

ARE YOUR AFFAIRS IN ORDER?

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Why do we fail to plan? "I don't have that much" is a common answer. Other common misconceptions are that it is too expensive or complicated. Many do not want to address our mortality.

For almost everyone, the plan should include a will, a power of attorney and an advance medical directive. Some plans will also include some sort of trust. These documents are not "products" in the sense that we think of other things we buy from stores. The most important element is the knowledge and advice that are used to create the document which best fits your particular situation.

Will

Your will directs who will inherit your property. It does not govern property passing to a joint owner or to a designated beneficiary. For instance, life insurance proceeds pass to the beneficiary you designate on a company form. The will does not control the proceeds unless the owner fails to designate a beneficiary.

Property owned jointly with survivorship does not pass through the will; it passes to the joint owner. A dispute looms when a parent adds only one of the children to the bank account for "convenience", incorrectly thinking that the money in the account will pass equally to the children through the will. Using a power of attorney to write checks is often a better alternative.

A will also allows you to choose a guardian for minor children. A guardianship battle between grandparents can be avoided through this simple provision in the will.

By making a will, you can choose who will be the executor of your estate and waive the cost of a surety bond or the requirement of an appraisal. While valuable in a minority of situations, these are unnecessary expenses for the majority of families. You may also benefit those outside of your bloodline, such as charities.

Significantly, you can make arrangements for those children or grandchildren who rely or will rely on public benefits, such as Medicaid and Supplemental Security Income (SSI). These beneficiaries often lose their public benefits when they receive an inheritance. This loss can be avoided when a parent or grandparent diverts a sum of money to a Special Needs Trust, which is discussed below.

Trust

A trust is a document which specifies how someone (the trustee) is to manage and use money or other property for one or more beneficiaries. Trusts serve many different purposes. There is no "one size fits all" trust. While I appreciated the candor of a tag I recently saw on a garment, "one size fits most" is still not accurate.

If your child predeceased you and the grandchildren survived, would you want for the grandchildren to get all of their inheritance at age 18 or 21? If not, then a Grandchildren's Trust

might be important to you. With it, distributions of the money could be made for their benefit (i.e. health and education) when the trustee believes it would be appropriate. The principal amounts could be distributed to them in certain percentages at certain ages, such as one-third at 25, one-third at 30 and one-third at 35.

A Special Needs Trust holds money for a disabled child or grandchild to pay for items that their public benefits do not cover. This allows the person to enjoy a high quality and dignity of life. The child can still receive their public benefits, but also may have money for things like a camera, a microwave, a refrigerator, haircuts, and certain dental procedures which Medicaid would not cover. These items are only a few of the beneficial items which could be provided by a Special Needs Trust.

Trusts are also important for those who wish to avoid estate taxes, to handle the special circumstances of second marriages, to avoid disruption of a family business, and/or to avoid probate taxes on land owned in a state with high probate taxes.

Admittedly, preparing for our own death is not fun. However, it is important to those who love us. Preparing an estate plan is a gift to those we love. After all, none of us know when our time will expire.