

CREATING AN ESTATE PLAN



When it comes to estate planning, it is prudent to prepare in advance. This article looks at the essential steps of developing an effective estate plan and explains how you can take an active role in its success.

An estate plan outlines a course of action for the distribution of assets. Think of it as the constitution of your family dynasty. It outlines the principles by which family wealth is managed. The most important element in the estate-planning process is the establishment of your personal vision.

Your vision reflects your philosophy on wealth and inheritance. Factors to consider include:

- Needs and abilities of family members
- Interest in charitable giving
- Opinions as to which family or non-family members are best qualified to manage wealth without your involvement
- Desire for the continuation or liquidation of the family business

To further establish your vision, imagine that you live in a tax-free world with no limitations on wealth distribution. Then determine how you would like the family wealth divided and who should manage it. If you leave the process up to

your tax and legal advisors alone, without well-defined goals, you may end up with a technically perfect estate plan that is all wrong for your family.

Once a plan is established, you are ready to talk to your attorneys and accountants. Your job to figure out what is best for your family, and your advisors' job is to come up with a structure that achieves your goals in the most tax-efficient manner.

MARSHALLING THE FACTS

Your attorneys and accountants will need a great deal of information about your assets and your family. The more information you give them, the better they will be able to spot tax and legal issues.

Assets and Liabilities

The first step is to prepare a complete inventory with values of your assets and liabilities. Some of the asset classes are obvious, including marketable securities, cash, real estate, art and antiques, jewelry and business interests. Others, such as intellectual property, trust interests and contractual rights, are less obvious and apt to be overlooked. However, all are important to your estate plan.

Note whether assets are owned by you alone or jointly with your spouse. Joint property that passes by survivorship will go to your co-tenant automatically and will not be affected by the provisions of your will.





If assets are owned through trusts or other entities, or if you have created trusts, endowments, charitable foundations or other entities during your lifetime, be sure to provide copies of the governing documents.

Finally, be sure to add a list of all your liabilities, including mortgages and bank debt, as well as a listing of any contingent or unlikely claims that might arise.

Residence, Citizenship and Governing Law

The law governing the transfer and taxation of your property will be dependent on one or more of three factors:

- Residence
- Citizenship
- Location of property

Your citizenship and the location of your property are relatively easy to determine. What's more difficult to determine is your legal residence or "domicile."

This determination involves complex issues. Let your legal advisors make the determination based on facts that you provide:

- Where are you currently considered a resident for tax purposes?
- Where have you been considered a resident for tax purposes in the past?
- Have you ever changed your residence?
- What was your residence at birth?
- Where, other than your principal residence, do you own residential real estate or spend substantial time?

Giving this information to your legal advisor is important even if you believe that your domicile is obvious. Your advisor may feel that more than one jurisdiction is in a position to claim you as a resident, and steps may need to be taken to avoid problems. For example, some jurisdictions require that a prescribed percentage of your assets be left to your children. If you are a legal resident or even own real estate in such jurisdictions, their laws may apply to some or all of your assets.

Your Descendants' Tax Considerations

Your primary focus will be on how your own assets will be distributed and taxed. However, the way you structure your estate can also affect how your descendants will be taxed. Often an estate plan can be structured to give substantial tax benefits to future generations, so include all relevant information about your descendants, including their citizenship and residence and a disclosure of any existing trusts or similar structures in which they are beneficiaries.

Executors and Trustees

Selecting people to administer your estate and act as trustees requires a good deal of thought. Executors or other personal representatives are responsible for making an inventory of your assets, paying debts and death taxes, dividing your assets in accordance with your will, and dealing with legal and financial issues. This responsibility could be a five-year job, involving important decisions.

You may want to consider using co-executors, with one being an individual and one a corporate executor. A corporate executor, for example, a bank or trust company, will have expertise in areas crucial to carrying out the many duties involved in settling an estate. A personal executor, who

will contribute knowledge of the family and your intentions regarding distribution of assets, can complement the responsibility.

If you set up a trust, acting as a trustee can be a long-term commitment. Trustees are responsible for investing the trust assets (with an understanding of the rules of trust investment), making discretionary distributions, and generally carrying out the terms of the trust. Often, they are also involved in the process of selecting their successors.

There is no simple rule for choosing fiduciaries, except that you should be confident they are qualified for the job, meaning they exhibit common sense and are persons with whom you are comfortable entrusting the management of your family wealth. In the case of trusts, it's a good idea to include a mechanism for removal of any trustee who is not performing well or who is no longer favored by the family.

Family Issues

Family harmony is a goal that is sometimes overlooked in estate planning. You don't want any family member to leave the reading of your will angry or upset because he or she received treatment different from another family member, even though rational reasons exist for treating family members differently. You may want to select a financially savvy child to serve as trustee, or you may want to leave more property to a child of modest means than to a child who is independently wealthy. Regardless of the rationale, the slighted person may feel discriminated against if you've made no effort to explain your reasons, especially if the first time they learn of your plan is after your death.

If it's possible within the culture of your family, have a dialogue with your heirs during your lifetime to explain your thinking, particularly if you intend to treat family members differently. Let your family express their feelings directly, and let them feel that their opinions about the family wealth are taken seriously.

Only you can create the vision of your estate plan. Take time to consider the long-term effects of your decisions and formulate a plan you are pleased with. Then organize your facts so that your legal and tax advisors can carry out your wishes in a successful, binding and tax-effective manner.

Adapted from "Guidelines for Estate Planning: Doing Your Homework," by Henry Steinway Ziegler, an independent advisor to Fiduciary Trust Company International on estate planning.

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