What is Estate Planning?

Believe it or not, you have an estate. In fact, nearly everyone does. Your estate is comprised of everything you own— your car, home, other real estate, checking and savings accounts, investments, life insurance, furniture, personal possessions. No matter how large or how modest, everyone has an estate and something in common —you can't take it with you when you die.

When that happens—and it is a "when" and not an "if"—you probably want to control how those things are given to the people or organizations you care most about. To ensure your wishes are carried out, you need to provide instructions stating *whom* you want to receive something of yours, *what* you want them to receive, and *when* they are to receive it. You will, of course, want this to happen with the least amount paid in taxes, legal fees, and court costs.

That is estate planning—making a plan in advance and naming whom you want to receive the things you own after you die. However, good estate planning is much more than that. It should also:

- Include instructions for passing your *values* (religion, education, hard work, etc.) in addition to your valuables.
- Include instructions for your care if you become disabled before you die.
- Name a guardian and an inheritance manager for minor children.
- Provide for family members with special needs without disrupting government benefits.
- Provide for loved ones who might be irresponsible with money or who may need future protection from creditors or divorce.
- Include life insurance to provide for your family at your death, disability income insurance to replace your income if you cannot work due to illness or injury, and long-term care insurance to help pay for your care in case of an extended illness or injury.
- Provide for the transfer of your business at your retirement, disability, or death.
- Minimize taxes, court costs, and unnecessary legal fees.
- Be an ongoing process, not a one-time event. Your plan should be reviewed and updated as your family and financial situations (and laws) change over your lifetime.

Estate planning is for everyone.

It is not just for "retired" people, although people do tend to think about it more as they get older. Unfortunately, we can't successfully predict how long we will live, and illness and accidents happen to people of all ages.

Estate planning is not just for “the wealthy,” either, although people who have built some wealth do often think more about how to preserve it. Good estate planning often means more to families with modest assets, because they can afford to lose the least.

Too many people don’t plan.
Individuals put off estate planning because they think they don’t own enough, they’re not old enough, they’re busy, think they have plenty of time, they’re confused and don’t know who can help them, or they just don’t want to think it. Then, when something happens to them, their families have to pick up the pieces.

If you don’t have a plan, your state has one for you, but you probably won’t like it.
At disability: If your name is on the title of your assets and you can’t conduct business due to mental or physical incapacity, only a court appointee can sign for you. The court, not your family, will control how your assets are used to care for you through a conservatorship or guardianship (depending on the term used in your state). It can become expensive and time consuming, it is open to the public, and it can be difficult to end even if you recover.

At your death: If you die without an intentional estate plan, your assets will be distributed according to the probate laws in your state. In many states, if you are married and have children, your spouse and children will each receive a share. That means your spouse could receive only a fraction of your estate, which may not be enough to live on. If you have minor children, the court will control their inheritance. If both parents die (i.e., in a car accident), the court will appoint a guardian without knowing whom you would have chosen.

Given the choice—and you do have the choice—wouldn't you prefer these matters be handled privately by your family, not by the courts? Wouldn't you prefer to keep control of who receives what and when? And, if you have young children, wouldn't you prefer to have a say in who will raise them if you can't?

An estate plan begins with a will or living trust.
A will provides your instructions, but it does not avoid probate. Any assets titled in your name or directed by your will must go through your state's probate process before they can be distributed to your heirs. (If you own property in other states, your family will probably face multiple probates, each one according to the laws in that state.) The process varies greatly from state to state, but it can become expensive with legal fees, executor fees, and court costs. It can also take anywhere from nine months to two years or longer. With rare exception, probate files are open to the public and excluded heirs are encouraged to come forward and seek a share of your estate. In short, the court system, not your family, controls the process.

Not everything you own will go through probate. Jointly-owned property and assets that let you name a beneficiary (for example, life insurance, IRAs, 401(k)s, annuities, etc.) are not controlled by your will and usually will transfer to the new owner or beneficiary without probate. But there are many problems with joint ownership, and avoidance of probate is not guaranteed. For example, if a valid beneficiary is not named, the assets will have to go through probate and will be distributed along with the rest of your estate. If you name a minor as a beneficiary, the court will probably insist on a guardianship until the child legally becomes an adult.

For these reasons a revocable living trust is preferred by many families and professionals. It can avoid probate at death (including multiple probates if you own property in other states), prevent court control of assets at incapacity, bring all of your assets (even those with beneficiary designations) together into one plan, provide maximum privacy, is valid in every state, and can be changed by you at any time. It can also reflect your love and values to your family and future generations.

Unlike a will, a trust doesn't have to die with you. Assets can stay in your trust, managed by the trustee you selected, until your beneficiaries reach the age you want them to inherit. Your trust can continue longer to provide for a loved one with special needs, or to protect the assets from beneficiaries' creditors, spouses, and irresponsible spending.

A living trust is more expensive initially than a will, but considering it can avoid court interference at incapacity and death, many people consider it to be a bargain.

Planning your estate will help you organize your records and correct titles and beneficiary designations.
Would your family know where to find your financial records, titles, and insurance policies if something happened to you? Planning your estate now will help you organize your records, locate titles and beneficiary designations, and find and correct errors.

Most people don't give much thought to the wording they put on titles and beneficiary designations. You may have good intentions, but an innocent error can create all kinds of problems for your family at your disability and/or death. Beneficiary designations are often out-of-date or otherwise invalid. Naming the wrong beneficiary on your tax-deferred plan can lead to devastating tax consequences. It is much better for you to take the time to do this correctly now than for your family to pay an attorney to try to fix things later.

Estate planning does not have to be expensive.
If you don't think you can afford a complex estate plan now, start with what you *can* afford. For a young family or single adult, that may mean a will, term life insurance, and powers of attorney for your assets and health care decisions. Then, let your planning develop and expand as your needs change and your financial situation improves. Don't try to do this yourself to save money. An experienced attorney will be able to provide critical guidance and peace of mind that your documents are prepared properly.

The best time to plan your estate is now.
None of us really likes to think about our own mortality or the possibility of being unable to make decisions for ourselves. This is exactly why so many families are caught off-guard and unprepared when incapacity or death does strike. Don't wait. You can put something in place now and change it later…which is exactly the way estate planning should be done.

The best benefit is peace of mind.
Knowing you have a properly prepared plan in place - one that contains your instructions and will protect your family - will give you and your family peace of mind. This is one of the most thoughtful and considerate things you can do for yourself and for those you love.