

Why Do You Need an Estate Plan?

Often people delay putting an estate plan in place, or they may have preliminary draft documents but they fail to complete the process. Although they have spent time and effort accumulating assets, they wonder why they need to invest the time, effort and expense in a plan for the disposal of those assets at their eventual death. There are many reasons to invest in a well-crafted and complete estate plan: estate tax minimization, ease of administration, and a statement of your intent, to name just a few. The very purpose of an estate plan is to clearly state who will receive your legacy, and how and when your heirs will receive it. Without a plan in place, surviving family members will be burdened with administrative headaches that are costly and time consuming. These include estate taxes that may be otherwise avoidable, a determination by a probate court judge or intestacy laws – instead of you – as to who will receive your legacy, and a delay in access to needed funds. In most cases, a complete estate plan will include a last will and testament, a revocable trust, a durable power of attorney and health care documents.

Perhaps the best way to illustrate the benefits of a properly formulated estate plan is to share three planning hypotheticals which highlight the benefits of the estate planning process.

Hypothetical #1: “I am young and single and I do not have a significant amount of assets.” Our first example is a young, single man, without children, in his thirties. He has a few bank and investment accounts, and a retirement account. Because he is young, single and without children, he does not think he needs an estate plan. He dies unexpectedly and he leaves no will. His retirement accounts are left to disabled and minor relatives, in an effort to help family members. Because there is no will or trust to direct otherwise, this case requires Probate Court intervention so that conservators and/or guardians can be appointed on behalf of the disabled and minor beneficiaries. Although this decedent has a relatively modest estate, the fact that he dies without an estate plan requires that significant time and money be spent to conclude his affairs. Thousands of dollars of legal fees are spent and there is a significant delay in the access to and collection of the assets. All of this could have been avoided had there been a simple estate plan in place. More importantly, more of the estate assets would go directly to the beneficiaries rather than paying for the administrative process.

Hypothetical #2: “But I already had my attorney prepare estate planning documents for me.” Our next example is a couple who has executed estate planning documents, including revocable trusts. However, after executing their plan, they did not heed their attorney’s advice, and they failed to complete the necessary tasks that would make their estate plan fully operational, such as re-titling their assets and funding their respective revocable trusts to avoid probate. They have a fairly large estate. Over the years they have made gifts to their children and were unaware of the gift tax reporting requirements. When the first spouse passes away the surviving spouse is left with an unexpected mess: an unanticipated probate, an illiquid estate for which estate tax returns are required; cash flow concerns; and unreported gifts for which gift tax returns need to be prepared. While it is not uncommon to uncover a few surprises in the course of an estate administration, much of the legal work that would be necessary here could have been avoided with proper planning and follow through.

Hypothetical #3: “The perfect estate planning clients.” Finally, let us take a look at the savvy couple. They have a well drafted estate plan which includes wills, revocable trusts, durable powers of attorney and health care documents. They have properly funded their trusts to avoid probate, and they have equalized their assets so that they can each take full advantage of the available state and federal estate tax exemptions. When the first spouse passes away, probate court involvement is not necessary because of his funded trust. A Massachusetts estate tax return is necessary, but no tax is due because of the estate planning done prior to death. Assets in the decedent’s estate receive a stepped-up basis (to minimize future capital gains taxes), the marital and family trusts are funded, and the widow is feeling at ease with regard to her finances. Though she is dealing with the loss of her spouse, she can sleep better at night knowing her estate plan is solid and that she saved a significant amount of time and money because of it. She will continue to meet with her attorney every few years, or as circumstances change, to ensure

that the legacy she leaves for her children and grandchildren is not tainted by the time and expense of long, drawn out probate proceedings, tax filings and large tax payments to the federal and/or state governments.