

DEATH & TAXES

By Bob Prior



Benjamin Franklin famously said, “In this world nothing can be said to be certain, except death and taxes.” Even in the face of this certainty, many individuals choose not to plan for their death. They think they don’t own enough, they’re not old enough, they’re busy, they have plenty of time or they’re confused and don’t know who can help them. Then, when something happens to them, their families are left in emotional and financial chaos. Too often, feuds among family members and lawsuits follow, and the estate can be tied up for years while the assets are used to pay legal costs. Just a little forethought and planning can avoid this unfortunate result.

Everyone has an estate, no matter how large or how small. It is comprised of everything you own: Your home, your car, checking and savings accounts, investments, life insurance, furniture, and personal possessions. And everyone has something in common: You can’t take it with you when you die. When that happens, you probably want to control how those things are given to the people or organizations you care most about. To ensure your wishes are carried out, you need to provide instructions stating whom you want to receive your property and what you want them to receive. And you want this to happen with the least amount paid in taxes, legal fees, and court costs. That is estate planning—making

a plan in advance and naming whom you want to receive the things you own after you die.

However, good estate planning is much more than that. It should also: Provide instructions for your care if you become disabled, appoint a guardian and trustee for your minor children, provide protection for family members with special needs without disrupting government benefits, provide for loved ones who might be irresponsible with money or who may need future protection from creditors or divorce and properly designate qualified plan and IRA beneficiaries.

Include life insurance to provide for your family at your death. If you don’t have a plan, the government has one for you, but you probably won’t like it. If you become disabled due to mental or physical incapacity, only a person appointed by the court can sign for you. The court, not your family, will control how your assets are used to care for you through a conservatorship or guardianship. It can become expensive and time consuming, it is open to the public, and it can be difficult to end even if you recover from the disability.

If you die without a will or trust, your assets will be distributed according to the state laws of administration. If you are married and have children, your spouse and children will each receive a share. That means your spouse could receive only a fraction of your estate, which may not be enough to

live on. If you have minor children, the court will control their inheritance. If both parents die, the court will appoint a guardian who may well be the last person you would have chosen to raise your children. An estate plan begins with a will or living trust. A will simply provides your post-death instructions regarding your property. Any assets titled in your name or directed by your will must go through the probate process before they can be distributed to your heirs. The process can be expensive with legal fees, executor fees, and court costs. It can also take anywhere from nine months to two years or longer. With rare exceptions, probate files are open to the public and excluded heirs and creditors are encouraged to come forward and seek a share of your estate. In short, the court system, not your family, controls the process. For these reasons a revocable living trust is preferred by many families and professionals. It can avoid probate at death, prevent court control of assets at incapacity, bring all of your assets (even those with beneficiary designations) together into one plan, provide maximum privacy, is valid in every state, and can be changed by you at any time.

The best time to plan your estate is now. None of us like to think about our own mortality or the possibility of being unable to make decisions for ourselves. This is exactly why so many families are caught off-guard and unprepared when incapacity or death does occur. A well planned estate is one of the most thoughtful and considerate things you can do for yourself and for those you love.



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Estate Planning Elder Law

Robert T. Prior

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