



ESTATE PLANNING FOR YOUNG ADULTS

Estate planning includes not only what how your assets are distributed on your death, but also how your property is managed in the event of your incapacity, and who can make decisions about your medical care in the event that you are unable to communicate with your physician.

An estate plan:

Fulfills your wishes in regards to the distribution of your assets at death;

Provides for contingencies that may occur, such as a beneficiary predeceasing you, or a beneficiary becoming disabled;

Provides for special needs, such as a disabled parent, child or sibling;

Authorizes designated persons to handle medical and financial matters in the event of your disability;

Should be flexible, to allow for contingencies that you do not expect

Includes charitable gifts as part of your legacy;

Provides tax planning to reduce or eliminate federal estate taxes;

Will provide you with security and peace of mind, knowing that you have completed the necessary steps to set up your estate plan.

The Seasons of Financial Life:

Growth (accumulation)

Conservation (retirement)

Distribution following death

Do you need a Last Will and Testament or a Revocable Trust?

Last Will and Testament:

Any individual of legal age (18), who is of sound mind, and is acting free of duress, fraud and/or undue influence can make a will.

A will nominates a personal representative, usually referred to as an Executor, to manage your estate upon your death.

The will may specify how certain debts and expenses are to be paid, or gives general authority to pay debts and expenses.

Distributes your assets as approved by the District Court to the designated beneficiaries in your will, or distributed to a trust.

Will provides for the special needs of your family.

You select through your will a guardian for minors.

You select a conservator or trustee for minor beneficiaries.

A will has no legal effect until you die and the will is admitted to probate by the District Court

Personal Representative

If named in the Will, the personal representative is the Executor of the Will. If the named personal representative is deceased or unable to serve, and there is no alternate personal representative named, or if there is no will, then the District Court appoints a personal representative as the Administrator of the Estate.

The personal representative can be an individual of legal age, or a bank, a trust company, or other appropriate corporation.

You can require two or more persons or entities to serve as Co-Executors.

The Executor should be able to handle the duties of an Executor to inventory the assets of the decedent, process creditor's claims, manage investment assets, file appropriate pleadings with the District Court, and then distribute the assets under the terms of the Will, with the assistance of a qualified attorney.

Guardians for Minors.

Guardian is person responsible for the custody, care and education of minor children, and has legal authority to act in the best interests of the minor. A guardian has physical custody of a minor.

Guardian is appointed by the District Court. You have the right to nominate a guardian and alternate guardians to the District Court by your Will.

The guardian is subject to oversight of the District Court, and must submit at least annual reports to the District Court.

At least one successor guardian should be named in case your first choice is not available or is unable to serve.

Who do you select as a guardian?

Conservators for Minors.

Conservator is the person or entity responsible for all property owned by a minor child. The conservator must obtain court approval for expenditures for minors, and must file an annual accounting with the District Court.

The Conservator and Guardian can be the same person.

When minors become 18 years of age, then the conservatorship is terminated, and assets distributed to the child.

In lieu of a conservator, you can leave the assets in trust for any minor, and also determine the age at which the trust will terminate and the assets distributed to the child. The will provides for the use of the assets of the trust for the living expenses, medical care, education and other needs of the child during the duration of the trust. Many parents will provide for partial distributions of trust assets upon child reaching certain ages, such as 22 (finishing college), 26 (finishing graduate school or making funds available for house down payment), and then final distribution at age 30.

You will select and name the Trustee of the child's trust in your Will. The Trustee can be the same person as the Guardian. Name a successor Trustee in case the first named Trustee is unable to serve.

PLANNING TIP: You need to have non-probate assets payable to any testamentary trust, such as life insurance and retirement plans, for the benefit of a child, so that those assets will also be subject to the trust. Otherwise, if the non-probate assets are distributed to a minor, then a conservatorship has to be established to manage those funds until the child is 18, at which time they receive the assets.

INTESTATE SUCCESSION (dying without a will)

If you die without a will, any interest that you own in real estate, personal property, financial accounts, etc. will be distributed under the Kansas Statute on Intestate Succession.

One half to a surviving spouse, one half to children of decedent, subject to spousal rights;

If no surviving spouse, all to the children;

If no surviving children, or their descendants, then all to the surviving spouse;

If no surviving spouse or children, then to the closest heirs up to the fourth degree;

If no heirs, then to the State of Kansas.

Disadvantages of probate procedure

Public disclosure of will and estate proceeds, as they are a matter of public record.

Time delay in settling estate, with a minimum of 6 months.

Attorney Fees and court costs.

Necessary to probate will in every state where real estate is located;

Will contests.

Probate Estate

All property owned by you in your own name at the time of your death:

Real estate, stocks and bonds, household furnishings, automobiles, life insurance, cash, notes, artwork, antiques, jewelry.

Non-Probate Assets

IRA and 401(k) accounts;

Life insurance owned by deceased and payable to a third party

Annuities payable to third parties;

Joint Tenancy property;

Payable on Death transfers.

JOINT OWNERSHIP OF PROPERTY

Tenancy in Common

Two or more persons own the same asset

Deceased person's share passes under their will or by intestate succession if no will, not to the other owners.

Joint Tenancy with Right of Survivorship

Two or more persons own the same asset

Deceased person's share passes on death to other living owners.

PROBLEMS WITH JOINT TENANCY PROPERTY

Husband/Wife

Failure to provide for sudden death

Exposes asset to personal liabilities of owners

May disinherit children

Parent/Child

Exposure to Unexpected Liability (divorce, legal claims, bankruptcy)

Disinherit other children

Possible gift tax consequences

Restrictions on Sale by other parties (spouses)

PAYABLE ON DEATH

You retain ownership of asset until your death.

On death, the ownership passes to designated beneficiaries

Can be used for bank accounts, certificates of deposit, investment accounts, real estate, stock.

The transfer on death document designates beneficiaries. Owner may change beneficiary designations during life as long as he/she is competent to do so.

If a named beneficiary predeceases the owner, the beneficiary's estate or heirs do not receive the assets on death of owner, but goes to remaining designated beneficiaries. Owner must designate contingent beneficiaries to cover this possibility.

REVOCABLE TRUST

A legal entity, created by a written trust agreement, into which assets are transferred. The Donor can amend or revoke the trust at any time.

A revocable trust provides for use of income and assets during lifetime of donor; provides for payment of debts and expenses at death, and then distributes assets after death or retains in trust for benefit of designated beneficiaries.

A pour-over will is generally prepared also in case not all assets are in the trust at time of death.

Will

May be easier to prepare

May be less expensive to prepare

Probate court supervises administration

Assets distributed pursuant to Court Order

Revocable Trust

Less Expensive to settle after death

Avoids probate

Privacy, not a matter of public record

Less likely to be challenged

Includes disability of donor

Reduces settlement time

Allows donor to maintain control

DURABLE POWER OF ATTORNEY

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

Revised July 2017-2018

DECLARATION (LIVING WILL)

ADVANCE HEALTH CARE DIRECTIVE