ESTATE PLANS

KNOW MORE THAN YOUR ATTORNEY

IN 15 MINUTES

by Scott Royal Smith

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INTRODUCTION

An estate plan is a legal strategy that addresses how your money and other assets will be distributed upon your death. Deciding these matters ahead of time is the best thing for you and your heirs. If you don't yet have an estate plan, you should.

Think of estate planning like car insurance, but better. We buy insurance to protect us in case we get in an accident. Insurance and estate planning are both proactive measures you take to offset the pain of an unexpected loss (whether vehicular or of your life).

Well, you may or may not crash your car, but the odds of death are 100 percent. You wouldn't think about driving without car insurance, knowing you may never even need it. By the same logic, you shouldn't even think about avoiding estate planning, as the consequence of dying without one will actually be visited upon your family and loved ones. Estate planning lets you die, well, politely, while also getting to control exactly where your assets go and who will run your business.

Why It Matters

Everyone needs an estate plan. If you have children, estate plans are essential for looking after them. If you invest in real estate, you have more assets to divide up than a typical non-investor, and therefore an estate plan is crucial for managing your investments, debts, and profits when you are no longer able to.

Almost everyone has someone who could benefit from their assets, or at least a charitable cause closer to their heart than the United States government. Even if you had no friends or family members, surely there's a charity that you'd rather benefit from your life's work than the Taxman.

Consider what happens when someone dies without any advanced preparations. In such cases heirs are stuck waiting while accountants, lawyers, and Uncle Sam duke it out in probate court. Of course, all of those parties are paid immediately. Meanwhile, years can pass while heirs wait for a decision with no guarantees that they will get what you meant for them to have.

Simply put, a death is already a tragedy for loved ones of the deceased. This tragedy is compounded and complicated without a clear estate plan.

Benefits

As a real estate investor, you know the importance of planning ahead for your business. If supporting your family or other loved ones is one of your investing goals, the kindest thing you can do for those heirs is get familiar with estate planning.

A proper estate plan created by a competent estate planning attorney with real estate familiarity can give you many benefits:

- Leave behind a business that will outlive you.
- Give your family the gift of a healthy, long-term real estate portfolio.
- Use your assets and wealth to create meaning upon your passing through charitable or philanthropic acts.
- Prevent Uncle Sam from getting his greedy paws on your life's earnings and dividing them up as he fancies.

We'll go through a few of these points individually in the next section.

SECTION I: WHY YOU NEED IT

Keep Your Estate Intact

Guess who gets your money if you don't have an estate plan? That honor goes to Uncle Sam and a small army of attorneys and accountants.

Depending on what type of REI business you have, it's fairly easy to make sure it outlives you. Some structures, like the Series LLC with its potentially unlimited lifespan, make this task easier.

Avoid Probate

Some people believe a will alone is sufficient, but this is a myth. A will must go through probate court. The good news is that you can spare your family from ever having to handle probate with a single document: a revocable living trust.

Probate court can be a miserable, emotional experience for everyone involved. To make things easier on your grieving family, set up a living trust. You may specify in this document which assets go to whom. Some investors use this in conjunction with a "pour-over will" to easily transfer ownership of a business. We'll discuss this in depth later.

Choose Your Legacy

YOU are the best authority on you and how you'd like to be remembered. Leaving your heirs a business with a clear secession plan can save them the stress of preserving your legacy.

If you want to establish a philanthropic legacy, there are legal asset protection tools that can help you make such donations. The beauty of building your own legacy is you truly get to call the shots. Estate planning can ensure you're remembered through your support of both people and causes dear to you for years beyond your passing.

Help Your Children

Trusts are a critical part of estate planning, particularly if you have children or other under-age benefeciaries. As an added bonus, when assets are transferred to heirs over the age of 18, the heir receives the benefits of asset protection and creditor protection. Such benefits are not available to heirs receiving assets in a Probate Court context.

Prepare for Emergencies

Estate planning isn't only about what happens after you die. A comprehensive estate plan includes tools for you while you are still alive, including:

- Medical power of attorney
    - What happens when medical incapacitation? If you can't make decisions (coma, surgery, etc). Typically spouse, but may be another designee.
- Durable power of attorney
    - Someone has to pay the bills when the unforeseen happens. This person can sell property, etc. Mentally sound.
- Living will
    - Plan ahead in the event you have terminal illness/vegitative state. What are your preferences for end-of-life care? Difficult job. Hard for larger families (for example) to agree on.

Find Out If It's For You

Many asset protection structures (such as LLCs or other entities, investment vehicles, and certain types of retirement accounts) have rules, regulations, and restrictions about who is eligible to use them and how. So it's only natural to wonder what rules apply to your estate plan.

Let's start with the good news.

Who Is Eligible

Anyone on earth can (and should) create an estate plan. We will all die eventually, and estate planning allows us to prepare for this inevitability, provide for our loved ones, and direct our assets to exactly where we want them to go.

You do not need anything special to get an estate plan. Estate plans are universally available to everyone.

When to Act

The ideal time to make an estate plan was yesterday. But since our mad scientists at Royal Legal Labs have yet to crack the formula for a time machine, today's just as good.

All kidding aside, the sooner you can make your estate plan, the better. Which legal tools will be most appropriate will depend on your personal situation, where you live, and many other details your legal and tax professionals will need to know.

Estate planning's connection to asset protection seems obvious to any attorney with asset protection experience. Be aware that not all lawyers understand estate planning equally well. For instance, many attorneys have a go-to estate planning strategy that is already legally sound, then tailor the forms to clients' individual needs.

We've established that emergencies can happen to anyone. Estate planning isn't about just anticipating your inevitable death either. We use many estate planning tools to ensure your wishes are carried out if you're ever in any kind of emergency where you're unable to make decisions. It's a way to protect your business and assets during life and beyond. But the estate plan can only work if you bother to make it. In our opinion, the consequences of dying without an estate plan are too high.

Why You Shouldn't Put It Off

Certainly not. At least not exclusively, and in fact, estate planning matters in life as well. Just because we all know we will die someday doesn't mean we know when. While we may associate estate planning with sickness or old age, assuming you don't have to worry about estate planning until an emergency happens is foolish.

The reality is none of us are immune from unexpected illnesses, traumas, freak accidents, or even heavy objects falling from above. Estate planning is the only way

Case Study

Amy and Caroline are 36-year-old identical twin real estate investors. The twins got started investing together, even splitting profits and losses. They grew their businesses, yet happened to always have the same number of assets, each with the same value.

But Amy and Caroline didn't do everything exactly the same. Although their financial conditions and portfolios were dead ringers, just like the sisters, the women disagreed about how to handle estate planning. The two made their appointments to address the issue the same day. Each sister had five chosen beneficiaries, but neither included the other.

Amy read online that the will is the oldest and most accepted document available, and partially to save money, she used a consultation with a lawyer to draft a will. She spent some time Googling a cheap attorney and found one who agreed to create a document that listed her existing assets. The price was right and she felt secure. "I'm young," Amy reasoned: "I'll update it later."

Caroline, however, is more cautious. She spent more time researching her options and learned about living trusts and estate planning for real estate investors. She spent some time looking for references for an estate planning attorney with real estate experience, narrowed down her candidates, and opted for an attorney who was also an investor.

This lawyer spent some time with Caroline, looking at her full situation and providing thoughtful feedback. He agreed to form her living trust and advised that she use a pour-over will, a tool which ensured all of her assets would be added to the living trust. She spent more up-front than her sister, but also would not need to come back to update a will (and pay the necessary legal fees) like her sister would.

Caroline also took advantage of the lawyer's estate planning review services, which meant her lawyer ensured compliance and made suggestions twice annually.

Now let's see what would happen for our sisters if they were to pass away suddenly. No actual twins were harmed in the making of this example.

Five years after drafting her will, Amy has essentially forgotten about the document. During those years she got married, had two children, acquired three new investment properties, and got busy with life. She is driving to work on an uneventful morning. Out of nowhere, her small sedan is T-boned by an 18-wheeler. She dies upon impact. Amy's five-year-old will is her only estate planning document.

First, her will would have to be probated no matter what. Things get darker, though. She listed beneficiaries before her marriage and kids existed, and while there are legal ways to sort these things out, they are expensive and time-consuming processes for her already-grieving family to handle.

Further, not all of her assets are accounted for in that will. The investments she had purchased since weren't listed because the will wasn't updated, creating yet another issue for the court. Sorting out these details usually means legal and accounting fees are deducted from the estate while the heirs, both listed and presumed, wait. Sometimes they fight. Amy's family would be in a much better position if she had followed her sister's lead.

Suppose Caroline also started a family and grew her portfolio in the five years since making her plan. Now let's suppose she's fatally struck by lightning. Her heirs won't be attending probate court like Amy's, because she used the power combination of a pour-over will, living trust, and closely involved attorney. Her family was included in her trust agreement, and even though her last investment hadn't been formally listed in her documents before she passed on, the pour-over will ensure all assets went into her living trust for distribution.

While a living trust clearly beats a will alone, the pour-over will combined with a living trust is the gold standard for the vast majority of our clients. The pour-over will is superior to the simpler will solution mentioned above because it accounts for all assets you control at the time of your death. Any you hadn't added are "poured" into your living trust, offering a smooth business transition option that also takes care of your heirs.

SECTION II: HOW IT WORKS

How To Set Up

Estate planning is vital for all people, but real estate investors in particular have unique concerns. Estate planning for real estate investors with less than the federal estate tax thresholds (currently approximately $5.5 million) consists of two fundamental tools:

- Living Trust
- Pour Over Will

The living trust is a much more effective vehicle for conveying your assets directly and tax-efficiently (or even free in certain situations) to your loved ones and other heirs than the traditional “last will and testament.” That’s movie stuff. If you want real protection, you need a living trust that contains all of your assets and a pour-over will to back it up in the event you acquire assets not yet in the trust.

There’s much more to estate planning than these two tools, but they are universal for most plans for investors with assets valued under $10 million. Those exceeding this limit must make additional plans to protect it.

However much you end up with, remember that you can’t take it with you. Estate planning is how you control where the rewards of your life’s labor go and provide for the ones you love.

Living Trust

A trust is a great way to pass your legacy on to the next generation, whether they are your family, friends or someone else.

When establishing a trust, you enumerate your assets and designate who will receive those assets upon your death.

You also outline certain conditions that may be placed on your assets. For example, you may state that your children will receive an equal share of your estate upon your death. You can also add that your children shall not receive a distribution if they have a drug or alcohol addiction, or if they have a creditor who would seize the funds.

The trust may also set up distributions to minor children so that they don’t receive a large inheritance when they turn 18.

Living trusts are a legal vehicle that individuals use to pass their assets. They function like a will but have the advantage of avoiding probate when they’re drafted properly and when all assets have been transferred properly. For most people, a well drafted will is about all they’ll need.

For those with a lot of assets or assets spread across multiple states, a revocable living trust is a powerful legal tool that can streamline the process of distributing assets after death.

Living trusts are established by private trust agreements. This type of revocable trust is one you can form today, but deed property titles into for years to come. In this sense, it's also an asset protection tool.

Living trusts also allow you to name a trusted confidant to manage your real estate assets if you ever can't while alive, say because of a medical emergency.

Perhaps most importantly, because this tool avoids probate, your heirs will receive their share far faster with no surprise fees.

As a real estate investor, you may have many properties that you will pass on to your heirs. The living trust can help you ensure a seamless transition upon your passing. It may be helpful to think of the revocable living trust as a large lockbox that holds your assets. The trust's "job" is to hold title for the properties. Estate planning attorneys use living trusts as a way to avoid probate court.

When a living trust is created, a trustee will be named to control the assets for you. You can think of your trustee as the person who has the key to your "lockbox." Your role is simply to be the beneficiary of your trust. You may direct your trustee to buy, sell, or transfer assets into or out of the trust.

The living trust will have ultimate ownership and control over all of your assets and companies. The living trust allows for the control of the assets to immediately pass to the designated heir, as opposed to getting caught up in probate court by passing through an ordinary will. With this method, you can breathe easy knowing that mortgage payments are made, rents are collected, insurance premiums are paid, etc.

The living trust ensures that your property is not lost or diminished in value, which are both highly likely occurrences if the properties are caught in probate court.

A living trust is a legal container for property that is created by a trust agreement. The trust takes the title of various properties and assets. Control of those assets is granted to a trustee. In the majority of cases, the trustee is the same individual that is funding the trust.

Why would someone create a legal document to give themselves control over property they already have control over? The major benefit of a living trust is that it names beneficiaries of your assets upon your death and can avoid the probate court system during distribution. The key factor that distinguishes it from a will is that it is designed to avoid.

Since probate is governed by state law, properties held across multiple states can be subject to any number of jurisdictional restrictions depending on where they're held. While going through probate is not necessarily the end of the world, going through probate in multiple states can get relatively messy. In addition, there are some states that have particularly complicated probate laws. Properties held in California and Maryland are solid candidates for a living trust.

Florida is another candidate for a living trust. There are restrictions on who can serve as a personal representative for a descendant. With a living trust there, is no such complication.

It's important to keep in mind that when a property or asset is transferred to a trust, the asset becomes property of the trust. For instance, if you were to transfer a car to a living trust, you might find it difficult to insure the car as a result, since the car is no longer in your name. This, in fact, makes it difficult to transfer certain kinds of assets into the trust. Only when the titles of these assets are transferred to the trust do they avoid the probate process.

There are some people that are under the impression that living trusts allow assets to transfer tax-free. That isn't the case. Assets stored in a living trust are not granted any kind of special tax consideration, either while the grantor is alive, or after the grantor has passed.

In addition, all assets in a living trust are considered "countable" for the purposes of qualifying for entitlements such as Social Security or Medicare.

Assets that are placed in a trust are still subject to claims brought forth by creditors. In other words, living trusts don't "shield" your assets from claims against the estate, either while you're alive or after you've passed.

In short, here are the benefits and disadvantages of the living trust:

Benefits

- You can transfer your assets privately. For those whom privacy is a major consideration, the one major advantage of avoiding probate is that court proceedings are a matter of public record.
- Asset transfers are not a matter of public record.
- You can dictate what happens to your property if you're incapable of managing it yourself.
- Living trusts are easier to change than a will.
- Living trusts are more difficult to contest than a will.

Disadvantages:

- Cost money to set up
- Do not always avoid the problems they are designed to avoid
- There are legal complexities to the process that are not always obvious

Will

Having some means to make your wishes known to those you have left behind will resolve any potential infighting over assets. A will has three fundamental purposes. Those are:

- Distributing of your assets and your property
- Determining guardianship of children (if they are still minors)
- Setting up an executor to your property

There are a number of different kinds of wills, and beyond wills, there are other options like living trusts that allow you to distribute your assets.

There are also a number of different ways to draft wills. Those with few assets might consider drafting a simple will. These can be found online but might not account for complex situations or line up perfectly with state-specific laws. For instance, those who live in Florida are restricted on who they can name their executor. The will also requires signatories, at least one of which will need to be a notary public.

When most people think of a will, they are usually referring to the most common and easiest type of will for the average person to draft, a variation on the Simple Will. The requirements for and components of these wills are straightforward:

- Created when you are of sound mind.
- Give a complete list of assets and heirs.
- Specify who gets what.
- Name an executor to carry out your wishes for you.

A will alone is not an estate plan, but more of a guarantee that your family will end up in Probate Court, possibly languishing there for years. Having a proper estate plan is the kindest thing to do for your loved ones, and the only way to ensure that your business outlives you.

Even an ambiguous will, such as one written by you but not reviewed by an attorney, can create problems. What typically happens in these cases is that the state distributes up the valuables and funds as they see fit.

Will vs Living Trusts

There are many crucial distinctions between the living trust and the will. The differences touch on everything from legal and business differences to the costs you can expect to pay for your estate plan.

Wills must be probated, which means your grieving loved ones would be navigating a maze of red tape before receiving anything from the estate. Living trusts bypass this process and allow for the control of the assets to immediately pass to the designated heir, as opposed to getting caught up in probate court. With this method, you can breathe easy knowing that mortgage payments are made, rents are collected, insurance premiums are paid, etc.

The living trust offers greater anonymity for real estate investors, even after their passing. Your heirs will also benefit from this privacy. Probate court records are public, while trust filings are private. The probate court would never be involved in handling matters pertaining to your trust.

Wills may be cheaper upfront, but you get what you pay for. The money you “save” could lead to more costly heartache for your heirs, particularly if you truly cheap out and write it yourself. Resist that urge.

Living trusts are more expensive to establish, but you’ll be far more protected. They can’t be contested or held up in probate court for months, even years—a fate all too normal for those who die with only a “Last Will and Testament.” Trusts have the advantage of being more difficult to contest. They are also easier to amend than wills.

With living trusts, your heirs won’t also have to worry about paying out lawyers and accountants or fighting for their fair share if your living trust leaves no room for ambiguity. This is just one more reason to get professional help for your estate plan.

The living trust ensures that your property is not lost or diminished in value, which are both highly likely occurrences if the properties are caught in probate court. It has the added benefit of keeping the value of the home out of the taxable portion of your estate.

Living trusts are easier to modify than wills, but harder to challenge legally. Trusts are also private, meaning using a living trust would remove your name from the public record. You would no longer own the property but retain control as the beneficiary of the trust.

Fundamentally, a living trust acts in much the same manner that a will does. A revocable living trust, however, offers some options that a will does not.

The major difference between a will and a living trust is when it takes effect. A will goes into effect only after a person dies. A living trust can go into effect the moment you are either incapacitated or can no longer make decisions on your own behalf.

The living trust is an excellent option for those with Alzheimer's running in their family. Wills can be contested. A living trust is much more difficult to contest. On the other hand, a living will can accomplish the same thing. It basically specifies who is allowed to make decisions on your behalf if you can't make them on your own.

Combining Living Trusts And Pour-Over Wills

These tools work together to ensure a seamless business transition that carries on your legacy as quickly and simply as the law allows. The go-to model that works for most investors with assets valued under $10 million is a combination of the pour-over will and living trust.

A "pour-over will" essentially states that anything that was not put into your living trust during your lifetime is "poured" into the trust and distributed accordingly to the beneficiaries (your heirs). The pour-over will can help avoid some of the sadder situations involving confusion regarding heirs and other unique estate planning situations.

With these tools working together, you need not worry about all of those "Last Will"-only issues. You simply deed all of your assets to the living trust. As for the pour-over will, it's a better choice as well than a "Last Will and Testament" alone.

For the real estate investor, a pour-will pairs well with the living trust to ensure a smooth, private transition of your assets. Using these tools together is a smart move.

Other Estate Plan Documents

Have you ever considered what would happen if you were in an accident and couldn't do the things you need to do for your real estate investments? Someone needs to be there to collect rent, make payments, and otherwise manage real estate investments.

Power of attorney documents, including both medical and durable power of attorney, allow you to make provisions for what would happen if you're ever unable to make decisions for yourself. You get to call the shots ahead of time in the event of an emergency.

Medical power of attorney

What happens when you become medically incapacitated? If you're in a coma, or when you're in surgery, granting someone medical power of attorney gives them permission to make medical decisions for you if you become incapable of doing so.

Durable power of attorney

Someone has to pay the bills when the unforeseen happens. Durable power of attorney lets you designate someone to manage your investments and financial affairs in the unfortunate event of an accident or severe, debilitating illness.

Living will

The living will lets you plan ahead in the event you have a terminal illness or end up in a vegitative state (for example). What are your preferences for end-of-life care? It's a difficult choice—especially for large families, who can end up fighting over what to do. The living will gives you the chance to tell them EXACTLY what you want to do, while you are of sound mind and body.

HIPAA

This document allows the person(s) named within to access your medical records. A copy of the signed HIPAA is not valid, but if you want to provide a HIPAA to more than one doctor, just print out another blank one and sign it (in front of a notary in CA). If you want to make changes to a HIPAA form, you will need to provide a new HIPAA form to each doctor.

How To Manage

Trustee Vs. Executors

The position of executor tends to be temporary, while someone could serve as a Trustee for a few months or a few decades.

Think of an executor as a "liquidator" and a trustee as more of a "manager." An executor's duties are complete once everything has been liquidated, whereas a Trustee's duties are complete when there is nothing left to be managed.

Fun fact: Usually neither an executor nor a trustee is compensated for their position. Many have tried to monetize this position, and few have succeeded.

Executors

The executor is tasked with administering and distributing the estate. Their main job is to ensure the deceased's wishes are carried out.

For an executor to do their job properly, he or she must know the identities of any heir and have a solid comprehension of the will.

An executor, also known as personal representative, has the authority to administer and distribute an estate. If you were appointed as an executor (or personal representative) in a will, you will need to understand the terms of the will and who the heirs are.

In most situations where only a will is used, you will need to go to court to be appointed as the legal executor of an estate and will need court approval to transfer certain assets (such as a home.)

Trustees

You know in the movies where the trustee calls everyone together, puts a videocassette into the VCR, then the eccentric old billionaire tells everyone that to get his money they have to defeat his greatest enemy or solve a riddle?

It may not be this dramatic, but your trustee will tell everyone what they can expect. Your trustee will determine what exactly your assets are to make sure they are distributed to the heirs/beneficiaries of your trust. They will organize these assets for distribution. This may include listing and selling property, transferring ownership of businesses, jewelry, art, bank accounts, etc.

The trust's "job" is to literally own properties, cars, family heirlooms, or any other assets that the creator decides to place within it. The person who creates the trust provides for its funding.

The trustee, who may be an individual or even several people, is tasked with determining how money and other assets flow in and out of the trust.

If the trust was established correctly and if it was properly funded (the trust owns the assets of the deceased person), then you will not need to go to court to get approval to administer the estate.

The trustee will make the funeral arrangements with the help of the family. The hardest part about this is managing a grieving family. If your son or daughter doesn't do well with grief, you may want to consider someone else.

Dying is expensive. Your trustee will pay off creditors and hire professionals (lawyers, real estate agents, etc.) as needed to assist with the process.

Choosing a Trustee

Appointing a trustee is an important part of estate planning. Your trustee will have an immense responsibility thrust upon their shoulders following your death. But finding a trustee is easier said than done. How do you know how someone will act once you're not around anymore? If you appoint the wrong person, they might end up making you "roll over" in your grave.

Let's look at eight questions to ask when picking a trustee.

#1 How Large is Your Estate?

If your trust is worth $2 million or so, listing a family member as the trustee is probably your best option. However, if your estate is worth over $4 million you may want to consider listing a lawyer as the successor trustee of your estate.

And if you've been fortunate enough to accumulate an estate worth over $10 million you may want to consider listing a trust company or bank as the trustee of your estate. Note: If you appoint a trust company to manage your trust it will cost tens of thousands of dollars, so this option is only viable for large estates.

#2 When Should You Appoint a Non-Relative Trustee?

If you have heirs who are likely to disagree and cause problems, you may want to list a non-family member or a friend as the trustee so a third party can make decisions. This way you can avoid potential contention and litigation over your estate.

#3 Does Your Trustee Have Financial Skills?

If you are selecting a family member, choose one who has shown good financial skills over their life. If you're selecting a child over another, consider their financial skills, work background, and family dynamics.

Choose someone who is well organized and who can get things done. You want a responsible person to be your trustee.

#4 What Are The Dynamics of Your Family?

Every family is different. Some have gold diggers, others have delinquents. Maybe your children are too young to be trustees, or you don't have a spouse. In any case, just think long and hard on this one!

#5 Will They Be Compensated?

You may compensate them or give them something extra from the estate for taking on the responsibility, but generally family members are appointed to serve without compensation. Those with large estates may want to hire a professional instead.

#6 Can Your Heir/Beneficiary Be a Trustee?

Yes, you may have your beneficiary/heir serve as trustee. Most people who have adult children will list a child as the successor trustee and this person will typically be a beneficiary/heir.

Note: While there is some conflict of interest in this arrangement, the trustee is bound to the terms of the trust and can't abuse that discretion for their own personal benefit.

#7 Should You Appoint Co-Trustees?

Some people will consider listing co-beneficiaries as successor trustees. This can be a way to involve more than one family member in the distribution of the estate so that one person doesn't feel left out.

While there can be some benefits to involving another person as trustee, it can cause tension and confusion as to who is doing what. Make sure you're specific about their authority and responsibility if you are listing multiple trustees.

#8 Who is Most Commonly Named?

In most situations, you will be the trustee during your lifetime and your spouse will be trustee if they survive you. But you can select a family member, friend, company, etc.

Most persons with adult children will list one of their children as successor Trustee. Most persons with younger children will list a sibling or close friend as their successor Trustee.

What To Expect As An Executor/Trustee

Where a will names an executor, a living trust names a successor trustee.

Whether you've been named an executor or a trustee, the first thing to do is to read the estate documents.

The role can be as emotionally draining as it is time-consuming. But don't forget that you have a job to do, and you must do it with your head and not with your heart.

Before you do anything, you need to review any and all paperwork relating to the estate. These should cover the basics: funeral arrangements, how the deceased wants the estate managed, and preferences about matters like burial. These documents will specify the distribution and management of the estate.

The estate will assume their costs, particularly if it is a large or complex one. If you spend any of your own money in the course of your duties, the estate should reimburse you.

The estate documents should outline exactly how the estate will be administered. Sometimes, the court has to approve certain aspects of this, such as when the family home is transferred to an heir. This is particularly common if the estate is based solely on a will (all the more reason we should all be thorough in our estate planning.)

Let the judge interpret the law, or anything ambiguous for that matter. Even if you have legal chops of your own, you'll likely need a greenlight from the court to interpret much of anything.

Determine Assets

You will need to determine what assets are included in the estate. Sometimes this can be difficult to determine, as the deceased person may not have provided complete information as to their bank accounts, investment accounts, real estate, retirement accounts, and life insurance policies. The first order of business for a trustee is to clarify which assets are held within a trust. If you were appointed as a trustee in a trust, you will need to understand what assets are owned by the Trust and what assets are owned outside the Trust.

Assuming the deceased planned ahead, there will also be a specific document cataloging valuables like heirloom necklaces or firearms. In legalese, we call this a "memorandum of personal property." Common items identified and handled on the memorandum of personal property are jewelry, guns and other valuables.

Identify Heirs

Most estate documents such as a will or a trust will list the heirs to the estate and these heirs (AKA, beneficiaries). Usually the heirs are clearly identified. However, what happens if the will or trust listed one of your siblings as an heir and what if that sibling is no longer living?

Does that portion of the estate go to your sibling's surviving spouse or children or to the other siblings? Hopefully the will or trust will state what shall occur in this instance. But in many instances this item can be overlooked and not considered in the estate plan.

As executor or trustee, you are left to determine who shall take the place of your deceased sibling and this decision is subject to the terms of the document and state laws.

Identify Creditors

Almost every estate has creditors who need to be paid. From credit card companies and other consumer debt to mortgage lenders with liens on real estate owned by the deceased.

As executor or trustee of the estate, you have an obligation to guarantee that all creditors claims are paid from the estate. Failure to do so may result in liability to you as the executor or trustee or to the heirs who receive distributions from the estate.

Whether you are working with a secured or unsecured creditor, you will need to provide evidence of your position as executor or trustee, which in the case of a Will would include a copy of the Will or in the case of, a Trust would include a copy of the certificate of trust.

In general, secured creditors such as mortgage lenders or car lenders will be paid upon the sale of the property or asset unless the estate otherwise ahs cash available and intends to hold these assets.

Regardless of whether the asset will be held or sold, you should immediately notify secured creditors of the death of the deceased person. Where possible, you should make sure that payments are made to these creditors to avoid late fees and other penalties.

If properties or assets subject to the secured creditor are paid, then the proceeds from the sale will resolve these debts.

As for unsecured creditors, you should notify them of the passing of your loved one. However, these creditors are not always paid in full. Don't be hesitant to negotiate with unsecured creditors, such as credit card companies. They can be negotiated with fairly easily.

Maybe start with an offer of 1/3 of the amount owed and see if the unsecured creditor will accept that amount as a payoff. While they do have legal recourse against the estate, they do face significant legal fees in probate court to collect on the debt.

If the estate must be probated in court, as will typically occur if there is only a will, then as executor you are required to notify creditors of the probate court action and of the assets of the estate.

Unsecured creditors then have a certain amount of time to assert their claim against the estate. Most unsecured creditors won't follow up and make a claim against the estate despite being given notice of the assets of the estate.

Look to negotiate with these creditors and if you are in probate court already, wait until they actually make a claim in the probate court (following notice of the case and deceased persons death you will be required to provide) before paying those creditors.

You have a good chance that the creditor won't even make a claim.

It doesn't take long for the vultures to circle. You'll have two kinds of creditors to tango with: secured and unsecured. Worry about secured creditors first. These are folks like conventional lenders. You'll want to make sure these types of creditors are notified of the deceased's passing right away. Make payments immediately, as soon as reasonably possible.

Unsecured creditors, on the other hand, have to actually come after you in the form of a claim. Unsecured creditors can include everyone from the neighborhood bookie to the (much more likely) credit card companies. Fortunately, credit card companies are fairly realistic about the fact that they're unlikely to be paid off in full. So bust out your haggling skills. There is some wiggle room about the total bill, but don't expect the company to tell you that.

While credit card companies won't break your kneecaps, they can make probate court an even bigger pain in the ass than it already is. Both types of creditors can demand and collect legal fees in a court setting. If the estate ends up in probate court, you will be obligated to alert all creditors of this fact.

To recap: Don't mess around with secured creditors. It's a good idea to delay making unsecured creditor payments, because if a claim is never made you won't be on the hook. There's also a clock on how long these types of creditors have to make a claim at all.There's a good chance this one is going to take care of itself by dissolving into the ether of banking bureaucracy. Now it's time for the fun part: probate court.

Guide the Process

The estate documents and the assets of the deceased will determine the process to administer the estate. Also, if the deceased person had assets in multiple states if they only left a will, you may need to conduct probate in multiple states.

There are a number of common situations where you will need to go to court to obtain court approval in administering the estate.

In the case of a will, you will typically need to go to probate court to be appointed as executor by the court and to get court approval to transfer any real estate assets to heirs or in a sale from the estate.

Also, if the identity of heirs is in question, you may need to get approval from the court as to the proper heirs to receive proceeds from the estate.

Lastly, you may be required to go to court if the estate documents leave contradictory, improper, or confusing provisions that cause disagreement amongst heirs. In this situation, obtaining approval from the court is advisable in order to avoid claims against yourself and the estate.

Handle Taxes

As executor or trustee, you must also make sure individual income tax returns and estate tax returns are filed. That's right, you get to deal with both of life's inevitabilities in one experience: death and taxes. This can be tricky, considering the circumstances.

You'll have to file the deceased's final tax return. You'll want to be certain that you label the returns with the word "DECEASED" across the top of the tax return. In addition to a final income tax return, you may be required to file an estate tax return using IRS form 1041. This is required if the estate receives $600 or more in gross income.

As your last task, you may have to also file an estate return. This is legally required if the estate earns over $600.00 in gross income.

How To Avoid Errors

Thanks to the Internet, you can also plan your own estate from the comfort of your own home. Not only is this cheaper, but it's also convenient.

However, this "convenience" has caused disasters for many families. "Do It Yourself" estate plans often fail to provide the kinds of benefits and protections that you would get in a well-drafted and planned estate.

The same mistakes come up over and over when people create wills and other documents without legal counseling.

Improper Signatures in Wills

Most states require the signature of the person creating the will as well as two witnesses to the will. The only exception to the two witness requirement in most states is handwritten wills.

Failure to adhere to the signature and witness requirements invalidates the entire will. It doesn't matter how good it looks or how many terms you included. If the signature and witness requirements are not followed, then the will is invalid.

Failure to Fund The Trust

Many people who create a revocable living trust (AKA a "trust") on their own don't fund the trust with the assets from their trust. Funding a trust means that you actually put the assets you want to be controlled by the trust in the name of the trust.

Let's say you want your home to be subject to the terms in your trust. To do this you would need to deed the home out of your personal name and into the name of the trust.If the property is not deeded into the trust it falls outside the trust terms and your heirs will need to go to probate court to get a judge to approve any transfers of title to the property following your death.

As for stock or LLC ownership, those need to be transferred into the trust. And for insurance, investment, and savings accounts, those should be put in the trusts name or the trust should be listed as a beneficiary.

Note: Failure to properly fund your trust will lead to your heirs going to probate court.

Irrelevant/Non-Custom Forms

Most families have at least one unique situation to their estate that is not covered by standardized documents found on the web. One situation that would be hard to deal with in a will is when you have a child who is financially irresponsible while the rest of your children are not.

Or, maybe you have an estate that has more debt than assets, in which case you would need to structure your estate plan to leave as little money as possible to the creditors.

More "unique situations" include you having assets in multiple states or being married to a spouse with children from a prior marriage.

The list could go on and on but these unique situations are rarely handled properly when you're doing your estate plan on your own.

Check out our educational resources about the most effective legal tools asset for estate planning for REIs. But keep in mind that the most important thing isn't what you use, it's that you use the things suitable to you. Doing your own research is wonderful. We encourage you to use our free educational resources as much as you like, and read even more on top of that.

But given how important this issue is, this research should just be your starting point. Use it to form questions for the legal professionals assisting with your estate plan … and stay away from LegalZoom and the other "out of the box" legal documents that will cause more headaches than anything else.

How To Update

Your estate plan must be updated each time you buy and sell major assets. Include anything with substantial financial value, such as a bank account, real estate, as well as items with great emotional value like family heirlooms on your list of assets.

Be sure to update wills and beneficiaries. Do you have new step children? A new spouse?

Also update your medical power of attorney (the person who makes medical decisions for you if you are incapacitated). Whether you want your new spouse, a child, or another trusted loved one to make medical decisions for you, be sure your power of attorney documents reflect your choice—and that the responsible party knows your wishes in case you are ever incapacitated.

There are major life events that are critical times to update your estate plan and make any necessary adjustments.

Marriage/Remarriage

But before you tie the knot, you'll want to ensure your spouse will be a part of your estate plan. Spouses are often beneficiaries of wills and life insurance, and may be listed on titles to shared investments or homes.

It is particularly important to update your plan if this isn't your first wedding. You don't want things going to your ex that are more appropriate for your current spouse. Even for first marriages, your spouse may not be fully protected or presumed to be an heir if the plan omits them.

Getting remarried often means blending your family. If you have new step children that you wish to include among your heirs, your legal documents should be updated to reflect this.

Parenthood

Kids, accompanied by marriage or not, really do change everything. One massive reason children can affect estate planning is because this documentation lets you dictate guardianship: who gets your children if you and the co-parent both pass away. It's a situation nobody wants to be in, but one to plan for. Otherwise, the judgment call could be left up to the state. States also have different laws about whether "natural children" are heirs. Keeping your plan current is critical if you want to retain control.

Your children turning 18 also matters. As adults, they can directly inherit assets, and your plan should evolve accordingly.

Divorce/Death of Spouse

Removing an ex from estate planning documents is one of many legal considerations during a divorce. All changes in marital status, including a spouse's death, should at least be cause for reviewing if not amending your estate plan. The detail to focus on is where a former spouse may be a beneficiary, and skilled estate planning attorneys can also inform you of other concerns for your unique situation.

Buying/Selling Major Assets

This includes investment properties, and one major reason why estate planning for real estate investors is approached differently. Those with investment properties may consider the living trust and pour-over will, which an attorney can craft to ensure the seamless transition of assets without the need for probate court. A new home of any kind can drive up your estate's value, but fortunately asset protection strategies including titling property to a land trust may help prevent this and other potential legal issues surrounding titling. For real estate investors who may be buying and selling assets frequently, it is important to know that you would normally update your estate plan each time you make a significant purchase or sale. This could present a challenge for an active investor with many properties, but that problem can be easily addressed by simply using a pour-over will.

New Business

Whether you started or purchased the business, understand it's also an asset. You'll need to decide who owns the business, and a succession plan is wise for particularly successful and profitable businesses. If you want to make the decisions around your legacy without incurring unnecessary probate court fees, updating your estate plan is vital.

SECTION III: THE BIGGER PICTURE

IRAs and Estate Planning

Roth IRAs, while primarily used for the purposes of retirement, can also be useful for estate planning. Contributions to the Roth IRA are taxed; distributions are not taxed.

Traditional IRAs may be converted to Self-Directed Roth IRA accounts.

How can you use this to your advantage in terms of estate planning?

Estate Tax

There's no way around the fact that an IRA, regardless of the kind, is included as a part of the owner's estate. When the IRA is inherited, the beneficiary is required to include each distribution as part of their yearly income tax. The distributions can be stretched out for the individual's entire life expectancy, but yearly distributions are mandatory.

Converting to Roth IRA

If you decide to convert a traditional IRA to a Roth IRA, you will have to pay taxes on the amount going into the account, since Roth accounts tax contributions and not distributions. You also don't have to convert the entire account over to the Roth, but whatever you convert will be taxed, so bear that in mind.

Benefits to converting to a Roth IRA include:

Distributions are no longer taxable

You're going to be basically paying off the taxes on behalf of those who will inherit the account when you convert it to a Roth. In fact, you can leave this as a notice upon your passing to pay off the taxes for the conversion and that would reduce the amount of taxes you would pay on your estate. Each time your beneficiaries take a distribution, the money would not be taxed.

You are not required to take distributions during your lifetime

With a traditional IRA, you must begin receiving distributions once you hit 70 ½ years of age. Not so with a Roth IRA.

Growth is not taxable

Traditional IRAs have tax-deferred status. Roth IRAs are essentially tax-free. The longer the IRA has had time to mature, the better the potential payoff. The growth of the IRA is tax-free and so are the distributions, giving you and your heirs non-taxable income for the remainder of your lives.

It’s a great time to convert

The new Tax Cuts and Jobs Act has made converting from a traditional to Self-Directed Roth IRA historically cheaper than it’s ever been before. It’s a great time to take advantage of low tax rates in order to save money on the cost of converting.

You can execute a ‘stretch’

To execute a stretch, simply pass the IRA to the youngest person in your family. A good example is a grandchild. Since the value of the distribution is prorated over the course of the child’s life, it stands a good chance of being less than the account’s annual earnings. Another option would be leaving the Roth IRA to a spouse who would not be required to take any distribution at all. When the spouse passes, the Roth can then be handed over to the youngest child in the family