



Estate Planning Basics

What is Estate Planning?

At its core, an estate plan is a set of instructions left behind by an individual expressing their wishes on a variety of topics. Typically, an estate plan will direct how a person wants to be cared for if they are incapacitated, and who they would like to make decisions for them. It will also direct the way property and other matters should be handled in the event of that person's death. An estate plan is essentially a reflection of a person's values and their life, and thus the testator, or the person making the plans, should be heavily involved in the planning process.

What is the goal of good estate planning?

While the goals of a particular estate plan may vary from person to person, the overarching goal of all estate planning can be summed up in the following: To record the wishes of an individual as it pertains to their care and their assets when they are no longer capable of making decisions, either due to death or incapacity; To maximize the benefits that an individual wishes to bestow on the beneficiaries of the estate; and To leave no ambiguity as to what the wishes of the testator were so that the beneficiaries of the estate or other affected parties have no basis for dispute over what course of action should be taken.

How are these goals accomplished?

Good estate planning requires a great deal of communication and collaboration between the estate planner and testator. A good estate planner must make sure that every potential outcome is considered and discussed with the testator so that the resulting plan conforms to the testator's wishes as closely as possible.

In addition, the estate planner will generally construct a package of planning tools that are designed to maximize the benefit for the beneficiaries. This generally means employing tools meant to avoid probate and minimize taxes. Probate is the legal process by which an estate is administered and can be expensive depending on the circumstances. Additionally, the tax treatment of different tools varies, and thus it is important to take into consideration when creating an estate plan.

What are common estate planning tools?

- Will – A Will serves two primary purposes. First, it allows a person to direct how they would like assets distributed at their death. Second, it allows people who have minor children in their care to choose who the child's guardian should be if something were to happen. Wills are also vehicles for establishing Trusts and may be used to direct other post-death affairs as well, such as burial instructions.
- Trust – A Trust is a separate legal entity established to hold property for the benefit of another. Trusts are great probate avoidance tools and are generally free from Creditor's claims.
- Durable Power of Attorney/Healthcare Directive – A Durable Power of Attorney is a tool granting someone authority to act as an agent or attorney in fact for the person who executed the instrument, even in the event of that person's incapacitation. A Healthcare Directive allows an individual to direct the type of care they would or would not like to receive if they are incapacitated or in a vegetative state.
- Community Property Agreement – These agreements are primarily probate avoidance tools by which spouses agree that all of their property is community property, and that said property will automatically pass to the surviving spouse in the event of the other's death.

Complex Estate Planning Issues

Depending on the scope of a testator's wishes and the variety the testator's assets, estate planning can become extremely complex. The following are a few common examples of assets and goals that can increase the complexity of an estate plan:

- Non-Probate Assets: Ownership and management of various contractual, or "non-probate assets," such as Life Insurance, Annuities, Retirement Accounts, etc. typically increase the complexity of the planning required, but are also excellent estate planning tools.
- Business Interests: Ownership of a business requires a great deal of discussion and succession planning. Often, it requires a review of the business' formation documents and discussion with the other business owners.
- Charitable Plans: Choosing the right gifting vehicle and/or setting up a charitable or tax-exempt organization can be quite complex.

About the Author

Ross Gardner is an attorney in Edmonds, WA. His passion for the law has grown from a desire to help families and businesses plan for a secure future. Ross' practice is devoted to helping people protect what is theirs and what they have worked so hard to gain throughout their lives. Ross practices Estate, Business, and Real Property law.

Our Estate Planning Services

We assist families and individuals with all aspects of estate and trust planning, from basic Wills, Trusts, Power of Attorney, and Healthcare Directives to more complex trusts and sophisticated wealth transfer strategies. We will also review any existing estate documentation to address whether or not your estate plan needs updating due to changes in your life or changes in the law.