What Can an Estate Plan Do For You?

Many people procrastinate completing their estate plan. It lingers on their to-do list, as they avoid facing difficult decisions regarding life events they would prefer to ignore. There are, however, many important reasons for establishing an estate plan. These are a few of the more important reasons for ensuring your affairs are in order.

1. Failing to Plan for Your Incapacity Can Be Catastrophic

Having an estate plan in place can ensure that both you and your assets are protected in the event of your incapacity. The primary documents that control if you become incapacitated are durable powers of attorney. With these documents, you are able to select a person who you both trust and believe to be qualified to manage your affairs.

It is important to have in place a durable power of attorney for financial matters, under which you to name an Agent to handle your financial matters in the event you are unable to do so. With a medical directive (sometimes called a living will) you direct your wishes with respect to medical care should you be terminally ill or in a persistent vegetative state; while a durable power of attorney for health care decisions names an Agent to make medical decisions on your behalf should you become incapacitated.

If these documents are not in place and you become incapacitated, then a court proceeding will be required to name a guardian and conservator to manage your assets and make decisions on your behalf. Not only will you have no say in who is selected to act on your behalf, but it may result in your relatives fighting over who will have the right to act on your behalf. With proper estate planning documents in place, these issues can be avoided.

If you establish a Revocable Trust to which you transfer your assets, the terms of the Revocable Trust will likely direct that the assets be used for your support in the event of your incapacity, as well as provide for your spouse and any minor children you may have. In addition, you will name successor Trustees to administer the Revocable Trust if you cannot. This not only permits you to make sure that someone will manage your assets for your benefit, but it also allows you to name who that person will be.

2. A Well-Prepared Plan Preserves Your Privacy

Many people wish to keep the details of their assets and their wishes for those assets private. Having a proper estate plan in place prevents your affairs from becoming public at your death. If you own assets in your individual name without proper beneficiary designations in place, then at your death those assets will need to go through probate. In probate, the inventory of a decedent's assets, as well as the manner in which these assets will be distributed, is available to the public. This can invite costly and time-consuming litigation from family members who may feel they deserve more assets than they are receiving. Likewise, it can complicate the ability to sell hard to value assets, such as real estate and closely held businesses. If, however, your assets have been transferred into a Revocable Trust and you have the proper beneficiary designations in place, a probate will be avoided, and your affairs kept private.

3. Unique Assets Can Be Appropriately Handled in Your Estate Plan

If your estate contains unique assets, such as closely-held business interests, then an estate plan will be necessary so that such assets are handled properly. For example, if you own a

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business, and you want the business to continue after your passing (or your incapacity), it is important to implement a business succession plan. This involves having people designated and trained to take leadership positions in the company and continue running the business successfully. If the proper successors are selected, then the change in leadership will cause minimal disruption to the operations and management of the business.

Alternatively, your estate may consist of a family business in which some of your children are involved and some are not. If so, consideration should be given on how to best divide your assets among your children in an equitable manner. While your first instinct may be to divide all of your assets equally among your children, this can cause conflict if ownership of the business is divided between a child who is active in the business and a child who has no interest in it. This conflict may manifest itself with the child involved in the business becoming frustrated that the child who is not involved is benefiting from the work the business child is contributing, or the non-business child becoming frustrated that the business child is reinvesting business assets rather than making a dividend distribution. Alternatively, issues can also arise if you leave the entire business to the child involved in the company, leaving insufficient non-business assets for the other child to receive that have an equal value to the business. A well-coordinated estate plan that implements succession planning proactively addresses these issues, setting forth your wishes and goals with regard to the unique assets.

4. Addressing Your Unique Family Circumstances May Avoid Conflict

Every family is different, but the circumstances of some families require more attention to an estate plan than others. For example, in a second marriage, where a spouse has children from a first marriage, care should be taken to ensure that the children from the first marriage are not cut out or put in a situation where they are just waiting for the new spouse to pass away to receive their inheritance. Or, there may be a family member who is unable to manage their finances, whether it be due to a disability (a “special needs” person) or an addiction. In either of these situations, these individuals should not receive assets outright. When a special needs person is involved, they should receive their assets in a special needs trust designed to ensure that their eligibility to receive government benefits is not jeopardized. If a loved one struggles with addiction, assets can be left in a trust for their benefit with the Trustee making distributions for their support, but not in a manner that would encourage or contribute to their addiction issues.

More reasons – including providing creditor protection for your loved ones, leaving assets to charity, engaging in tax planning – exist for why an estate plan is important. The best reason is putting one in place can be simple.

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