

A person wearing a green sweater is looking down at a document. Their hands are visible, holding a pen and pointing at the paper. The background is slightly blurred, showing a blue shirt and a laptop.

# UNDERSTANDING YOUR ESTATE:

## CRITICAL ELEMENTS OF AN ESTATE STRATEGY

TAKING STEPS TO HELP PROTECT YOUR ESTATE IS A KEY FINANCIAL CHOICE. WITH APPROPRIATE STRATEGIES, YOU MAY BE ABLE TO MAXIMIZE YOUR OPPORTUNITIES AND HELP MANAGE STRESS AND CONFUSION FOR YOUR LOVED ONES. THIS WHITEPAPER OUTLINES CRITICAL ELEMENTS WORTH CONSIDERING WHEN CREATING YOUR OWN ESTATE STRATEGIES.

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Taking time to create estate strategies not only helps you put your financial house in order, but may also save you money. By documenting your wishes and goals, you create a legal framework that the courts, your executor, and your loved ones can follow when settling your estate. Without these strategies in place, your family risks going through a lengthy and expensive process — which could alter any wishes you had for your legacy.<sup>1</sup>

You can help make sure that your executor respects and upholds your values, goals, and desires for your estate by taking some time to thoughtfully prepare, today. Here, we outline some of the critical details that can play a role in creating your own estate strategies.

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## *KEY ELEMENTS OF AN ESTATE STRATEGY*

### *1. WILL*

A Gallup survey found that 55% of American adults don't have a will in place, which is unfortunate since a will can be one of the cornerstones of your estate.<sup>2</sup>

The will is a crucial legal document that helps outline what you own, how you want to distribute your assets, and who is to care for any minor dependents on you at the time of your death. A will can also help business owners successfully and efficiently transition their assets. If you don't have a will in place, then any questions connected to your estate will get resolved through the courts' probate process.<sup>3</sup>

#### **WILLS CAN BE CONTESTED**

Unfortunately, as important as they are, wills have shortcomings.

Although though they are a legally binding document, people can challenge them in court. In fact, the probate court will send out notice of the will to anyone who might have grounds to contest it. And if someone steps forward, there may be potential for a lengthy probate process.

Once estates go to probate, all details become public record — meaning anyone can find out how much you left and to whom.

### *2. LETTER OF INTENT*

With your will in place, another document that can help guide your estate is a letter of intent. While a will provides legal directives, you can provide a more personal voice by giving additional written instructions.

A letter of intent is not an official legal document, nor can it override your will.

However, the letter can work in tandem with your other estate documents.

You may need to update your letter of intent several times a year to reflect any details that have changed since your last check-in. Also, the more people involved in your estate that have copies of the letter, the better. Consider giving copies to your spouse, children, closest friends, or executor.<sup>4</sup>





### *WHAT DOES YOUR WILL DO?<sup>25</sup>*

- NAMES AN EXECUTOR
- NAMES GUARDIAN FOR MINOR CHILDREN
- DIRECTS HOW TO DISTRIBUTE YOUR PROPERTY
- GOES THROUGH PROBATE



## *DETAILS COMMONLY INCLUDED IN A LETTER OF INTENT*

- COMPLETE LIST OF ALL ASSETS, INCLUDING ARTWORK AND INVESTMENTS
- ESTIMATES OF YOUR ASSETS' CURRENT MARKET VALUES
- WISHES FOR PASSING DOWN HEIRLOOMS
- FUNERAL INSTRUCTIONS
- LOCATION OF TITLES/DEEDS FOR ANY REAL ESTATE
- CHARITIES YOU WANT TO SUPPORT

### HOW LETTERS OF INTENT HELP

**INFORM PROBATE JUDGES:** This personal letter can help clarify to the judge what your intentions are should questions arise.<sup>6</sup>

**BACK UP INVALID WILLS:** Sometimes, courts can find wills to be invalid. Should this happen, a letter of intent could help inform how you want to distribute your assets.<sup>7</sup>

**HELP IN A MEDICAL EMERGENCY:** Should an accident or emergency leave you unable to express your wishes, your letter of intent can offer the answers and perspectives you need to share.<sup>8</sup>

## *3. POWER OF ATTORNEY*

Typically, a power of attorney document authorizes someone to handle financial and some legal decisions when you become incapacitated.<sup>9</sup> The person you designate as a power of attorney doesn't have to be an attorney. Anyone you trust, such as a family member or friend, can serve in this role for you. You can even designate more than one person, assigning different responsibilities to each.<sup>9</sup>

The power of attorney can go into effect upon your incapacity or any other trigger event you specify. A power of attorney does not need to go through any additional legal proceedings. Individual states can have various power of attorney laws. So, consider becoming familiar with your state's specific regulations in order to make a more informed decision.<sup>10</sup>

### POWER OF ATTORNEY DESIGNATIONS

**GENERAL POWER OF ATTORNEY:** An agent under this agreement can serve any and all needs, as your state allows. They can do things like sign checks, sell property, and more.

**LIMITED POWER OF ATTORNEY:** An agent under this agreement can serve specific legal needs for limited timeframes. For example, you may choose to designate a loved one to manage only your retirement accounts for a few years.

## *4. HEALTH CARE*

A sound estate strategy should address your health needs in preparation for any medical emergencies. If you could not care for your estate as a result, you may need to have people designated beforehand who can manage responsibilities for you.

To include medical care in your estate strategies, start by organizing a variety of legal needs and documents, including:

**LIVING WILL:** A living will provides specific instructions about your medical care if you become incapacitated and unable to communicate. This will goes into effect immediately upon your incapacitation and may not need to go through any additional legal proceedings.<sup>11</sup>

**DURABLE MEDICAL POWER OF ATTORNEY:** A durable medical power of attorney for health care agreement authorizes someone to make medical decisions on your behalf. Like the living will and the power of attorney, it may not need to go through any additional legal proceedings.<sup>12</sup>

**HIPAA RELEASE CLAUSE:** The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 protects the confidentiality of your medical information. By signing a release approval, you'll permit hospitals and medical facilities to release your details to your designated health care proxy, such as your durable medical power of attorney agent.<sup>13</sup>

## *5. SECOND & THIRD MARRIAGES*

Forty percent of new marriages in the U.S. include a spouse who's been married at least once before. As a result, many Americans must plan for second (and third) marriages in their estate strategies.<sup>14</sup>





Whereas a first marriage typically builds a new foundation for your estate needs, subsequent marriages create additional layers of complexity. You may have children from your first or second marriage, as well as new assets to manage from your second marriage. Failure to build the estate strategies to protect your family and estate could leave you in a legal bind should something happen.

#### HERE ARE COMMON ESTATE NEEDS TO CONSIDER WHEN REMARRYING:

**PRENUPTIAL AGREEMENTS:** Prenuptial agreements may get a bad rap, but these legal documents can be a critical estate strategy for remarriages. In fact, they are one of the only ways you can prove who owns certain assets within a marriage. A prenuptial agreement can also help you put financial protections in place for your children, should a spouse die. State laws on prenuptial agreements can vary, so be sure to check your own state's requirements.<sup>15</sup>

**UPDATED LEGAL DOCUMENTS:** Once you remarry, your estate documents may need updating to align with this new stage in your life. You'll want to look over your will, powers of attorney, trusts, and health care directives, and revise them to include your new spouse, as needed.

**BENEFICIARY CONSIDERATIONS:** You may need to update your beneficiary listings for your accounts to include your new spouse, if you want them to inherit certain assets. Just note that your beneficiaries can also list their own beneficiaries after you die. This detail could mean your children are excluded as beneficiaries if your spouse designates other people — even if you told your children otherwise. You may want to consider this carefully as you create strategies that reflect your estate wishes.<sup>16</sup>

## 6. GUARDIANSHIP DESIGNATIONS

Having children means addressing their needs in your estate strategies, which includes naming legal guardians for them. If something happened and you and your spouse could no longer care for your children, a guardianship designation helps ensure you can choose who raises them. You may want to name a back-up guardian as an additional safeguard.<sup>17</sup>





### *FEATURES OF A TRUST<sup>18</sup>*

- AVOID PROBATE
- ARE NOT PUBLIC RECORD
- SUPPORT EFFECTIVE MANAGEMENT & DISTRIBUTION OF ASSETS
- PROVIDE SOME CONTROL OF BENEFICIARIES
- ARE DIFFICULT TO CONTEST







## DIFFERENCE BETWEEN GUARDIAN AND TRUSTEE

While guardians and trustees can both provide care for your children, they aren't one and the same. A guardian specifically serves in a custodial role, providing the ongoing care and guidance for children, making choices such as where they go to school and what they eat for dinner. Meanwhile, a trustee is a financial guardian who helps children with money matters, like receiving their beneficiary payments and paying their bills.<sup>19</sup>

## 7. TRUSTS

Trusts can be another powerful estate management tool, providing an effective management of your assets and their distribution to your heirs. A trust is a legal entity that can own property. Properly structured trusts completely avoid probate and avoid the accompanying delays and expenses. Trusts are not a matter of public record; they're a tool for maintaining privacy.<sup>20</sup>

Trusts can provide an effective management of your assets and their distribution to your heirs.

Even after your death, trusts can provide some measure of control over how assets are distributed to children and other beneficiaries. In addition, trusts can be much more difficult to contest than wills.

Trusts are governed by a complex set of tax rules and regulations. Before moving forward with a trust, consider working with a professional who is familiar with these dynamics.

## 8. LIST OF ACCOUNTS AND PASSWORDS

If you were to pass away suddenly, would your executor and loved ones know how to access all your accounts? Would they even know all the accounts you own?

Chances are, probably not. Considering that over half of Americans store their online passwords in their heads, the majority of people aren't preparing their executors to access their accounts.<sup>21</sup>

### CONSIDER TRACKING THE FOLLOWING CATEGORIES:

**EMPLOYMENT BENEFITS:** If you receive health care or retirement accounts through your employer, then you may want to capture these details for your estate executor. Also, include your human resources contact for this benefit.

**FINANCIAL ACCOUNTS:** Gather all the account details connected to your assets. This information could include investment accounts, credit cards, and safety deposit boxes.

**ONLINE ACCOUNTS:** Your online life may require management from your executor and loved ones in order to settle your estate. Be sure to list your account login credentials for all accounts, from social media to online streaming channels and more.

We are happy to provide guidance about estate strategies. If you have questions about the information in this report, please reach out. We're here to help.

Sincerely,



## *SOURCES AND DISCLOSURES:*

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- <sup>1</sup> TheBalance.com, December 9, 2019
- <sup>2</sup> Gallup.com, May 18, 2016. Most recent survey available.
- <sup>3</sup> TheBalance.com, November 29, 2019
- <sup>4</sup> Investopedia.com, August 5, 2019
- <sup>5</sup> Investopedia.com, December 11, 2019
- <sup>6</sup> Investopedia.com, December 11, 2019
- <sup>7</sup> Investopedia.com, August 5, 2019
- <sup>8</sup> AmericanBar.org, 2019
- <sup>9</sup> Investopedia.com, May 5, 2019
- <sup>10</sup> AmericanBar.org, 2019
- <sup>11</sup> LawHelp.org, 2020
- <sup>12</sup> ConsumerReports.org, October 24, 2018
- <sup>13</sup> PewResearch.org, February 13, 2019
- <sup>14</sup> Kiplinger.com, April 20, 2018
- <sup>15</sup> Kiplinger.com, April 20, 2018
- <sup>16</sup> Fidelity.com, January 22, 2019
- <sup>17</sup> Investopedia.com, December 11, 2019
- <sup>18</sup> Kiplinger.com, August 6, 2018
- <sup>19</sup> FindLaw.com, 2019
- <sup>20</sup> PewResearch.org, January 26, 2017
- <sup>21</sup> Forbes.com, April 27, 2018



