

CHAPTER 1

INTRODUCTION TO ESTATE PLANNING

What is estate planning?

Important decisions in life require at least *some* advance planning. Decisions such as selecting a career, starting a family, and planning for retirement all require careful consideration of your abilities and goals to ensure that your personal objectives can be achieved. Estate planning is no different; in fact, proper and effective estate planning can be more important than many of life's other decisions since it is very difficult (if not impossible) to modify your plan after incapacity or death.

Estate planning is more than just a will, power of attorney, or other document designed to distribute your property. It is a process of identifying your goals and taking steps to achieve those objectives, including the preparation of appropriate legal documents. However, the process does not end there. Certain additional steps are also required to ensure that your objectives are achieved in the most efficient manner. Finally, regular review of your plan and periodic adjustments are necessary in order to take updates in the law into consideration as well as changes in your personal situation and objectives.

Personal planning objectives and the estate planning process

The process of planning your estate must begin with identifying your objectives. It is difficult to plan unless you know where you want to be when the planning is complete. An estate planning attorney who does not start with the client's objectives is unlikely to achieve results that are entirely satisfactory for the client and his or her family. Estate planning objectives vary with the person; however, the ones that I most frequently hear from my clients are:



- Protecting my spouse after I die
- Avoiding probate
- Reducing estate taxes
- Passing on the family business
- Making gifts to my family or to charities
- Protecting my assets from lawsuits or creditors (referred to as “asset protection planning”)

- Protecting my assets if I require nursing home care (referred to as “Medicaid planning”)
- Managing assets in the event of my disability or incapacity

While each of these is a laudable goal, not all will apply to a client’s situation. Consequently, it is important for the client to discuss his or her priorities with the attorney so that the estate plan will be consistent with the client’s objectives.

Implementation of the estate plan

Once your objectives are identified, your attorney can prepare documents and take the steps necessary to implement your estate plan. The type and number of documents prepared for one client may be significantly different than for another. The most common estate planning documents are a will, power of attorney (often referred to as a “durable power of attorney”); trusts for children, grandchildren or others; living will; or revocable living trust. At a minimum, a complete estate plan will include *at least* a will, power of attorney for financial matters, power of attorney for health care, and a living will. In Washington (or other community property state), a married couple may have a community property agreement, although such an agreement is not appropriate under all circumstances and you should not sign one without the advice of your attorney. This handbook will review in detail the purpose, advantages, and disadvantages of each of the necessary documents, as well as many others that may be appropriate.

The process of completing an estate plan may take only a few weeks or several months—even years—depending on the client’s objectives and circumstances as well as the complexity involved. A basic estate plan (including wills, trusts and powers of attorney) can be implemented in less than a month under most circumstances.

It is very difficult, if not impossible, to make changes to an estate plan after incapacity or death. If the plan is incomplete, outdated or mistakes were made in the planning process, your objectives may not be achieved. In addition, the expense in administering your estate may be substantially greater.

Involvement of professionals in the estate planning process

When preparing your estate plan, it is important to seek the advice and direction of a qualified attorney. It is generally best to select an attorney who emphasizes estate planning in his or her law practice to assist you with the planning process. Attorneys who emphasize other areas of the law, such as business, criminal or divorce law, are not likely to have expertise or experience in the area of estate

planning. Only an attorney may legally assist you in the estate planning process, although your financial advisor, banker, accountant, and insurance agent may be significantly involved in the process as well.

Many law firms have entire departments committed to working with clients in the estate planning process and/or the administration of estates and trusts. These law firms will also have other departments devoted to business matters, real estate, or litigation. Other firms (called “boutique law firms”) only offer estate planning or estate administration services.

Your estate planning attorney’s professional qualifications are very important. However, it is equally important that you select an attorney with whom you are comfortable in the same way you are comfortable with your doctor or financial advisor. The attorney that you select may very well be the lawyer who assists your spouse or your family with a variety of legal affairs in the event of your incapacity or at the time of your death. This relationship may extend for many years—perhaps decades.

The process of identifying your goals and preparing an estate plan may also involve input from other professionals with whom you work. It may be important for your attorney to consult with your accountant, financial advisor, insurance agent, trust officer, or other professionals from whom you seek advice. Keeping the lines of communication open between you and your advisors will ensure that your estate plan will incorporate all of the appropriate considerations and opportunities.

Regular review of your estate plan

Changes in your personal and family situation often warrant review of your estate plan. For example, you should contact your estate planning attorney in the event of the incapacity or death of a spouse or child, retirement, or a substantial change in your financial circumstances.

In addition, your estate plan may be affected by changes in federal laws (such as tax and pension laws), state law (including the state probate code and trust law), and local laws affecting property rights (such as your real estate). When these laws change or new laws are implemented, there may or may not be a resulting need to update your estate planning documents.

It is generally recommended that you contact your estate planning attorney at least once every three years in order to review your current situation and to determine whether any changes in the law will have an impact on your estate plan.

Preparing for the estate planning process

The first step in the estate planning process is the initial conference with your estate planning attorney. Your attorney can be most effective if you prepare for the conference by considering your estate planning objectives (some of the most common are outlined above) and preparing a net worth statement so that your attorney can identify potential tax and other legal considerations. Also, it is helpful to consider who should be appointed as your fiduciaries, such as your executor, trustee, and health care representative.

Preparation for the initial conference also includes considering whether there are any special factors in your personal and family situation, such as the disability of a spouse or child or circumstances involving a family-owned business, that should be taken into account in the estate planning process.

Many attorneys use an estate planning questionnaire to assist their clients in preparing for the initial conference. Completing the questionnaire prior to the initial conference will help your attorney be as efficient as possible which, in turn, will reduce the legal costs in preparing your plan.

A sample estate planning questionnaire is included in the appendix to this handbook. You may also download this questionnaire from our firm's website at www.landerholm.com. Go to the Estate Planning Practice Group page and click on the link to the Estate Planning Questionnaire.