

Ten Timeless Tips for an Effective Estate Plan



Good estate planning anticipates your death and disability.

Great estate preparation reflects your chosen legacy. What's yours?

You can't plan for every one of life's contingencies, but follow these tips and you'll be as prepared as anyone to care for your loved ones, anticipate incapacity, protect assets, and settle the estate efficiently.

Never mind dying...

GIVE POWER OF ATTORNEY & HEALTH CARE PROXY TO TRUSTED PERSONS.

Tip 1: For most of your life you are far more likely to be temporarily incapacitated or disabled than you are to die. Be prepared for times when you might not be able to make decisions for yourself, by giving power to others to act on your behalf.

Care for yourself through possible periods of incapacity and illness or into advanced age with proper legal instruments giving power to others to act on your behalf. Provide guardians for your minor children for times when you are incapacitated. Consider, and then execute, the following: Durable Power of Attorney, Health Care Proxy, Living will, Medical Directive, HIPAA Release, Emergency Guardian Appointment for Minor Children, Special Business and Professionals Powers of Attorney.

How you hold title matters – a lot!
CAREFULLY TITLE YOUR ASSETS.

Tip 2: Hold title and designate beneficiaries on your assets, policies, annuities and retirement plans properly.

Title your assets and designate beneficiaries on life insurance and retirement plans carefully and flexibly. Exact wording is important, as well as asking "what if?" -- "What if I die before the other owner(s)? Who owns the asset then?" And, "What if the beneficiary I name is not living, is incompetent, or has claims against him at the time I die?" Are you sure the asset will be paid to the person or persons you intend and in the correct proportions? Word these titles and designations wrong, and you may live – or not be living – to regret it!

Consider the meaning and implications of each of these forms of ownership and beneficiary designation before using them: Sole, Joint or Common ownership; Tenancy by the Entirety; general partnership, limited partnership or liability company or corporation; revocable trust, irrevocable trust; payable on death, in trust for, for the benefit of; custodian for a minor; per stirpes, by right of representation, per capita at each generation, to children, grandchildren, descendants, or issue.

Remember, anyone whose name is on an account with you will have authority to use funds on your behalf, to help themselves.

Case: Otto B. Good is sick and laid up for 4 months. He has a house sale that he can't attend to as a result.

How does the manner in which he holds title matter?

What can he do to be sure the deal goes through in his absence?

Case: Fairley Good (Otto's daughter) is a smart and loyal daughter, but Otto and Bea are not happy with their daughter's family situation.

Her husband, Lou (Louis DiMula), is losing the mulah. Bea and Otto want to protect the inheritance. What are some options?

*"Where there's a will, there's a way" -- your way.
WRITE A WILL (AND APPOINT GUARDIANS).*

Tip 3: Write a legal will that disposes of your assets. If you have or plan to have or adopt children, you may also name legal guardians (for their care, upbringing and educational choices) and trustees (to manage their inheritance).

A will is essential to every complete estate plan. Even though you have assets in joint name with a spouse, or have named beneficiaries on life insurance policies and retirement plans, all of which do not require a will to be disposed of, or even though you have a trust, you must still have a will to be sure to fulfill all of your desires for your estate. Assets that are owned in your name alone or "in common" with others, and assets of which you may become the surviving joint owner or beneficiary, will be disposed of by your will. Without a will, assets will be disposed of according to state law, known as intestacy. A will also can nominate your choice for permanent legal guardians of minor children and trustees to handle their inheritance through whatever age you specify. Even as a young adult, you should consider where your estate will pass if you are gone from the scene. If you have a will, you will never be embarrassed by the question, "You have a will, don't you?"

*It's fairly easy to get basic asset protection.
PROTECT WHAT YOU CAN BY EASY, LEGAL MEANS.*

Tip 4: Take action to protect your assets. No one else will!

Take advantage of protections that are available, as a matter of right, under laws designed to protect certain basic property rights. Some assets are protected by state law and therefore cannot be taken by a general creditor to satisfy your obligations, such as • Life Insurance policies including present cash value • 401(k) and other qualified retirement plan assets • most IRAs • your primary residence (pursuant to state Homestead Act protection) • Tenancy by the Entirety (for married owners in states such as Massachusetts and Rhode Island), and • Bankruptcy exemptions (if you have to take advantage of this dire remedy). With additional, common legal steps you can also protect business and professional assets, real estate and even your personal wealth.

*At some point every one of my clients will have a trust.
USE TRUSTS TO HOLD ASSETS AND SETTLE YOUR ESTATE.*

Tip 5: In Trusts we trust; all others go through probate.

There are very few instances where the settlement of an estate and the management of affairs in your elder years are not better handled by the use of a trust rather than merely a will. Some of the biggest savings are achieved in very modest estates and even more can be saved in estates in excess of \$1m. Therefore, most folks should eventually use a revocable living trust as the centerpiece of their plan. In addition, there are dozens of purposes for *irrevocable* trusts created for many favorable income, estate and gift tax results and, when used correctly, protection of assets.

*Avoid the Attack of the Killer "Ds".
USE TRUSTS FOR YOUR CHILDREN, TOO.*

Tip 6: Do NOT leave inheritances to children directly. Avoid claims against the inheritance from Debts, Divorce, Disability and Destructive Spending Habits.

The Inheritance Trust™ (my term for a life-long trust for your heirs) can be established with total discretion in the hands of the trustee to distribute assets to your heirs, or it can be written with an "ascertainable standard" for exercise of the discretion. The most commonly used standard is "health, education, maintenance and support." The trustee is charged with using its discretion to benefit the beneficiary and no one else (other than possibly other heirs), especially not creditors and others who would like to make claims against the assets. When there is an ascertainable standard, the child can be his or her own Trustee –with back-ups of course in case they are needed. This technique is one of the most powerful ways to defend the inheritance against attack and can be incorporated into any trust leaving assets to your heirs. A specialized approach must be used for IRAs and other retirement assets being left to heirs.

*A wise person has many advisors.
GET GOOD, CURRENT ADVICE.*

Tip 7: “Plans fail for lack of counsel, but with many advisors they succeed.” Prov. 15:22.

Family Assistants: Members of the immediate or extended family can be helpful to involve in your health matters, and in your estate and your financial planning. They know you, they have a moral obligation to you, and they have a financial interest in a successful outcome. However, as the saying goes, “trust but verify.” Be suspicious of family members who want to control you and your money, especially if they try to stop you from writing a will your own way and or choosing your own advisors. Choose a time in the future when you will engage one or more family members in your affairs. Tell them ahead of time you will be looking for this help. Bring them to meetings with professional advisors.

Professional Advisors: As far as professionals go – lawyers, bankers, financial planners, stock and insurance brokers – size them up and see if you are comfortable with them. Do you like them? Ask as many tough questions as you can, test their knowledge, seek second opinions, keep them honest and working hard for you. Learn what it means to pay a fee for advice (fee only) versus having the amount of your assets be the basis for the fee (fee based), versus working with an advisor who is on commission only. Be wary of advisors who are not open to new ideas, but also give your advisors time to respond to new ideas and criticism.

*Don't neglect the financial plan.
BE A GOOD STEWARD OF YOUR ASSETS.*

Tip 8: It's never too early to plan your financial future.

Take yourself to a good financial planner (interview a few based on recommendations) even if you think it's too early to start planning your financial future. The truth is, it's never too early. If you miss the boat, get yourself on a good financial plan as soon as you can. Consider the advice of other trusted advisors. Interview a couple. Bring a family member or friend, or even your lawyer or CPA. Do not put all your eggs in one basket like one CD, one stock or even one annuity. Consider what you want your money to do for you and your heirs –a good plan considers retirement age, major purchases, education, health care, long term care, disability, income replacement at death or disability, and attaining objectives like giving money away while you are living, and leaving a legacy of value that includes gifts, even modest ones, to charity. My observation is that the last two decades of life are often lost on the financial front. Clients lose interest in handling their own money or do not do it well. They do not involve children or heirs soon enough in helping to manage their affairs and they do not develop trust in advisors. Those who bring in family and professionals early are more successful in their final years.

*Picture the Possibilities!
DON'T LIMIT YOUR PLAN. THINK OUTSIDE THE BOX.*

Tip 9: Identify unique purposes that are important to you or your family and focus your plan around these themes.

For example: You are a spender not a saver. Then you need a financial plan early on. You believe in taking care of family, and in supporting important causes. Then you need to take care of the family, but you want to share wealth with charity. Your purpose in life is to start or build a great business, to have a beautiful home, to provide education for descendants, nieces and nephews. Then putting money aside and protecting your hard earned money or property for these goals will be important. Plan ahead how to handle special assets like vacation property, business interests, professional practices, investment real estate and collectibles, how those special assets will be treated in the last decades of your life, and how they will be inherited. Your legacy is NOT about passing all your wealth to your children or grandchildren. It is about your mark on the world, however small it may seem.

*An Estate Plan is only as good as its Maintenance.
KEEP PLANNING – EVERY YEAR!*

Tip 10: Effective estate planning is a lifelong activity, not a one-time, distribution system.

Over time as laws, family circumstances, and the make-up of your wealth changes, it is critical to know whether your estate plan has adapted or whether it needs to be updated. Performing a periodic, systematic and, at least by retirement, a yearly review ensures the integrity of your estate plan and confirms that your planning goals are being addressed.

Bea Good is widowed. Her husband did more with the money in the household than she ever did, and now she's a fish out of water.

She doesn't know who to trust, what questions to ask, how to know if she's getting good advice.

What are some smart steps for her to take?