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Estate Planning: Getting Started[1]

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Figure 1.
Credit: Adobe Stock Image

Estate planning is a topic avoided by many people because it deals with attitudes and feelings about death, property ownership, business arrangements, marriage, and family relationships that family members may not be ready to discuss. It may also be avoided because family members disagree on how assets are to be handled. Although planning for the end of life may be uncomfortable, think of it as a gift to your family. By getting your affairs in order, you will save them a great deal of anxiety, time, and money even if you can't spare them their grief.

Many people think that estate planning is for someone else, not them. They may rationalize that they are too young, too healthy, or don't have enough money to worry about an estate plan. Estate planning is for everyone, regardless of age or net worth. In today's complex society all families regardless of ages and resources can benefit from including estate planning in their financial planning process. Estate planning includes a plan to transfer assets, a plan to manage assets if you become incapacitated, and a plan to care for minor children.

This is the first publication in a series on estate planning tools and techniques. Check with your local Extension agent for more information on the topics.

What Is Estate Planning?

Estate planning is developing a definite plan for the administration and disposition of your property during life and at death. That is, it involves both handling your property while you are alive and deciding what happens to that property after your death.

Estate planning involves two overall steps and the plan should be updated as major life events occur to be confident property will be transferred to the right heirs. For example, if you get married, divorced, or widowed, your plan needs to be updated. If your health or financial status changes you will need to update your plan. If you have a child you will need to update your plan. Additionally, you should periodically review the beneficiary and ownership designations in your life insurance policies, retirement plans, bank accounts, and other assets to make certain they will transfer the property according to your wishes.

The two steps are:

- setting goals and objectives (e.g., What do you want to accomplish?), and
- the making of a will.

After experiencing the trauma of losing a loved one, quarreling over what the deceased would have wanted, and hunting for documents, most people would agree that it is worth spending some time and money to get their affairs in order to cut down on the confusion and uncertainty.

Most people would like to have a say in what happens to their property. An estate plan is a tool that provides some aspect of control. If you don't make a plan, state and federal law will determine what happens to your property upon your death.

In Florida if you die intestate (without a will) the following applies based on your family situation:

- If you have a surviving spouse and no lineal descendants (children or grandchildren), then the surviving spouse receives all of the estate.
- If you have a surviving spouse and lineal descendants of both the surviving spouse and yourself, then the surviving spouse receives the first $60,000 of the estate, plus one-half of the rest of the estate and the lineal descendants share the remaining half.

- If you have a surviving spouse and lineal descendants (one or more of which are not lineal descendants of the surviving spouse), then the surviving spouse receives one-half of the estate and the lineal descendants share the remaining half.
- If you do not have a surviving spouse, but have lineal descendants, then the lineal descendants share the estate.
- If you do not have a surviving spouse nor lineal descendants, then the estate goes to your surviving parents, and if none, then to your brothers or sisters or descendants of your brothers or sisters.

Your estate consists of everything you own including your home, other real estate, bank accounts, investments, retirement plans, and insurance policies. While a will is the cornerstone of an estate plan, other common transfer tools include joint tenancy with right of survivorship, gifting, beneficiary transfers, and living trusts. You may choose to use several of these tools to manage your estate.

Getting Started

If you live in Florida only part of the year, are you a Floridian? Do you have multi-state citizenship? To avoid more than one state claiming jurisdiction over some part of your estate, clearly establish residence in one state. You can show intent to be a Florida resident by such acts as registering to vote in Florida, opening bank accounts in Florida, obtaining a Florida driver's license, putting a Florida tag on your car, writing a Florida will, and filing your declaration of domicile at your county courthouse in Florida. If you have a will and/or trust written in another state, consult an attorney to make sure it is legal in your official state of residence.

Accept the fact that you are going to die someday. Ask yourself some questions about what will happen if you do nothing. For instance if you should die before tomorrow:

- What would happen to the property you own?
- Who would take care of your dependents? (minor children, disabled children, or aging relatives)
- How would your spouse and children be provided for?
- What would happen if you and your spouse died at the same time?
- What would happen to the family business?
- Would the estate settlement be conducted by someone with your family's interest and needs in mind?
- Would estate taxes, probate fees (often as high as 4% to 10%), and other administrative and legal costs be held to a minimum?

Six Steps

Below are six steps that can help you as you get started in planning your estate.

Step 1: Communicate

Family members, all too often, are hesitant to discuss estate planning. This lack of communication is probably the greatest hurdle to overcome. Parents sometimes delay discussion because of the unpleasant overtones of growing old and dying. Adult children may avoid discussions on estate planning because they don't want to appear greedy or as if they are trying to take over.

Opportunities to discuss estate planning may arise from publications, seminars, and visits with financial and legal professionals. The death of a friend or relative can lead to a family discussion on the importance of estate planning and how not planning ahead for the inevitable may result in family turmoil. Once a dialogue is started, many families find it's easier to discuss their situations, concerns and objectives. Delaying this conversation won't make the situation easier and can lead to greater problems if it never occurs.

Step 2: Collect Information

Having necessary information and documents in hand for the first visit with your attorney and estate planning professionals can save time and money.

Below is a condensed checklist of information your estate planning professional will require. Actual documents may also be needed, such as wills, deeds, major debt instruments, past gift tax returns, income tax returns and financial statements for the past five years, trust instruments, information about the income tax basis of property, and any other document that will clarify how property is titled or who would be responsible for any debt.

Personal information: Family members' names, birth dates, addresses, telephone numbers, occupations, and Social Security numbers.

Life insurance: company name and address, policy number, face value and any supplemental values, cash value and any outstanding policy loan, exact name of owner, name of insured, and name of beneficiary.

Checking and saving accounts: Name and location of institution, exact names on account, account numbers, amounts, how titled on signature card.

Personal property: Motor vehicles, home furnishing, jewelry, art, personal items, antiques, machinery, livestock, and crop inventory. Provide a description that includes cost, value, ownership, how titled.

Real estate: Type of property and size, location and description, year acquired, cost, how titled, market value.

Stocks, bonds, and other securities: Description, when purchased, number, exact name of owner, face value, and cost.

Trusts: Type, location, trustee, who established, exact name of beneficiary, value of trust property.

Notes, mortgages, and other accounts receivable: Description, year acquired, value, person who owes you, repayment plan.

Retirement benefits: Pensions, profit sharing, deferred compensation, individual retirement accounts, Social Security, qualified domestic relations order, amount invested, accrued benefits, annual benefits, death benefits.

Mortgages and other real estate debts: Description, name of creditor, date due and amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured.

Liens against personal property: Description, name of creditor, date due, remaining amount to be paid, whether debt is an individual or joint responsibility, whether insured.

Other personal liabilities: Unsecured notes, notes endorsed, real estate taxes, personal property taxes, state taxes, federal taxes, unsettled claims (name of creditor, date due, amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured).

Taxable gifts: Amount, when made.

Location of important documents: All wills, trust documents, deeds, insurance policies, stocks and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnership and corporation agreements, profit sharing plans, marriage dissolution decrees, pre- and post-nuptial agreements, employment contracts, pension benefits.

Step 3: Clarify Objectives

Estate planning objectives vary from family to family because of family values, differences in family size, number and ages of children, assets and liabilities, and family income. Objectives may change with age, marital status, income, kind of property acquired, and other circumstances. Clarify your objectives and determine what you want to accomplish through your plan.

Some common objectives are listed below. Check those that apply to your situation and add others. If there is conflict among objectives, rank them in order of importance.

__ Provide security for surviving spouse.

__ Relieve surviving spouse of estate management responsibilities.

__ Provide security for both spouses after retirement.

__ Retire at age _____.

__ Provide security for an incapacitated family member.

__ Assure continuity of family business.

__ Provide educational opportunities for children.

__ Assist children in starting a business.

__ Minimize estate taxes.

__ Name guardian, conservators, or trustees of minor children.

__ Name a personal representative for the estate.

__ Provide means for paying expenses of estate settlement taxes and other debts.

__ Provide equitable treatment of family members.

__ Transfer specific property to specific people.

__ Make gifts to family members and others during lifetime.

__ Reduce income taxes by disposing of income property during life.

__ Transfer property during life by installment sale.

__ Provide for charitable bequest to favorite charities or organizations.

__ Minimize probate and settlement costs.

__ Review current operation and ownership of business, farm, or ranch.

Step 4: Choose Professional Advisers

Estate planning can be technical and complex. Estate planning is typically not a "do it yourself" project. You may subject your family to many headaches down the road if you use an online estate planning kit. For example, probate laws vary by state and many online estate planning kits do not address the variations in law. Additionally, the online kit may contain out-of-date information and forms.

Most people do not have the time to learn all they need to know and to keep up with changes in state and federal taxes. A team of professionals can be helpful in creating an estate plan. Your team may include a financial planner,

attorneys, certified public accountants, trust officers, and life insurance underwriters. When selecting your team seek recommendations from friends, coworkers, or professionals who have done legal work for you. A resource for selecting a financial planner is the Certified Financial Planner Board of Standards at www.cfp.net. At that site, select Search for a Certified Planner to find a planner in your state. The Florida Bar has a system for telling the public which attorneys have special skills in certain areas of the law. Attorneys who have passed a rigorous written exam, been reviewed by peers, and maintained a satisfactory professional ethics record can apply for certification in Wills, Trusts and Estates for a five-year period. This is the highest classification a Florida attorney can attain. Even though not all good attorneys are board certified you can be assured that a Bar-certified attorney has a good reputation and a proven level of expertise.

Step 5: Choose Alternatives and Implement the Plan

There are several strategies for reaching your objectives. Ask your advisors to explain the alternatives from legal as well as tax angles. Explore the consequences of the various strategies from the beneficiary's perspective as well as your own. Even though gifting is a great strategy to use, if there is any likelihood that you will need the gifted property to provide income for your later years, this is not a strategy you want to use. Decide who is to receive what, when, and how. Once the plan has been developed, it is important to implement it. Otherwise, the time, energy, and money involved have been wasted.

Step 6: Review Plan and Modify As Needed

Once you have completed your plan, keep a copy in your safe deposit box and another one at home so you can review it as needed. Your plan should be reviewed at least every three years and more often if your family situation or objectives have changed. If your family has increased or decreased through birth, adoption, death, marriage, or divorce, you may need to make changes. If a family member has become disabled and dependent you may need to make changes. And of course if tax laws change, you will want to review your plan for the impact of the new laws.

Summary

Estate planning is time-consuming and laden with complex decisions and emotions. No one forces you to plan your estate, but the six steps identified above will help you get started. Once your plan is complete and in place you can spend more time enjoying life and less worrying about the future.

Disclaimer

This publication is not intended to be a substitute for legal advice. Rather, is it designed to create an awareness of the need for estate planning and to help families become better acquainted with some of the devices involved. Further changes in law cannot be predicted, and statements in this publication are based solely upon the laws in force on the date of publication.

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