

Basics of Effective Estate Planning



When discussing the concept of estate planning, many people think all they need is a Will. However, a Will only takes effect after that person passes. In reality, effective estate planning also covers what other documents may be needed in order to carry out a person's wishes and manage his or her assets in the event he or she is temporarily or permanently disabled, whether mentally or physically. Effective estate planning grants peace of mind to the client, knowing that he or she will be cared for during their lifetime and that his or her loved ones will be cared for and have access to the assets of the decedent once he or she is gone. Estate planning can be relatively simple or it can be fairly complex depending on how each individual desires to plan for the future.

An effective estate plan ordinarily will be composed of four basic documents, no matter the size of the family or the value of assets. The first basic document everyone needs is a Last Will and Testament, or simply, a Will. Having a Will provides a broad plan for how an individual desires to distribute his or her assets once they are deceased. In effect, a Will acts as a "catch-all" document that will provide for the distribution of assets of the decedent, which may not be accounted for within a trust or by beneficiary designation. A Will allows you to appoint a guardian to care for your minor children, and also allows you to appoint an executor to oversee and manage the distribution of your assets in accordance with your wishes. Many clients ask, "What happens if I don't have a Will?" Without a Will, the decedent's assets must be distributed in accordance with a statutory formula, which may not match up with how he or she intended to distribute his or her assets. In the event that the decedent failed to appoint a guardian for his or her minor children in a Will, that decision would then be left up to the discretion of the probate court judge, who, although well intentioned, likely does not know the decedent or the decedent's family.

The second and third documents in an effective estate plan are power-of-attorney, or POA, documents. The two basic POA's that every individual should consider are a Durable General Financial POA and a Health Care POA. A Durable General Financial POA and Healthcare POA designate trusted family members or other individuals to make important decisions regarding your finances and health care. A Durable General Financial POA will appoint an agent to act on your behalf to make decisions pertaining to your finances, real estate, contract matters, and government benefits, just to name a few. A Health Care POA will appoint an agent to act on your behalf to make decisions pertaining to your medical treatment and health care needs. One of the primary benefits of establishing POAs is to avoid the cost and headache of having your loved ones apply to the probate court to establish a formal guardianship or conservatorship in the event of your disability, incapacitation, or legally declared incompetence.

The last document, which every individual should at least consider, is a Living Will Declaration. The purpose of this Living Will Declaration is to document your wish that life-sustaining treatment, including artificially or technologically supplied nutrition and hydration, be withheld or withdrawn if you are unable to make informed medical decisions and are in a terminal condition or in a permanently unconscious state. This Living Will Declaration does not affect the responsibility of health care personnel to provide comfort care to you, and is not the same as a Do Not Resuscitate Order.

While these four documents provide a simplistic basis for estate planning, many individuals require more complex planning including, amongst other tools:

- A revocable living trust, which allows for easier management of the distribution of assets to beneficiaries, provides standards of distribution and potentially age limited distributions to your children, grandchildren, or other beneficiaries, and, when funded during your lifetime, avoids probate.
- Planning for the effects of the federal estate tax for individuals with assets in excess of the current exemption amount, which for calendar year 2017 is \$5,490,000.00 per individual.
- A special needs trust which plans for the future financial support of a family member or adult with special needs, without affecting that individual's eligibility for support under government programs such as Medicaid and Social Security.
- A domestic asset protection trust, to protect your assets against creditors, and in some cases, divorce.

Estate planning is a highly individualized process, and can include many other planning tools other than those mentioned here. However, that doesn't mean that effective estate planning needs to be either overly complicated or expensive. An experienced attorney, familiar with the many nuances and estate planning tools available to individuals can greatly ease the process and allow you to have peace of mind knowing that you and your loved ones will be cared for in the future. For more information on effective estate planning, please contact Attorney Ryan A. Kuchmaner at (330) 456-8341 or at rkuchmaner@bmsa.com. Ryan is also experienced in the practice areas of trust & estate administration, business law, commercial and real estate development & finance law.