

Estate-Planning Fundamentals

In general, when the subject of estate planning comes up, most people's eyes just glaze over. The terminology is confusing and the subject is, well, depressing.

However, I can make the subject matter more palatable, and that starts with understanding the terminology.

Will

A document that controls the flow of your personal property such as jewelry, family heirlooms, and assets held in your name only. It does not control what passes by beneficiary designation (for example, life insurance, IRAs, retirement plans, Transfer on Death agreements), by contract (for example, accounts held by joint tenancy with rights of survivorship), or by trust.

Trust

A separate entity that holds property for the benefit of either the grantor (creator) of the trust or his or her heirs. A trustee manages the assets that are placed in the trust and makes sure that the terms of the trust are followed.

Estate Exemption

An amount of money and/or property that you own at your death, which you can transfer to non-spouse beneficiaries without paying a death tax. For the federal estate tax, the 2008 exemption is \$2,000,000. The Ohio estate exemption is smaller - \$338,334. Everyone has the right to use their estate exemption. By using the federal estate exemption, you avoid \$780,800 of federal death tax. But you would owe death tax to Ohio.

Executor

The person who administrates your final estate. That person should be sensitive to the needs of your beneficiaries, competent to handle financial and legal matters, and available and willing to take on responsibilities.

Guardian

The person(s) who will take care of your dependents. They should know your children already (if possible), have similar philosophic views to your own, and be financially able to take on the responsibility of caring for your children.

Health Care Power of Attorney

A document that clearly states what your wishes are if you find yourself on life support. You appoint an "agent" that will act on your behalf to make sure your wishes are followed.

Power of Attorney for Property

A document that establishes who will act on your behalf (again, your "agent") in financial matters if you are incapacitated. The agent can manage your assets, sign a tax return, pay your bills, or even sell property. They can also fund a "living trust."

Living Trust

A trust that's established while you are alive. You can declare yourself the trustee of the trust until you are no longer able to act on your own behalf. You can set standards for determining capacity--for example, your doctor and your spouse must agree that you are unable to make significant decisions on your own. Assets must be retitled in the name of your living trust. At your death, any assets in the living trust do not have to go through probate.

Probate

A court process that makes sure that all your final debts are paid and that your will is executed. Probate can be a lengthy and costly process, but not always. If you want to bypass probate, set up a living trust.

Testamentary Trust

Just the opposite of a "living trust." This trust isn't established until after you die. Your will typically includes the language to establish these trusts at your death.

Taxable Estate

The total assets that will be taxed at your death. To determine whether your estate will be subject to estate tax, add up all of your assets plus your home (50% if owned as joint tenants) and life insurance and subtract any of the following: unified credit, unlimited marital deduction, and unlimited charitable deduction. Whatever is left is your taxable estate.

Unlimited Marital Deduction

Allows one spouse to pass an unlimited amount of assets tax-free to the other spouse in life or at death (unless one spouse is not a U.S. citizen).

Unlimited Charitable Deduction

Allows anyone to bypass estate tax by gifting property to a qualified charity.

Marital Trust

Also known as an "A" trust, the marital trust provides management for assets passed to your spouse. (The alternative is to leave assets for your spouse outright--no trust.) If no restrictions are placed on what happens to the assets when the second spouse dies, it's called a "general power of appointment." If you choose to control what happens upon the death of your spouse, you need to establish a Qualified Terminable Interest Property Trust or "QTIP" Trust (a stricter form of marital trust).

QTIP Trust

Often used in second marriages in which children are involved, a QTIP trust allows the creator of the trust to determine where his or her assets will ultimately go after the spouse dies.

Family Trust

Also known as a "B" trust or a credit equivalent trust, the family trust is funded with up to the maximum assets that can pass with no tax due (currently \$2 million). These assets are taxed at death, but because each person has a unified credit, no tax is actually due. Once these assets have been taxed (with no tax due), they are free to grow to any amount and will never be taxed again for estate purposes.

Qualified Domestic Trust

A type of trust that can be set up for the benefit of a non-U.S. citizen spouse to help defer estate taxes to a future date.

Trustee

A person who holds title to assets that will be used for the benefit of someone else. When choosing a trustee for your trust, look for someone who is financially capable, responsible, and sensitive to your family's needs.

Equalizing the Estate

A term used to denote that each spouse owns up to \$3.5 million (in 2009) in his or her own name. This ensures that both spouses make use of their unified credits.

Children's Trust

A document that controls when your children will be able to access the money you've left them. Frequently the trust provides for equitable payment of college costs for each child. Then assets are distributed as you direct. Many times parents will choose to stagger when the money is paid out—for instance, one third at age 25, one third at age 30, and the final third at age 40.

Irrevocable Life Insurance Trust

A document that removes the value of your life insurance from your taxable estate. You irrevocably assign your policies to the trust. This means you can't change your beneficiaries at a later date. You choose a trustee to make sure the policy premiums are paid. If you transfer life insurance policies to an irrevocable trust, you must live three years past the date of transfer or the value of the policies will be pulled back into your estate.

Transfer on Death (TOD) or Payable on Death (POD)

A type of non-retirement account that allows you to name a beneficiary just like you would on an IRA or other type of retirement account. At death, your assets flow directly to your beneficiaries without going through probate.

Special Needs Trust

A type of trust that can be set up for a disabled person. By specifying that assets are only to be used for "luxuries" and not basic care, the trust allows the disabled person to continue being eligible for government financial aid. For more information on Special Needs Trusts, [click here](#).

Charitable Remainder Trust

A trust that is established to ultimately benefit a qualified charity. These types of trusts can be set up so that the grantor (creator) of the trust receives a stream of income during his or her lifetime. Then at death, the balance of the trust passes to the charity tax-free. When you set up a charitable remainder trust, you get the benefit of a current tax deduction.