

ESTATE PLANNING

Leave your money to the people and organizations you love.

WHAT IS AN ESTATE?

Everybody has an estate. One definition is “all the wealth you’ve accumulated during your life time.” This means your house, assets, automobiles, life insurance, and so on. All of your assets have to go somewhere when you pass away. Without a will or some type of directive, the State decides where it goes.

BENEFITS OF ESTATE CONSERVATION

- You select who will receive your assets
- You determine the distribution of your estate
- You choose the individuals to settle your estate
- You can reduce settlement costs
- You are in control
- You choose guardians for minor/special needs children

Should I consider a corporate trustee? - Some individuals choose a corporate trustee to act as a trustee or co-trustee now, especially if one or both spouses are ill or there is a special needs child.

I'm not sure my estate is large enough to need a trust- Sometimes the need for a trust is determined more by personal needs rather than the size of the estate. For instance, individuals with a special needs child need to make provisions for the care of the child.

Funding a trust- Properly titled assets are important, or else the trust will not accomplish one of its primary goals, which is to avoid probate. The initial work of funding can be cumbersome because of the amount of paperwork and time involved, but once that is accomplished, maintenance is much easier.

ESTATE CONSERVATION

Getting Started - Work with a Certified Financial Planner, estate planning attorney and accountant.

What is a revocable living trust? It's known by many names: a “family” trust, a living trust, and a revocable living trust. Depending on the size of your estate and your needs, it may or may not include an A/B trust, or A/B/C trust (also may be known as a Bypass trust or Credit Shelter trust).

A revocable living trust is a legal document. Like a will, a revocable living trust contains your instructions for what will happen to your assets at the time of your death. But, unlike a will, it can avoid probate upon your death, control all your assets during life and prevent the court from controlling your assets if you become incapacitated. It is also much easier to change than a will.

Most people think that trusts are only for the rich, but that's not so. When structured appropriately, trusts can shield assets from estate tax liability and avoid probate. However, the use of a trust involves a complex web of tax rules and regulations. You need to consider the counsel of an experienced estate planning professional before implementing such strategies.

Who are the parties involved in a revocable trust?

- **Grantor**— individual that creates the trust
- **Trust**—the legal document
- **Trustee**—individual that controls the assets in the trust
- **Beneficiary**— during your life you are the primary beneficiary and at your death the beneficiaries become your heirs

Documents that make up a typical estate plan:

Estate planning documents provide a roadmap that your heirs can follow.

- **Revocable Trust**— described above
- **Pour Over Will**— the primary beneficiary is your trust; if any assets are left out of the trust at the time of death this type of will “pours over” those assets into the trust.
- **Durable Financial Power of Attorney**— gives trusted individual power and authority to act on your behalf in legal and financial matters in the event you become incapacitated.
- **Durable Power of Attorney for Healthcare**
- **Living Will/Directive to Physician**

UNDERSTANDING ESTATE CONSERVATION



Mark F. Swingle, CFP®
Westfield Financial Planning

316 East Broad Street
Westfield, NJ 07090
(908)-379-2706

BASIC CHALLENGES OF ESTATE PLANNING:

CHALLENGE #1 – ATTORNEYS

1. *Choosing the Right Attorney-* Every attorney has completed law school and can probably prepare a will, but not every attorney is well-versed in estate planning, which is an ever-changing complex, and intricate area of law.
2. *Fair Price-* Attorneys usually charge by the hour or by a flat fee for the work to be completed. An attorney's rate is often tied to their experience level and locale.
3. *Control-* People are concerned an attorney will take control of their assets.

However, if you work with a team of professionals, i.e., wealth manager, and accountant, we're confident you'll be able to find a good attorney at a fair price and you'll feel comfortable knowing they are working together to protect and preserve your estate.

CHALLENGE #2 – PROBATE

It is important to understand that all wills go to probate court. If you don't have a will, your state will provide one; this is called a dying "intestate." All wills are legal, but not necessarily valid. A will must be validated by the probate court before the executor can begin to distribute the assets. Wills only distribute assets at the time of death – wills do not do anything about controlling assets while you're alive.

Conversely, a living trust can help you manage your estate while you're alive, helping to provide assurance and peace of mind that your assets and money will go to the people and organizations you love. A living trust does not go through probate court and it can help if you become incapacitated.

What Is Probate Court?

Probate court is the process where a judge validates the will and considers anyone that may contest the wishes in the will. After the will has been validated, the executor is responsible to distribute the assets according to the terms of the will, after all taxes and/or expenses have been paid.

What's Wrong with the Probate Court Process?

Confusing: In most instances, the executor must file petitions with the court, publish notices, mail notices to persons entitled to receive, find bonds, set up multiple court hearing dates, prepare an inventory, give creditor notice, pay debts, sell properties, file tax returns, etc.

Costly: Probate generates executor and attorney fees before distribution to the beneficiaries. Plus, if you own real estate in other states (even timeshares), probate must be handled in each state.

Time Consuming: In most states it takes a minimum of four months, and, there are many cases where probate has taken more than 2-3 years and sometimes isn't settled until all the money is gone. Sometimes assets can become frozen. Usually the executor has to petition the court to request funds for beneficiaries if they need living expenses before time for distribution.

No Privacy: Probate offers no privacy, rather it's a fully public process. Probate files are open to anyone who wants to know about your will or assets.

Easily Contested: Wills are easily challenged by unhappy relatives. Your heirs must wait for the probate process, while enduring the cost, time, and loss of privacy associated with it.

CHALLENGE #3 – ESTATE TAXES

Estate Taxes have been around for hundreds of years. Estate taxes started back in 1797 with the Stamp Act to help fund naval build up. The Revenue Act of 1862 helped to fund the Civil War. The Emergency Revenue Act of 1916 helped offset the cost of World War I and the Revenue Act of 1940 helped pay for WWII military readiness. Whether the estate exemption goes up or down, it will likely always be there. In addition, some states even have death/inheritance taxes.

CHALLENGE #4 – LONG TERM CARE

Long term care is an on-going problem that is only increasing. The need for long term care insurance and health related services are growing at a significant rate. Without addressing the issue now, it may take most or all of your assets to pay for your care.

CHALLENGE #5 – JOINT OWNERSHIP

Although joint ownership has its place, here are some potential dangers:

1. Transferring property to a joint owner (e.g., child) is giving a gift of the property to that person, which could trigger gift tax implications.
2. You lose control, but have joint liability. In fact, assets can be lost (or tied up in court) if the joint owner runs into financial difficulty through creditor problems or bankruptcy, etc.
3. It does not avoid probate, it only delays it.
4. With some assets, especially real estate, all owners must sign to sell or refinance. If a co-owner were to become incapacitated, you could have a new co-owner, the court, even if the incapacitated co-owner is your spouse.

CHALLENGES #6 – BENEFICIARIES

One of the most common mistakes in estate planning is wrong or missing beneficiaries. When insurance companies or retirement plan custodians change, many times updated beneficiary designation forms are not completed, leaving outdated or missing beneficiaries. This means that the proceeds go to your estate, which means it goes to probate court. This is unnecessarily time consuming and expensive.

CHALLENGES #7 – BECOMING INCAPACITATED

There is the possibility that you may become incapacitated (mentally or physically) prior to your death. If you become incapacitated and don't have the proper documents that provide someone the authority to make financial and health care decisions for you, the courts will have to intervene. Once the court is involved, it usually stays involved until you either recover or pass away. This is commonly referred to as "living probate." It's a hassle, is time consuming and, can be expensive.