

Estate Planning Tips

Regardless of the size of your estate, an effective estate plan is necessary if you want to make sure that the right parties inherit your assets. You might find the following tips helpful, even if you already have an estate plan in place.

Select a trusted Personal Representative for your Estate. When you prepare your Will, you will need to choose an Executor or Executrix (now more commonly referred to as the “Personal Representative”). The Personal Representative’s role is to make sure your wishes are carried out.

More specifically, the Personal Representative’s duties, responsibilities, and headaches include the following tasks:

- Collect assets and information on beneficiaries.
- Determine debts and other claims against the estate and pay legitimate claims.
- Manage the estate assets.
- Determine and pay all taxes.
- Distribute the estate to beneficiaries pursuant to the Will or intestate statute.

The most important factor in choosing your Personal Representative is that he/she be someone whom you trust. You do not have to choose an attorney or a bank’s trust department. Also, the Personal Representative does not need to be experienced with administering an estate because your Personal Representative will have the ability to hire (and fire) legal counsel and an accountant to perform a majority of the tasks associated with the estate, at the expense of the estate.

Consider choosing a trusted friend or relative, or one of your beneficiaries, to act as your Personal Representative. You should know that your Personal Representative will be entitled to a fee for his/her work, and in some states like California, the fee is set by statute as a percentage of the estate’s assets. However, the Personal Representative is not required to take a fee.

If you are gifting most of your estate to charity, one of your favorite charities will often be willing to serve as Personal Representative without charging a fee. A charity working without a fee will be motivated to keep administrative costs as low as possible, including the cost of hired professionals, and to expedite the distributions.

Choosing the right Personal Representative is important, because administrative fees can significantly deplete your estate. Some attorneys consider estate administration their “bread and butter” and have been known to administer simple estates for more than 10 years.

If choosing a trusted friend, relative, or beneficiary is not practical, consider naming your local bank’s trust department to act as Personal Representative, but ask them to agree on fees beforehand and put their fees in your Will.

Sign your Will and Codicils in front of two witnesses. Each witness must sign in your presence and in front of the other witness. It’s also a good idea to sign before a notary.

Avoid hand-written changes. Never hand-write anything on your Will as this can invalidate your Will. If you need to make changes, consider a Codicil for minor changes, or just re-do the entire Will.

Consider setting up a Living Trust, and put most of all your assets in the name of the trust. A Living Trust is simply an artificial entity that holds title to your assets, but these assets are still under your control and you can spend the money in the Trust as you see fit. By naming yourself as the Trustee, you are in charge. Most importantly assets in a Living Trust bypass the probate process, and speed up the distribution of your estate to the people you have designated as beneficiaries. In this regard, it is just like a Will, as you decide who gets what, and you can change what it says at any time.

Your Living Trust will need a Trustee to take over after your death. It’s best to use the same Trustee(s) as the Personal Representative(s) named in your Will.

Fill out beneficiary designation forms for pension accounts and life insurance. If you have life insurance, own an IRA (Individual Retirement Account), SEP (Simplified Employee Pension), 401(K) retirement account, or any other retirement account, be sure to fill out a beneficiary designation form. When you have a beneficiary form in place, your assets will bypass probate and go directly to the named beneficiaries.

Fill out POD Forms. For each of your bank accounts, including Certificates of Deposit, fill out the bank's POD (Payable on Death) form. As long as you are alive, the person you named to inherit the money has no rights to it. If you need the money, or just change your mind about leaving it to the beneficiary you named, you can spend the money, name a different beneficiary, or close the account. Some points to be aware of: (i) the POD beneficiary(-ies) can not be a minor, but you can name a person as custodian for a minor; (ii) some states (e.g., Delaware) don't allow charities to be named as a beneficiary in a POD form.

Make a Living Will (also known as an advance health-care directive). A Living Will expresses to your family and to your health care providers what medical procedures (life-prolonging, pain-relief, etc.) you do and do not want and those you do not want performed in the event you are unable to express these desires yourself. You can also appoint a "health care proxy" to make decisions on your behalf that are not covered by your Living Will. Discuss your desires with your family and your health care proxy.

Execute a Power of Attorney. If you are incapacitated or otherwise unable to take care of your financial affairs, a durable power of attorney will give a trusted individual the ability to pay your bills and manage your affairs during your incapacity. Your will has no effect during your lifetime and a living will only addresses your medical affairs. Durable powers of attorney fill in the end-of-life planning gap and avoid expensive court proceedings to have a guardian or conservator appointed to handle your affairs.

Make sure your family members know where to find vital documents. It's a good idea to prepare a list that shows where all important documents and assets are stored. This should include birth, marriage, and death certificates, especially of children, spouses, and other potential heirs. You will also want to include important financial records, such as stock certificates, insurance policies, and retirement account statements. Be sure to provide your executor with the names of your attorney, accountant, stockbroker, and other advisers.