

MOLDENHAUER ASSOCIATES

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It has not been an easy year for investors, but it has been an even more difficult year for non-investors. The ups and downs are enough to make anyone dizzy. We are attempting to understand the moves the Fed is taking, but every time anyone believes they have an understanding of what they are attempting to accomplish, they seem to change directions. We keep studying, reading, and talking to the Investment Officers at the best investment houses. As the year progresses, I think the Fed will stop raising interest rates and that is when we should see the economy start a recovery.

At the time of this writing, we have had a slight up-tick in general market performance. Perhaps, we will have that soft landing the pundits keep projecting. Only time will tell how soft the landing really is.

In the end, we will guide our clients through the maze by adhering to time-tested principles and guidance. When we became an independent advisory firm in 2000, we recognized that working hard to provide the best guidance and service, in good and not so good times, was the best way to protect our client's planning success.

As I said at the time, it is better to avoid costly mistakes and miscalculations by being a cautious investor. We, at that time, promised clients the opportunity to meet with our advisors, face-to-face, on a regular basis. We have kept the promise for over two decades and will continue that commitment.

If you are like me, dealing with previously reliable suppliers of products and services has become more difficult. Whether it is getting a car serviced, a little help at a store, or even dealing with doctor's offices, people

have often become less polite and less interested in being of help. These things make life difficult. As your financial advisory firm, we will always treat you the way we would like to be treated.

As many of you know, as a senior member of the firm, I have had to spend the colder months of the year in another less harsh state. It has allowed me to maintain my health and still spend part of the year in WNY. As I write this article, I am preparing for my semi-annual trip to visit my doctors at Duke Medical Center and then we will travel to WNY.

While I am very fortunate to have two of my sons and their families within 30 miles of where I live, we miss family members in WNY and always look forward to returning home. It also allows me to see many clients and old friends.

Richard Moldenhauer

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DO I NEED ESTATE PLANNING?

Everyone needs an estate plan, no matter the size of the estate. An estate plan helps carry out your wishes after your passing and benefits you while you're living. A good estate plan includes documents to manage your financial affairs and health care decisions in the event that you cannot. It can prove invaluable in easing the administrative burden for your family and friends during a time of emotional distress.

With no formal estate plan, your survivors may not be able to access your assets until a personal administrator or guardian is appointed and the distribution plan is approved by the probate court. This process can last more than a year in some states.

Conversely, an estate plan benefits you, your family, and friends by allowing you to do the following:

- Quickly settle issues related to your estate, therefore minimizing expenses
- Provide financial support to friends or family members, such as a relative with special needs
- Avoid possible disruption of your business during the time of transition
- Direct money to your favorite charity or religious organization
- Reduce taxes owed after your death

It is advisable to consult with a qualified attorney about your specific situation and unique goals. Estate planning, however, does not have to be complicated or expensive.

Estate Planning for Parents

Estate planning is essential for parents. This is especially true if you are not currently married to your children's mother or father. Your children's surviving parent will generally be appointed guardian. Estate planning will provide the flexibility to name someone else to oversee the money you leave your children. If you have remarried, an estate plan can provide support for your surviving spouse, as well as protect your children's potential inheritance should your surviving spouse remarry.

Your children's inherited assets must be managed for them until they reach their legal age. In some states, the court may authorize a minor's guardian to open a "blocked account" or guardian account at a bank or a financial institution. These types of accounts are very restrictive, and withdrawals are not allowed during the child's minority, except by court order. Alternatively, a custodial account may be established under a state's Uniform Transfers to Minors Act (UTMA). In most states, a UTMA account will terminate when the child reaches 18 or 21. If you believe your children would not be ready to handle large sums of money at young ages, talk to your attorney about other alternatives, such as creating a trust. You can instruct your trustee to take into account your children's financial maturity or special needs when making distribution decisions.

Elements of an Estate Plan

A plan generally consists of three elements:

1. The **last will and testament** is a blueprint that directs who will receive your probate property upon your death and the specific circumstances in which they will receive it. Your will only governs property that flows through probate. For example, financial assets with beneficiaries other than your estate, jointly owned property with rights of survivorship, or assets in a trust funded during life are not distributed under the terms of your will.
2. The **durable power of attorney (POA)** authorizes someone, often called an agent, to handle your financial affairs if you were to become incapacitated. Without a durable POA, your family members would have to institute legal proceedings and request a probate court to appoint a guardian to carry out these responsibilities.
3. A **trust** is a formal arrangement allowing the trustee to hold assets. The trustee distributes assets to your beneficiaries at the time that you direct in the trust document. There are two basic types of trusts: a living trust and a testamentary trust. A living trust is funded during your lifetime and may receive your estate assets after probate is complete. It is often called a revocable trust because you retain the right to make changes or remove property during your lifetime. A testamentary trust is created after your passing and your will is approved by the probate courts.

Key Terms

An understanding of key terms commonly used in estate planning will help as you create your plan. They include:

Probate.

This term refers to the legal process of administering a will or distributing property. Depending on the size of your estate and your state's laws, the probate process can be either simple or complex. You may be able to avoid legal complexities by minimizing how many of your assets flow through the probate process. By funding trusts during your life, naming beneficiaries on insurance or financial accounts, and registering jointly owned property to include rights of survivorship, you may be able to avoid probate, if doing so meets your estate planning goals.

Executor.

Also known as the administrator or personal representative, your executor follows the instructions you outlined in your will, ensuring that your wishes are carried out. In executing your will you nominate your choice or choices for executor. While only the court can officially appoint the individuals named to that role, it will generally respect the wishes expressed in the will unless there is a compelling reason not to. If there is no will, the court would consider any petitions for appointment as executor of the estate and would appoint an executor from among those petitions.

Intestate.

If a person dies without a will, the decedent's probate property will be distributed in accordance with state law. This is called an intestate estate. This could mean that the people most important to you, or those most in need, will not receive what you would have wished.

Simplified probate procedure.

Almost every state offers small estates an alternative to the formal probate process. The requirements and rules differ from state to state, but if the estate qualifies, simplified probate procedures allow a speedy distribution of assets to heirs without waiting for court approval.

Letter of instruction.

This document provides informal guidance to your executor and can add important clarification about your wishes. It may include information about your funeral arrangements, wishes for your pets' care, or descriptions of specific assets' sentimental value. Your executor may find that your letter of instruction is the most important document of your estate plan.

Health care proxy.

Also known as a health care POA, this document authorizes someone to make health care decisions if you are unable to. It can also allow your wishes to be known about end-of-life decisions in the event you are unable to communicate. The latter may be part of your health care POA document or an advanced medical directive, also referred to as a "living will."

Beneficiary designations.

Retirement plans, life insurance, and annuity policies allow you to name who will receive your account without waiting for probate to conclude. Some brokerage and bank accounts, known as "transfer on death" or "paid on death" accounts, also allow you to name beneficiaries. If all of your primary beneficiaries predecease you, your named contingent beneficiaries will inherit the accounts. If you fail to name contingent beneficiaries, your estate is usually the default beneficiary.

Per stirpes.

This Latin term can be used in conjunction with a beneficiary designation as a substitute for a lengthy list of contingent beneficiaries. If part of the estate would have gone to one of your previously deceased children, the inherited share is divided among the offspring of this person. The laws governing how the inheritance is divided differ from state to state. It is important to understand how financial institutions where your accounts are held will administer per stirpes inheritances.

Joint ownership.

There are several ways to own property with another person, but not all registrations avoid probate. In most states, joint ownership, tenancy by the entirety, and community property with right of survivorship can act as effective substitutes for a will. Adding a joint owner to your property merely to avoid probate is not always a good idea because it may cause a taxable gift, subject the property to your joint owner's creditors, or raise disputes after your death.

Important Considerations

Estate planning can be complex. Be sure to keep the following in mind:

- Be sure that your beneficiary designations reflect your wishes and align with your will or trust documents. Contact your current and former employers, your investment advisor, and your life insurance agent for the required paperwork to make any changes, if necessary.
- Don't make the mistake of assuming a change in your circumstances, like a remarriage, will make a prior designation null and void. Always make beneficiary changes on the correct paperwork specific to the financial institution.
- Include both primary and contingent beneficiaries for your accounts. If your primary beneficiaries die before you, without a backup beneficiary, the death benefit would be paid to your estate. This can result in unnecessary fees and delays associated with probate, as well as accelerated taxes.
- Relatives with special needs or disabilities rarely inherit directly. Receiving an inheritance outside of a special needs trust could mean the loss of valuable government benefits.
- A spouse who inherits a retirement account has several options for deferring income taxes until the money is needed. When your children inherit retirement accounts, they cannot defer taking distributions from the account until their own retirement. Rules governing those distributions have become less favorable and more complex in recent years; generally, absent special circumstances (such as a minor or incapacitated beneficiary), retirement accounts inherited by individuals other than a spouse will (at best) need to be withdrawn within 10 years of the participant's death.
- You can name a trust as the beneficiary of your retirement accounts, but be aware of the tax impact, which can be significant. In the end, the advantages of having the retirement accounts managed by a trustee may outweigh the tax disadvantages.

How Much Will Estate Planning Cost?

It depends. Costs vary from state to state and by the size of your potential estate. There are many steps you can take yourself, without an attorney, such as adding beneficiaries to financial accounts. Many people, however, need several legal documents, such as a will, a durable POA, a health care proxy, and possibly a trust for their estate plan. Although free and online resources for these documents are available, they may not be right for your specific needs.

It's always in your best interest to discuss your situation and goals with a knowledgeable attorney. Ask about fees and the cost of an estate plan at your first meeting. Many attorneys charge a flat fee for simple estate plans. When the estate is significant and tax planning is required, it is common for an attorney to charge hourly. If this is the case, remember that you can save a significant amount by organizing your documents, creating a net worth

statement, and thinking ahead of time about your goals and potential heirs.

If you decide to use “fill-in-the-blank” legal documents, be aware of what is required in your state for validation. Many attorneys will answer questions about the legal documents you intend to use for a reasonable consultation fee.

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END-OF-LIFE PLANNING CHECKLIST

To ensure that your wishes are carried out after your death, end-of-life planning is essential. But when it comes to organizing your personal and financial affairs, it can be difficult to know where to start. The following checklists are designed to guide you through the planning process.

Estate Planning

- Execute and update living wills, durable powers of attorney (POAs), and any other documents that contain instructions for your care in the event of incapacitation. Provide copies to your physician, health care facility, and primary agents. Keep the originals in a safe place known and accessible by family members.
- Execute and update a will (and trust, if necessary) to direct the disposition of your assets. Keep the originals in a safe place known and accessible by family members.
- Consider specific bequests of personal property (e.g., family heirlooms, jewelry).
- Consider charitable gifts.
- Review beneficiary designations on assets that will transfer to a named beneficiary (e.g., retirement accounts and life insurance policies).
- Review how property is titled and make necessary changes.
- Consider organ donation or other deathbed wishes.
- Prepare instructions to your executor and/or family members, including a list of assets and personal records and their locations. Note the locations of safety deposit boxes, post office boxes, and safes, as well as keys and combinations.

Financial Arrangements

- Execute durable general POAs to authorize an agent to act on your behalf concerning financial matters.
- Prepare a list of your advisors and their contact information.
- Document the location of financial records (e.g., tax returns; bank statements; homeowner, life, and automobile insurance policies; automobile titles; and deeds).
- Document the location of personal records (e.g., social security card, divorce papers, birth certificate, and passport).
- Document social security or other pension benefits that may provide death benefits.
- Document contact information for utilities, repairmen, and so on.
- Review and discuss your financial picture with family members. Funeral Arrangements
- Consider preplanning and paying for burial arrangements, including transportation. Select participants for a memorial service (e.g., officiant and pallbearers).
- Consider helping family members assemble personal information for an obituary.
- Prepare a list of individuals whom you would like to be contacted upon your death.
- Notify family and friends of the arrangements and any other burial wishes.

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UPCOMING EVENTS:

Our upcoming seminars are at:

TO RESUME IN SEPTEMBER 2023

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