

Estate Planning Basics



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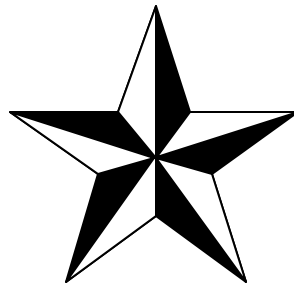
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AN OVERVIEW

The goal of estate planning is to create an *efficient and cost effective* strategy for the management of your property and assets during your lifetime and the distribution of them after death. A comprehensive estate plan is essential for the preservation of your assets.

- It should provide a practical approach for distributing assets to the people you choose -- *Beneficiaries* -- in accordance with your wishes
- It should account for your individual and joint holdings and be tailored to your anticipated lifestyle
- It should designate who will make your health-care decisions in the event that you are unable to do so for yourself
- It should assure a seamless transition for the management of your financial affairs in the event of mental incapacity or illness
- It should incorporate provisions to protect your Beneficiaries against the possibility of financial mismanagement due to their own disability or age
- It should minimize the payment of estate taxes and the cost of settling your estate

Its success depends on a number of interrelated factors and can be evaluated only from your standpoint and that of your loved ones. The plan that

is right for you requires careful evaluation of your accumulated wealth, your health, physical and mental well-being, as well as that of your spouse or life partner and others for whom you wish to provide. It must take into account your family structure and retirement goals, and many other complex considerations. Identifying and quantifying these are the first steps to developing your estate plan.

This brochure will give you a brief description of some popular tools that you can use to design your plan. It is informational in nature and should not be considered legal advice. It is not intended to answer all of your questions regarding estate planning and the options that may be available to you. Rather, it is meant to help focus your thoughts and raise questions about your personal situation -- *or that of your spouse, life partner, child, parent, grandparent, relative, friend, companion, business associate.*

On a precautionary note, we strongly recommend that your estate-planning decisions be made only after discussions with a qualified attorney, experienced in this discipline, who can best tailor a plan to suit you uniquely. This guide is a preliminary tool, designed for your review prior to a consultation with Berwitz & DiTata LLP. We urge you to make an appointment today.

THE LAST WILL AND TESTAMENT

A Last Will and Testament (“Will”) is a legal document, governed by strict statutory requirements. Your Will specifies the manner in which you want your assets distributed after death. It has no effect during your lifetime.

- It should direct how and to whom assets will be distributed
- It should appoint an Executor to marshal assets, manage them during probate and settle the estate
- It can create a trust to provide for a disabled or incapacitated spouse, life partner or other Beneficiary or in anticipation that such Beneficiary may become incapacitated in the future and appoint a Trustee to manage the trust during the life of the Beneficiary
- It should appoint a Guardian for minor children
- It can delay distribution of assets to a minor child after your death
- It can utilize the Federal Unified Estate Tax Credit to minimize estate taxes
- It can reduce estate taxes by using the “Marital Deduction” which permits an unlimited transfer of assets between spouses
- It can reduce the tax impact to non-U.S. citizen residents
- It can reduce the “Generation-Skipping Tax”

While a Will can accomplish many important estate-planning objectives, it is only one element in the well-designed, estate planning mix. A

Will has its drawbacks. Used alone, it does not enable you to take advantage of certain estate tax reducing strategies *during your lifetime*. Because it is ineffective until you die, it cannot provide either financial management or health-care decision making should you become disabled or incompetent. Further, upon your death, a Will subjects your estate to the expense and delay of a probate proceeding in Surrogate's Court. Then, your estate becomes a matter of public record and exposes your entire financial picture. The typical, simple Will may indeed cost your family tens of thousands of dollars in estate taxes and probate costs.

REVOCABLE LIVING TRUST

A Revocable Living Trust ("Living Trust") is a "Will substitute" for use during your lifetime and upon your death. During your life, *you* are the Grantor (owner), Trustee (manager) and Beneficiary (recipient) of the assets that you transfer into the Trust. Most importantly, you have full use of Trust assets and retain the ability to amend or revoke your Trust at any time. If you are no longer willing or able to assume these responsibilities, your appointed successor Trustee will take over. Upon your death, the Trust assets are distributed to your designated Beneficiaries.

A Living Trust not only achieves the same objectives as a Will, but also protects you while you are alive. Like a Will, it directs the distribution of your assets to take full advantage of favorable estate and gift tax laws. Unlike a Will, it becomes effective immediately and continues to exist after your death.

This is important for two reasons: First, there is no need for probate as your assets are owned by and distributed through your Living Trust. Secondly, it delivers your instructions should you become legally incapacitated. The Trustees you select to manage your affairs are bound by law to follow your instructions. A Living Trust protects you from a costly, time consuming and often humiliating judicial guardianship proceeding where the Court appoints a legal guardian to make your personal and financial decisions. Those court costs and attorneys' fees would be paid from your assets.

IRREVOCABLE LIVING TRUST

An Irrevocable Income Only Trust, or Irrevocable Living Trust, is an agreement between the Grantor(s), Trustee(s) and Beneficiary(ies). While it can accomplish what a Revocable Living Trust does, it also is a valuable tool for Medicaid planning. Properly drafted, an Irrevocable Living Trust can provide a continued source of income for you, allow you to become Medicaid eligible, and protect the assets in the Trust against the costs of long-term care. In other words, you can qualify for Medicaid and protect your assets for later distribution to your Beneficiaries.

This type of Trust has many other uses. For instance, it can own life insurance (to be discussed below in the section entitled "Life Insurance"), and can be used as a vehicle through which to make gifts for the benefit of your children, grandchildren, or other Beneficiaries. The assets placed in a Gift Trust reduce your taxable estate and appreciate in value for your Beneficiaries. The

appreciation of these assets is not taxable income to you.

POWER OF ATTORNEY

A Power of Attorney is a document by which the Principal (you), appoint an Agent, to manage your financial matters immediately or at some future time. A Power of Attorney can be broad or restricted to a specific transaction.

There are three kinds of Powers of Attorney: 1) an “immediate” Power of Attorney gives your Agent immediate authority to act in your stead and terminates automatically if you become incapacitated; 2) a “Durable Power of Attorney” provides your Agent with immediate powers and survives your incapacity; and 3) a “Springing Power of Attorney” only becomes effective upon the happening of a specified future event, such as your illness or incapacity. All Powers of Attorney expire at death. All three types can give as much, or as little, authority to the Agent as you deem appropriate.

Since illness or accidents may strike at any time, each of us should have a Durable or Springing Power of Attorney to ensure that our financial matters are addressed and to avoid the expense and emotional trauma of a guardianship proceeding.

HEALTH CARE PROXY

A Health Care Proxy is a formal designation of another person to act as your agent in making health-care decisions for you, if you cannot. These are decisions concerning diagnosis, treatment, services and procedures relative to

your physical or mental condition and may include whether to continue or terminate life-sustaining treatment.

Every one of us should be protected by a Health Care Proxy. More importantly, however, it is imperative that we fully and frankly discuss these issues, and the way in which we wish to be treated, with our designated Agent. Unless your Agent knows your preferences, for example, artificial hydration and nutrition (the provision of food and water through a feeding tube), he or she may make decisions that are contrary to, or inconsistent with your wishes.

Even after you have appointed an Agent, you have the right to continue making health care decisions for yourself for as long as you are able. Your Agent does not begin making your health-care decisions until you can no longer communicate or doctors determine that your decision-making is impaired. Remember, it is not just Alzheimers or stroke that causes incompetence, mental faculties may be impaired as a result of accident and other illnesses.

LIVING WILL

A Living Will is a recommended supplement to a valid Health Care Proxy. A Living Will expresses, in writing, your most significant health-care decisions as a guide for your designated Agent. Because the State of New York recognizes Living Wills, they are useful to a Court if a question later arises as to whether the health-care decisions of your Agent are consistent with your wishes.

LIFE INSURANCE

Life insurance is a powerful estate-planning tool. Proceeds of a policy can be used to pay estate tax liability or to supplement the sum available to your Beneficiaries. If you own a life insurance policy on your own life, the proceeds (the entire face value together with any additional death benefit to which you are entitled) will be included in your estate when calculating federal estate taxes. If you do not own the policy, it will not be included in your gross taxable estate. Thus, proper planning can substantially reduce federal estate taxes.

An Irrevocable Life Insurance Trust is an effective method to exclude the proceeds of your life insurance policies from your taxable estate (as mentioned above under “Irrevocable Living Trust”). This type of Trust enjoys the benefits otherwise associated with the creation of any Trust, such as the avoidance of probate. It can also help to solve the liquidity problem of an estate that is “cash poor” (due to closely held business interests, real estate holdings or retirement fund assets) without adding value to the gross taxable estate. The laws which govern these types of Trusts are quite exacting and call for the expertise of a qualified estate planning professional.

GIFTING

Gift-giving is an easy and effective way to reduce your taxable estate. Various strategies may be employed to achieve estate tax savings depending on the size of your estate, your willingness and ability to gift.

Gift-giving is usually thought to involve an annual amount per recipient

which was previously limited to \$10,000 but which has increased, as of January 1, 2002, to \$11,000. While there is a common misconception that gifts above that limit are subject to a "Gift Tax", in fact, any such taxes on gifts to one individual in excess of \$11,000 (or \$22,000 for married couples) in the same calendar year can be offset by utilizing some or all of the "Federal Unified Estate and Gift Tax Credit," currently \$1,000,000 and scheduled to increase to \$1,500,000 on January 1, 2004.

Therefore, assuming that you made no prior gifts, you could conceivably make a gift of up to \$1,011,000 in a single calendar year to a single Beneficiary with no tax liability whatsoever! Of that sum, the first \$11,000 would be exempt from Gift Tax and the balance, \$1,000,000, would reduce your available Federal Unified Gift and Estate Tax Credit to \$0. It is important to note that if the Federal Unified Gift and Estate Tax Credit is depleted during your lifetime it can not be used at death to shelter assets.

A gifting strategy must be designed in consideration of your Beneficiaries' ages and your concern about their ability to effectively manage the gifts. For example, a child or young adult may not be capable of effectively managing a large gift despite the fact that, under the "Uniform Gift to Minors Act," assets can be demanded by the child at the age of eighteen. Alternatively, the establishment of an "Irrevocable Gift-Giving Trust" takes advantage of the estate tax savings while providing a means for delaying distribution of the gift. Such a Trust can be drafted so that the funds are utilized to pay for college tuition, for instance, with the balance remaining under management for

distribution when the Beneficiary is truly capable of appreciating and managing it.

It is also important to know that monies that are used to make direct payment for the costs of education and medical expenses are not subject to the gift-giving limits discussed above. Moreover, under recent legislation, transfers to a New York State College Savings Program account may provide the donor with a state income tax deduction of up to \$5,000.

CONCLUSION

There is no escaping death and taxes. We all should have an estate planning strategy. Regardless of what is important to you -- *privacy, the swift distribution of your assets, minimizing the sums paid for estate taxes, the ability to provide care for the needs of minor children or grandchildren, or preserving your assets for your family while becoming Medicaid eligible in the event you require long-term care* -- the only way to ensure that your wishes and goals are achieved is through proper estate planning. This brochure only briefly addresses some of the techniques available to achieve those ends. It is not intended to provide an in-depth discussion of estate planning options, nor should it be used for that purpose. It can not incorporate changes in the law that occur subsequent to publication. It is intended for educational and informational use only and does not constitute legal advice. Your situation is unique. It is important that you develop your own individual plan based on professional advice. Berwitz & DiTata LLP is ready to develop an estate plan that is right for you.

BERWITZ & DiTATA LLP - a law firm devoted to estate and retirement distribution planning, estate administration and litigation and elder law, including:

- Preparation of Wills, Living Wills and Powers of Attorney
- Asset Preservation and Planning to Minimize Estate Tax Liability
- Creation and Implementation of Trusts
- Medicaid Eligibility Planning and Preparation of Medicaid Applications
- Retirement Distribution Planning
- Guardianship, Probate and Administration of Estates

Berwitz & DiTata LLP offers a highly professional, yet completely personal approach to the estate planning needs of its clients. This subject matter is sensitive. Therefore, we are committed to communicating with our clients in a caring and responsive manner. We listen to you. Together we design strategies to effectuate your goals by contributing our strong, technical legal expertise and experience.

Berwitz & DiTata LLP is dedicated to helping clients identify and implement successful estate-planning objectives. Use this brochure to identify issues that are important to you and to formulate topics for discussion during an estate-planning consultation. Contact us for your peace of mind.

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