception is that signing a will avoids probate. On the contrary, wills are intended to go through the probate process. If one of your estate planning goals is to avoid probate, consider establishing a revocable trust (below) and/or

transferring your assets through beneficiary designations. Additionally, under both Minnesota and Wisconsin law, real estate can be transferred outside of probate using a transfer on death deed.

What is a revocable trust?

A trust is a legal arrangement where a trustee holds title or ownership to property for the benefit of named beneficiaries. A revocable trust is a type of trust that is fully revocable and amendable by the grantor (the creator of the trust). A revocable trust can completely bypass the probate process. At the individual's death, trust assets are distributed to the named beneficiaries without the need for court supervision. This appeals to many people because it keeps the handling of the decedent's estate outside of public records. Other benefits include minimizing estate tax, incapacity planning, and planning for children/grandchildren with legal, financial or substance abuse issues.

Who will raise my children if I die?

In all likelihood, your spouse will raise your children if you die, but what happens if your spouse dies also? Unless you name a guardian in your will, the courts determine custody of your children after your death. For most people, the uncertainty of a court appointed guardian is a very scary thought. By nominating a

guardian in your will, you can be assured that your children are in good hands after you are gone.

Who will decide if I can't decide for myself?

Even if you do not have minor children and do not own any significant assets, planning for incapacity is a must for everyone over the age of 18 and involves signing a Power of Attorney and Health Care Directive.

◆ POWER OF ATTORNEY

A written document authorizing someone to make legal and financial decisions in case of incapacity. Signing a power of attorney ensures that someone you trust will be available to handle your day-to-day legal and financial affairs.

◆ HEALTH CARE DIRECTIVE/LIVING WILL

A written document that informs others of your health care wishes and authorizes someone to make health care decisions on your behalf in the case of incapacity. If you are unable to express yourself due to incapacity, you want to ensure that your health care providers and loved ones are aware of your wishes.

Although estate planning may seem complex, working with experienced professionals will help ensure your plan meets your needs. If you'd like to get started, or if you need help evaluating your current plan, reach out to us. Contact Lommen Abdo Attorneys Jesse Beier (jbeier@lommen.com/612.336.9339) or Cameron Kelly (ckelly@lommen.com/715.381.7112).