

***Your Estate Plan and  
Your Legacy***

## **Your Estate Plan – Your Legacy**

Americans are considered some of the hardest working, most productive people in the world. We set and achieve numerous personal and career goals. Yet, almost 60% of us leave it to the courts to decide who will receive our assets (how and when), raise our children, take over our business, determine the fate of our digital assets, and how to handle our remains after our demise - all deeply personal decisions. Our legacy should reflect the same care and diligence we put into planning our professional lives and shaping our private dreams.

**Estate Documents** Estate planning encompasses financial, tax, medical and business planning. Basic estate planning documents should include a Last Will and Testament, Durable Power of Attorney (DPOA), Medical Power of Attorney (MPOA), Living Will or Healthcare Directives, and HIPAA Authorization. Additional documents may include a trust, guardian of the person, guardian of the estate, LLC or other business entity paperwork, and family limited partnership documents to name a few. Generally, you should review these planning documents every four to five years with your local attorney. Also consider changes after these events:

1. **Mental health status of family members** Dementia, Alzheimer's, disability, special needs all need to be considered and addressed in your estate plan. Elder exploitation is on the rise with many victims falling prey to sweetheart scams or other types of financial fraud schemes. Solutions could include the use of trusts, reviewing DPOAs, MPOAs, HIPAA authorizations, and long-term care planning. Proper estate planning must be in place when leaving assets to someone receiving Supplemental Security Income (SSI) and other public benefits. If left undone, this may jeopardize your loved one's ability to receive those benefits.
2. **Death/Divorce/Marriage** Review beneficiary designations and coordinate those forms with your estate planning documents. Consider your heirs' financial skill and acumen to handle the inheritance. If you have prior children not of the marriage, determine if you want to ensure inheritance flows directly to those children. A child/grandchild's marriage and possible divorce should be considered as well. Do you desire that the assets your child/grandchild inherits remain their separate funds? Is your child/grandchild/their spouse financially savvy enough to handle a large sum of money? You may want to advise the child/grandchild to consider a prenuptial agreement as well to protect their future inheritance.
3. **Re-marriage** Consider a prenuptial agreement. Work with both a family law attorney and an estate planning attorney for these documents. For example, a surviving spouse has the right to occupy the homestead in Texas for his or her life even if the home is the separate property of the decedent and gifted to someone else unless a prenuptial agreement states otherwise. A family law attorney may not be well versed in estate laws (and vice versa).
4. **Domiciliary** Have you moved? Laws vary from state-to-state. Therefore it is very important to review your estate planning documents with a local attorney to ensure your wishes will be met. Consider how property is classified (community versus separate). Does the court system favor prenuptial agreements? Does it favor business owners? Is probate "difficult" (do you need a trust) and which state do you want governing your trust?
5. **Changes in Wealth** Changes in wealth warrant a review of your estate plan since estate and state tax exemption laws change frequently. Your charitable desires should be documented and implemented through lifetime gifting strategies or bequests and beneficiary options.

**Do you need a trust?** You may need a trust if the some of the considerations above apply so be sure to discuss with your attorney your goals, profession, net worth and family dynamics. If you create a living trust, be sure to fund the trust, as waiting until you “need” to often presents itself at an inopportune time (i.e. sudden illness or life threatening diagnosis). Keep in mind that a DPOA ceases at death while a trust continues. The two types of trusts are a revocable trust and an irrevocable trust. A **revocable trust** can be altered or cancelled. It does not provide creditor protection during the life of the grantor but it does avoid probate, provide privacy and can control when and how often assets are distributed and contain other stipulations/wishes of the grantor. An **irrevocable trust** can’t be modified, amended, changed, or revoked (except in rare circumstances). Irrevocable trusts protect your assets from creditors since you can’t take your assets back once you fund the irrevocable trust. Since you no longer own the assets (the trust does) the appreciated value is not included in your gross estate, but requires the application of your lifetime gift exemption at the time of the gift. Your custodian offers corporate trustee services for trust administration purposes that will reduce the burden on your family members/beneficiaries.

**Assets that pass outside the Will** Assets that pass outside of the Will include items with a named beneficiary (i.e. IRAs/other retirement plans, life insurance policies, annuities, property owned joint with rights of survivorship, transfer on death and payable on death titling, and assets owned by a living trust). Therefore, it is paramount to review your beneficiary designations and account titling (community property, JTWR0S, tenancy in common) to ensure consistency with your estate plan. Your share of ownership for assets titled community property and tenancy in common will transfer via a Will (or be used to fund an irrevocable trust) and that may be exactly what your attorney intends to meet your goals. Consider naming your trust as a contingent beneficiary in lieu of a minor.

**Communication** Finally, once estate planning documents are drafted be sure to communicate with your loved ones that these documents are in place, where they are located, and who has access. Many clients store these and other important documents in their Frontier Wealth PASS vault and give their attorney, executor, and powers of attorney access to those specific folders. Don’t forget to complete your Letter of Instruction which is an informal document (no legal authority) that shares your financial and personal wishes with your heirs and can also include an ethical will or other personal statements.

#### **Specific Action Items Required**

- 1) Meet with a local attorney that routinely deals with estate planning documents and review them at least every five years or more often as personal circumstances and tax and probate laws change.
- 2) Communicate with your loved ones, executor and powers of attorney where the documents are stored, who can access the documents, and how. Any power holders should be given an executed copy of such document for access to your financial accounts in the time of need.

**Jessica Cafferata, JD, CFP®**  
**Senior Financial Planner**

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