

unnecessary probate, confiscatory death taxes and unpleasant surprises, but it also can protect your assets from these same fundamental estate planning challenges to benefit your loved ones over multiple generations.

Is it Time to Review Your Plan?

Estate Planning is a Lifetime Process, not simply an after-death distribution program. So, it makes sense to periodically reflect on your Life & Estate Planning goals, and review your legal documents as circumstances in your life change. Use this checklist of life changes or activities that could alter your estate-planning needs as a starting point.

- Marriage, remarriage or divorce
- Death of a spouse
- Substantial change in total asset value
- Death or incapacity of an executor, guardian or trustee
- Move to another state
- Acquisition of real estate in another state
- Birth or adoption of a child or grandchild
- Serious illness of a family member
- Change in business interest or retirement
- Change in insurability for life insurance
- Marriage or divorce of a beneficiary
- Change in beneficiary attitudes
- Financial irresponsibility of a beneficiary
- Change in tax laws
- More than two years since last review of plan with attorney

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ESTATE PLANNING 101



Unfortunately, confusion and myth abound when it comes to "estate planning." Perhaps that is why so few people actually get around to making such plans at all.

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What is *estate planning*? If you were to ask 10 adult Americans this question, you would likely get 10 different answers. Even otherwise financially savvy people seem confused about estate planning. Most erroneously equate *estate planning* with *death planning*. They think estate planning is limited to arranging for the ultimate distribution of their assets at life's end. Due partly to this confusion and partly to good, old-fashioned procrastination, it is little wonder that seven out of 10 adult Americans have no estate plan at all.

In reality, the ultimate distribution of your assets is but one of many important elements to successful estate planning. Were your estate plan your autobiography, then the ultimate distribution of your assets would only be Chapter 4, the book's final chapter. The preceding chapters of your estate plan would involve a lifetime process of making legal arrangements to protect yourself, your loved ones and your hard-earned assets from three fundamental estate planning challenges: unnecessary probate, confiscatory taxes and unpleasant surprises.

Chapter 1: Unnecessary Probate

Probate is the court process that takes care of people and their assets when they no longer can make their own personal, health care and financial decisions. You have two opportunities to experience probate: at incapacity and at death.

The law says every adult American is responsible for their own personal, health care and financial decisions. Such decisions include everything from where to live, to when to die (e.g., authorizing or withholding/withdrawing health care treatments), to filing tax returns, to real estate transactions.

What happens, though, if a stroke, a car wreck or advanced Alzheimer's leaves you disabled to the point of legal incapacity? Who will make your decisions for you? Will it be someone you know and trust? Perhaps it will be your spouse, your children, your siblings, a friend or a trusted

professional advisor. The answer is *none of the above ... unless* you make proper estate plans in advance of such tragedy.

Incapacity probate is the default plan for people who fail to make plans to avoid it. In the incapacity probate process you can expect to employ at least three lawyers (the probate judge, an attorney to represent your interests and an attorney representing the potential guardian), potentially spend thousands of dollars, expose your personal situation and financial matters to the public, and place yourself under the ongoing control of the probate court until you either recover or die.

At your death, any assets that are titled in your name alone or which name your estate as the beneficiary (e.g., life insurance or retirement plans) will go through probate. One common estate plan myth is that a valid *Last Will & Testament* will avoid probate of these assets. That myth could not be further from the truth.

In reality, a Will is your *admission ticket* to the probate court and only has legal effect when accepted by the court as valid. Like the incapacity probate, the death probate is the default plan for people who fail to make plans to avoid it. Similarly, in the death probate process you may expect to pay some potentially unnecessary costs, expose your personal situation and financial matters to the public, and place your assets under the ongoing control of the probate court for six months to a year or more.

Chapter 2: Confiscatory Taxes

Question: Which tax can take the biggest bite out of your estate assets? Is it the income tax, the

capital gains tax or the estate tax? Answer: The estate tax. While no one enjoys the income tax with a top marginal rate of 35 percent or the capital gains tax with a top rate of 20 percent, most are shocked to learn that the estate tax is more than 40 percent. Even more disturbing is that this is a final tax on assets that have already been subject

to income and capital gains taxes... oftentimes repeatedly during one's life.

As noted earlier, seven out of 10 adult Americans have no estate plan. They likely are headed to probate unnecessarily and may lose hundreds of thousands of dollars to the IRS in death taxes unnecessarily. Even people with estate plans in effect may have made serious mistakes in their planning.

Common mistakes may include joint tenancy ownership of assets, improper ownership methods for life insurance and simple Wills with no tax planning provisions.

Chapter 3: Unpleasant Surprises

Along with probate avoidance and tax minimization, asset protection should be a cornerstone of every estate plan. With divorces, lawsuits and bankruptcies (probably as a result of the other two), proper estate planning includes protecting your assets from unnecessary loss while you are alive and protecting them for your loved ones upon your death. The next and final chapter is a natural extension of this chapter.

Chapter 4: Unpleasant Surprises Reprise

A well-designed, thoroughly implemented and faithfully maintained estate plan can not only protect you and your hard-earned assets from

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