



FREQUENTLY ASKED QUESTIONS ON ESTATE PLANNING

What is Estate Planning?

Estate Planning is the process of organizing the control of your assets during your lifetime should you become incapacitated, as well as making the decisions on how your assets will be distributed upon your death. There are many different types of “Estate Plans” ranging from complex Trusts to the straightforward Will.

What is a Will?

A Will is a simple document that identifies who receives your assets when you die. A Will only controls and distributes assets held solely in the name of the deceased. The person in charge of your estate at your death is called the Executor/Executrix or Personal Representative. This person will be in charge of going through the court process called Probate, which will distribute your assets according to your Will or state law.

What is Probate?

Probate is the name for the court process all Wills must go through at your death before they are made effective. As with all court actions, the length and cost vary; a nine month to three year duration and up to 3-5% executor/administration fees are not uncommon.

What is a Revocable Living Trust?

A Revocable Living Trust is an Estate Plan in which you leave instructions for your Trustee (often a family member) to care for you in life and your beneficiaries after death. Many people prefer Revocable Trust based plans because they work without court intervention (unlike Wills, which must be Probated) and therefore can cost far less in administrative fees while keeping your affairs private. You can be your own Trustee while you are alive and have the capacity to do so. Your friends or family members may be named as the Trustee of your trust, which would allow them to make financial decisions on your part during your lifetime, as well as distribute your assets after your death.

What happens if you become incapacitated and you have a trust?

In a Revocable Living Trust there is the initial Trustee (typically you the Trustmaker) as well as a list of back-up trustees who can take your place for financial decisions if you cannot do so, or do not wish to do so. Typically the back-up trustee will be a family member, friend or professional trustee whom you trust with financial decisions. The back-up trustee can come to power through the death of the Trustmaker, resignation of the Trustmaker, or incapacity of the Trustmaker. This transition of power to the back-up trustee is done without court involvement, unlike the certification of an Executor for a Will.

Who makes medical decisions for me if I am incapacitated?

The Health Care Power of Attorney document allows for an “Agent” (typically your family or spouse) to make medical decisions on your behalf, if you are unable to do so. The Agent can then discuss your medical condition with the doctor and give permission for courses of treatment or procedures.

Will my friends and family have to make the decision to take me off life-support if I am very ill?

The Living Will, sometimes known as the Terry Schiavo document, directs your last wishes regarding life prolonging procedures when you are in a terminal and irreversible state, with no hope of recovery, and/or permanently comatose. This document dictates your last wishes directly to your doctor, when the situation arises, and thus your spouse/children will not have to make any potentially remorse-filled decisions regarding removing you from life support.

Do I need an Estate Plan?

The simple answer is.....YES. Everyone needs to complete some type of Estate Plan. However, the type of Estate Plan you need will be dependent on your goals and objectives. While each person's needs and situation are different, every adult needs to have at least a Will to arrange their affairs at death, a Durable Power of Attorney in the event of incapacity, and a Health Care Power of Attorney and Living Will for medical issues. It is especially important that people with minor children have a Will in place to identify who becomes the legal guardian of their children when they die. For additional privacy, efficiency, and tax savings, many people also use a Revocable Living Trust as part of their Estate Planning. Even a person with minimal assets wants his or her wishes carried out. Those with larger estates will, of course, need more comprehensive plans than those who have less, but everyone needs to make clear who is in charge, who receives their assets, and who takes care of their minor children.

Can you put off Estate Planning until later?

No. The most frustrating part of our practice is talking to survivors and caretakers about the problems we could have saved their family members from if we had only met before their loved one died or became incapacitated. We will never know the day nor the hour when misfortune will strike, but we can take the steps now to prepare ourselves and our loved ones by getting our affairs in order.

What does Johnson, Gasink & Baxter, LLP do?

Johnson, Gasink & Baxter, LLP is a law firm which focuses its practice on three areas: Estate Planning, Probate and Trust Administration, and Business Formation and Succession. We do not provide any financial advice, nor sell any insurance, or prepare income tax returns.

How much will an Estate Plan cost?

Because Estate Plans can be as straightforward as a four document Will Plan, or be a more sophisticated Trust Plan, every case is unique. At Johnson, Gasink & Baxter, LLP we take great care to spend all the time needed to learn about you and your goals and objectives before suggesting a plan. After we have discussed and designed your plan with you, we will present you with the fee for the project which you are free to accept or decline. There is no fee for the initial consultation. The fee will be fair, reasonable, and fully explained to you before you undertake any obligation to pay.

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