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## Online Law Library



### ESTATE PLANNING

Estate planning involves the preparation of legal documentation designed to provide for the management and disposition of one's assets in the event of incapacity or death. The process should take into account the nature and value of one's resources, with particular attention to ownership of those assets. No matter the value of the estate, every individual should have a current plan in place. Whether the primary issue concerns dividing assets fairly, appointing an executor, naming guardians for minor children or planning for avoidance of probate, or all of the above, the key is to have a current will or living trust in place to ensure that your priorities are addressed to your satisfaction.

As with any plan, the first step is to establish your goals. The concerns which motivate a person to develop a plan are just the starting point, and an experienced estate planning attorney can assist you with identifying additional issues of which you may not even be aware. Your priorities might include one or more of the following:

- Provide financial protection for your surviving spouse
- Protect inheritances for children from a prior marriage
- Provide for minor children or grandchildren (especially disabled ones)
- Minimize estate, gift and income taxes
- Determine proper beneficiary designations for IRAs and life insurance
- Name guardians for your minor children
- Keep the business in the family
- Establish trusts for professional management of your assets
- Prevent the unwanted disposition of your assets to certain persons
- Ensure your charitable giving goals are perpetuated

The next step is to determine the most effective estate planning tool for achieving those goals based upon advice of counsel. A thorough estate plan should include several of the documents addressed in these Law Library descriptions of many available estate planning vehicles and techniques.

#### LAST WILL AND TESTAMENT

The foundation of most plans, the Will sets out your written instructions for the distribution of your probate estate, and must meet certain legal formalities. The Will does not affect assets passing by beneficiary designa-

tions on life insurance policies and retirement plans or survivorship provisions on joint accounts. It is often appropriate to establish a trust under your Will to take effect, and be funded, at death for the protection of assets for certain beneficiaries. The named executor (and be sure to name an alternate executor) is appointed to pay your final obligations and to carry out your wishes for your heirs. The nomination of a guardian for minor children must be made in a Will. If you wish to make bequests to your favorite charities, establish a trust for minors, or even disinherit someone, the Will is critical to ensuring that your wishes are met.

If a person dies "intestate" (without a Will), the estate is distributed in accordance with the assumptions set forth in the Virginia Code. This statutory Will is very likely not what a person would want, since it creates unexpected results in blended family situations as between surviving spouses and their step-children. In addition, the costs of probate administration are increased due to certain court costs, surety premiums and legal fees which could be minimized or avoided with a properly drafted Will. And without naming an executor, you also leave it to your survivors to decide who will administer the estate.

### Revocable "Living" Trust

An increasingly popular estate planning vehicle, the living trust is a legal instrument by which you establish a trust for your benefit during your lifetime. A person who establishes a trust is called a grantor or settlor. Since the only assets typically held in a living trust are those belonging to the grantor, you name yourself as the initial *beneficiary*. Finally, in order to continue to control those assets in trust, you name yourself as the *trustee*.

Assets, such as bank and brokerage accounts, business stock and real estate holdings, are re-titled into the name of the trust, enabling your successor trustee to manage those assets in case of your incapacity or death, normally without court involvement. Thus, the revocable trust tends to avoid the court-supervised management of your assets while living and to reduce the cost and delay of probate estate settlement, protect your privacy and that of your family in the process.

The legal principle behind these benefits is the notion that assets "owned" by a trust do not pass through the "probate estate" of a grantor of a trust upon his death because they are not owned personally by him. While the death of the grantor is the trigger event set forth in the trust for the distribution of assets to his beneficiaries, it does not cause the trust assets to be included in the probate process. Naturally, since the revocable trust is a "will substitute," the distribution of trust assets would follow the same pattern as a person's will without subjecting them to probate. Nonetheless, even if a living trust is established, a grantor should still execute a simple Will naming your trust as the beneficiary of your probate estate, in case you have one. These supporting instruments, called pour-over wills, ensure that assets not titled in your trust at death will be transferred there by your executor.

If the grantor becomes disabled or incapacitated while acting as the trustee of his own trust, the successor trustee named by the grantor can easily assume responsibility and authority over the trust assets without court action. The trust document should provide for the identity, direction and compensation of such trustees, as well as the circumstances under which they will take over for you.

There are additional supporting documents for the well-drafted revocable living trust, all of which should be discussed during the initial legal consultation to prepare your estate plan. The key to success with the living trust, of course, is the proper change of title or beneficiary designation for assets intended to be owned by or payable to the trust, respectively. Only then will your goals for the management and preservation of your resources for the benefit of the family be achieved by the trust.

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