



ESTATE PLANNING: *Understanding the Basics*

Who needs an estate plan?

In this day and age, an estate plan is probably a good thing for *everyone* to consider. Contrary to popular belief, estate planning is not just for rich folks. It is a tool that can help almost everyone—especially if you want to specify how your financial and material possessions should be distributed to your heirs. If you want to help determine how your farm or business is transferred to the next generation, to clearly provide for the future care and needs of your children, or to minimize the impact of taxes on all these transactions, then estate planning is for you.

You should consider an estate plan if you have:

- dependent children or special needs children (either birth or adopted)
- adult children
- a spouse
- a disabled family member you wish to provide for
- a farm
- a business
- non-farm real estate
- real estate in two or more states
- money in a bank account
- money market accounts, mutual funds, or other investments
- a pension or other retirement accounts
- family heirlooms
- collectibles
- items with special meaning for you or your family

An estate plan can be beneficial in all of these situations because it specifies what should be done with all of your assets upon your death.

What is an estate?

An estate is more than land or a house (real property). Your estate includes all of the property or property rights that you own. Personal property such as life insurance policies, antiques, collections, timeshares, boats and other vehicles, fine china, and jewelry are all part of your estate. You may decide to include an item in your estate plan based on its sentimental value, such as a handmade quilt that has been in the family for generations, a family portrait of ancestors, or a family bible containing genealogical records of marriages and births. You want to be sure that these items remain in the hands of a family member with a similar appreciation for them. An estate plan can direct these and other belongings to the person or organization of your choosing.

What happens when a person dies without a will or estate plan?

The laws of the state where you live will determine what happens to your assets.

A valid and up-to-date will is the starting point or core document for nearly every estate plan. Your will is the legal document by which you specify what to do with your property (all your assets of any kind). A person who dies without a valid will is said to be *intestate*, and current state law will determine how to divide your assets among your surviving family members, based on spousal relationships and degrees of blood relationship. These laws do not allow for distribution of assets to your friends, your church, or your favorite charities.

In North Carolina, the legally required distribution method moves through the family lineage beginning with your children and continuing on to their lineal descendants, to your parents, and then to your paternal and maternal grandparents and beyond. If no surviving family is found, the estate is said to be *escheated*, meaning your assets will become property of the state.

Most state laws concerning distribution of assets are not flexible enough to accommodate each family's unique situation. Therefore, these laws are "blind" to family circumstances, personality traits, or special relationships. A relative whose education you might have contributed toward will receive a distribution based solely on the law, and that distribution may be more or less than you would have intended. Similarly, other relatives may receive a portion of your assets, even though you might not want them to receive any share at all.

Additionally, if you have property or assets located in more than one state, the process becomes even more complicated because each state's legal interest in your assets will have to be satisfied before making distributions to family members.

What is estate planning?

In the most general sense, estate planning means planning for your future and for the support and care of loved ones, minimizing taxes along the way. It means "getting all of your ducks in a row" for all the important business of your life.

A good estate plan is personal and is designed to meet your specific needs. It should address the issues that are important to you: guardianship for minor children, providing a lifetime income for a family member or other loved one, furthering the work of a favorite charity, or providing financial support for children's education.

Estate planning can also help you identify and address other issues related to your future financial well-being, including:

- if you will need for long-term care insurance and elder services,
- how to plan for inflation to avoid underestimating future costs and expenses,
- which retirement accounts you should draw against first to avoid spending your funds too quickly, and
- whether to use all of your funds during your retirement or to preserve some portion of the funds for people or organizations of your choice.

Estate planning offers a way to provide financial security for yourself, your family, and other loved ones. A good estate plan covers more than just financial matters, however.

What are the elements of an estate plan?

An estate plan is an organized collection of legal and financial documents designed to help you meet your personal goals. In addition to a will,

other documents that may be included are life, disability, or annuity insurance policies; various types of trusts; a durable health care power of attorney; a durable financial power of attorney; and a living will.

An estate plan can be relatively simple or complex, depending on your personal situation. It can evolve over your lifetime and become more comprehensive and complex as your assets increase and your personal goals change.

How do I create an estate plan, and who can help?

One Step at a Time: Incremental. An estate plan can be developed gradually by starting with the documents most important to you. For example, you can begin by writing a will and executing durable health care and financial powers of attorney. Later, you may want to add long-term care and other insurance policies.

All at Once: Comprehensive. Another approach is to work on everything you think you need all at once. A comprehensive estate plan will include provisions for tax minimization and wealth accumulation, asset protection, and any special distribution concerns you have.

Get help from a professional. Lawyers, certified public accountants, and certified financial planners specialize in estate planning. A comprehensive estate plan addresses lifetime financial and personal goals, tax planning, and wealth transfer. Therefore, it is frequently necessary to work with a team of advisors to prepare your estate plan.

How do I find estate planning professionals?

Ask people you know and trust for referrals to professionals who have done good work for them. If you have an accountant who is a Certified Public Accountant (CPA), ask if he or she works with an estate planning attorney. Similarly, you can ask your attorney for a referral to an estate planning specialist.

Professional associations offer another way to locate an estate planning professional. Most state and local bar associations operate a referral service based on the type of legal service desired. There may be a small fee for this service. The certified public accountants and certified financial planners associations also provide referrals to local professionals who are in good standing. A CPA who specializes in personal finance carries the Personal Financial Specialist credential awarded by the American Institute of Certified Public Accountants (AICPA). See the resource section for more information.

When should I update or change my estate plan?

Take some time to maintain your investment.

Your estate plan was thoughtfully and carefully developed. Keep the elements current to preserve the plan's effectiveness.

Conduct a periodic review. An estate plan is a living document that can and should be reviewed and updated periodically. Changes in tax laws, the introduction of new insurance products, changes in your assets either through purchase or sale, and changes in your family situation can all be good reasons to review and update your estate plan.

Another important time to review your estate plan is when you move to another state. State law governs several elements, such as your will and durable health care power of attorney. Failure to update your estate plan may result in not having your estate executed as you intended.

Now that you understand the basics, begin your estate plan today. Make a list of people and property that are especially important to you. Think about how you might want those items distributed and then take action to create your own personalized estate plan that reflects your values and goals. Don't delay—start today!

Resources:

I. Information on the Web

USDA, Cooperative State Research, Education, and Extension Service (CSREES)

The eXtension Web site is an interactive learning environment delivering the best, most researched knowledge from the smartest land-grant university minds across America. eXtension connects knowledge consumers with knowledge providers—experts who know their subject matter inside out. Financial Security for All has compiled more in-depth information to educate you on specific financial issues and strategies.
www.extension.org/pages/Financial_Security:_Estate_Planning

North Carolina Court System

Provides estate planning forms such as "Application for Letters of Administration."

www.nccourts.org

Click on the "Forms" tab at the top of the Home Page, then use the pull-down window to select "Estate." Use the "next" tab at the bottom to page through the list of available forms.

The **ExpertLaw** Web site also offers good background information on estate planning: www.expertlaw.com/library/estate_planning/introduction.html

II. Organizations and Associations

North Carolina Bar Association

8000 Weston Parkway
Cary, NC 27513

919-677-0561 or 800-662-7407

ncba@ncbar.org

www.ncbar.org

Referral Service:

800-662-7660 in North Carolina

919-677-8574 Raleigh area and from out of state

www.ncbar.org/public/lrs/search.aspx

The American Institute of Certified Public Accountants

Personal Financial Specialists

200 Leigh Farm Road

Durham, NC 27707

www.aicpa.org

Note: Use the "Consumer Information" button on the tool bar, then "Find a CPA."

National Association of Personal Financial Advisors (NAPFA)

Compensation method(s): Fee only

3250 North Arlington Heights Road, Suite 109
Arlington Heights, IL 60004

800-366-2732

info@napfa.org

www.napfa.org

Note: Use the "Consumer Services" button on the tool bar, then "Find an Advisor."

Financial Planning Association (FPA)

Compensation method(s): Fee-based, commission, or combination compensation

Denver Office

Suite 400

4100 E. Mississippi Ave.

Denver, CO 80246-3053

District of Columbia

Suite 201

1600 K Street, NW

Washington, DC 20006

800-322-4237

www.fpanet.org

Note: Use the "Find a Planner" or "Find a CFP Professional" button.

Glossary

Real property: land and anything on the land that is permanently attached or affixed.

Personal property: all property other than land or any interest in land. Personal property can be *tangible* (furniture, jewelry, cars) or *intangible* (bonds, leases, stock certificates).

Intestate: A person who dies without a will or with a will that is revoked or declared invalid.

Escheat: the assets become property of the state.

Durable Health Care Power of Attorney: gives authority to a person of your choosing to carry out your health care instructions and act in your best interest in a medical context. Also called a *health care proxy* or *medical power of attorney*.

Living Will: applies when you are incapacitated or permanently unconscious to express your wishes concerning the use of artificial life-support.

Durable Financial Power of Attorney: gives authority to a person of your choosing to conduct financial transactions on your behalf and may include purchase and sale of property, accessing retirement accounts, and conducting transactions beneficial to estate planning.

Long Term Care Insurance: health insurance that typically provides coverage for custodial care, intermediate care, and skilled-nursing care. Policy benefits may include home health care, adult day care, and assisted living.

References

Chapter 29, Article 2. Shares of Persons Who Take Upon Intestacy. Downloaded on June 26, 2007, from www.ncleg.net.

Esperti, R. A. & Peterson, R. L. (2000). *Protect your estate*, Second Edition. New York: McGraw Hill.

Fontaine, C. J. (2006). *Fundamentals of estate planning*, Tenth Edition. Bryn Mawr, PA: The American College Press.

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