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# Basic Estate Planning

**Prepared for:**  
Prospective Estate Planning Clients

## Estate Planning--An Introduction

By definition, estate planning is a process designed to help you manage and preserve your assets while you are alive, and to conserve and control their distribution after your death according to your goals and objectives. But what estate planning means to you specifically depends on who you are. Your age, health, wealth, lifestyle, life stage, goals, and many other factors determine your particular estate planning needs. For example, you may have a small estate and may be concerned only that certain people receive particular things. A simple will is probably all you'll need. Or, you may have a large estate, and minimizing any potential estate tax impact is your foremost goal. Here, you'll need to use more sophisticated techniques in your estate plan, such as a trust.



To help you understand what estate planning means to you, the following sections address some estate planning needs that are common among some very broad groups of individuals. Think of these suggestions as simply a point in the right direction, and then seek professional advice to implement the right plan for you.

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### Over 18

Since incapacity can strike anyone at anytime, all adults over 18 should consider having:

- A durable power of attorney: This document lets you name someone to manage your property for you in case you become incapacitated and cannot do so.
- An advanced medical directive: The three main types of advanced medical directives are (1) a living will, (2) a durable power of attorney for health care (also known as a health-care proxy), and (3) a Do Not Resuscitate order. Be aware that not all states allow each kind of medical directive, so make sure you execute one that will be effective for you.

### Young and single

If you're young and single, you may not need much estate planning. But if you have some material possessions, you should at least write a will. If you don't, the wealth you leave behind if you die will likely go to your parents, and that might not be what you would want. A will lets you leave your possessions to anyone you choose (e.g., your significant other, siblings, other relatives, or favorite charity).

### Unmarried couples

You've committed to a life partner but aren't legally married. For you, a will is essential if you want your property to pass to your partner at your death. Without a will, state law directs that only your closest relatives will inherit your property, and your partner may get nothing. If you share certain property, such as a house or car, you should consider owning the property as joint tenants with rights of survivorship. That way, when one of you dies, the jointly held property will pass to the surviving partner automatically.

### Married couples

Married couples are effectively treated as one economic unit for federal gift tax and federal estate tax purposes, as long as each spouse is a U.S. citizen. This is accomplished using the unlimited marital deduction--a powerful estate planning tool, because you can conceivably give or leave your entire estate to your spouse tax free. The deduction not only allows spouses to shift wealth between each other without incurring gift tax or estate taxes, but also allows spouses to maximize the benefits that result (e.g., equalizing your estates to take full advantage of the applicable exclusion amount). This is especially important since the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (the 2001 Tax Act), which has increased the exclusion amount (as described in a following section). Married couples should also consider creating a bypass or credit shelter trust.

## Married with children

If you're married and have children, you and your spouse should each have your own will. For you, wills are vital because they can name a guardian for your minor children in case both of you die simultaneously. If you fail to name a guardian in your will, a court may appoint someone you might not have chosen. Furthermore, without a will, some states dictate that at your death some of your property goes to your children and not to your spouse. If minor children inherit directly, the surviving parent will need court permission to manage the money for them.



You may also want to consult an attorney about establishing a trust to manage your children's assets in the event that both you and your spouse die at the same time.

Certainly, you will also need life insurance. Your surviving spouse may not be able to support the family on his or her own and may need to replace your earnings to maintain the family.

## Comfortable and looking forward to retirement

If you're in your 30s, you're probably feeling comfortable. You've accumulated some wealth and you're thinking about retirement.



Here's where estate planning overlaps with retirement planning. It's just as important to plan to care for yourself during your retirement as it is to plan to provide for your beneficiaries after your death. You should keep in mind that even though Social Security may be around when you retire, those benefits alone may not provide enough income for your retirement years. Consider saving some of your accumulated wealth using other retirement and deferred vehicles, such as an individual retirement account (IRA).

## Wealthy and worried

Depending on the size of your estate when you die, you may need to be more concerned than ever about federal estate taxes, regardless of the gradual elimination of these taxes under the 2001 Tax Act. Here is a brief explanation about how your estate planning may be affected by this law and why it is important that you re-evaluate your current plan soon.



The 2001 Tax Act gradually eliminates estate taxes by increasing the amount that is exempt from these taxes over several years (from \$1 million in 2002 and 2003 to \$3.5 million in 2009); reducing the top estate tax rate over several years (from 50 percent in 2002 to 45 percent in 2007 through 2009); and finally repealing estate taxes for persons dying after 2009. However, under a provision in the law, pre-2001 Tax Act rules will return after 2010.

Federal gift tax remains. The applicable exclusion amount is \$1 million. The gift tax rates follow the estate tax rates, except that the top gift tax rate in 2010 (when there will be no estate taxes) will be 35 percent (the top marginal income tax rate in 2010 under the 2001 Tax Act).

The law contains several other changes, some of which are retroactive. These changes are complicated, and the uncertainty that exists makes planning difficult. You should contact your estate planning attorney to re-examine your plan.

## Elderly or ill

If you're elderly or ill, you'll want to write a will or update your existing one, consider a revocable living trust, and make sure you have a durable power of attorney and a health-care directive. Talk with your family about your wishes, and make sure they have copies of your important papers or know where to locate them.

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## Table of Federal Estate Tax Brackets and Exemption

The federal estate tax brackets were changed by the Tax Relief Act of 2001. The following table illustrates the increasing amounts that will be exempt from federal estate taxation. While the size of an estate that is fully exempt from federal estate taxes increases, the highest estate tax rate is simultaneously being reduced.



Year	Amount exempt from federal estate tax	Highest estate tax rates
2002	\$1 million	50%
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	Federal estate tax scheduled to be repealed*	Federal estate scheduled to be repealed--no tax*
2011	Scheduled to revert to prior law*	Scheduled to revert to prior law*

\*The previous federal estate tax will be reinstated in 2011 under the sunset provisions of the Tax Relief Act of 2001 unless Congress takes additional action. The top federal estate tax rate will be restored to 55 percent, and the federal estate tax exemption amount will return to \$1 million.

## Steps to Estate Planning Success



Keep your estate plan fresh

**Step Six: Annual Review**



Sign necessary documents  
Purchase necessary insurance  
Make changes as needed

**Step Five: Create a Plan**



Review team suggestions

**Step Four: Recommendations**



Determine if current needs are being met  
Determine if future needs have been contemplated

**Step Three: Examine the Data**



Assets/Liabilities	Beneficiaries
Insurance Plan	Goals
Charitable Plan	Power of Attorneys
Health-Care Proxies	Wills
Trusts	

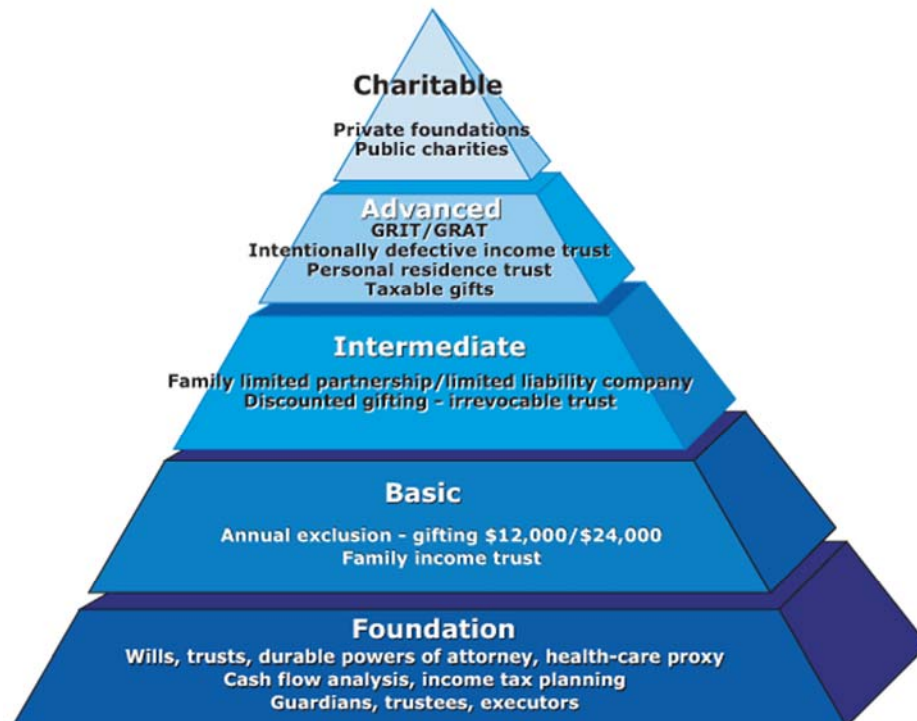
**Step Two: Fact Finding**



Accountant	Financial Planning Professional
Attorney	Tax Advisor
Trustee	Insurance Professional

**Step One: Pick a Winning Team**

## Estate Planning Pyramid



## Advantages of Trusts

### Why you might consider discussing trusts with your attorney

- Trusts may be used to minimize federal estate taxes for married individuals with substantial assets.
- Trusts provide management assistance for your heirs.\*
- Contingent trusts for minors (which take effect in the event that both parents die) may be used to avoid the costs of having a court-appointed trustee.\*\*
- Properly funded trusts avoid many of the administrative costs of probate (e.g., attorney fees, document filing fees).
- Generally, revocable living trusts will keep the distribution of your estate private.
- Trusts can be used to dispense income to intermediate beneficiaries (e.g., children, elderly parents) before final property distribution.
- Trusts can ensure that assets go to your intended beneficiaries. For example, if you have children from a prior marriage you can make sure that they, as well as a current spouse, are provided for.
- Trusts can minimize income taxes by allowing the shifting of income among beneficiaries.
- Properly structured irrevocable life insurance trusts can provide liquidity for estate settlement needs while removing the policy proceeds from estate taxation at the death of the insured.

\*This is particularly important for minors and incapacitated adults who may need support, maintenance, and/or education over a long period of time.

\*\*With a court-appointed trustee, the court must be petitioned each time funds are needed for the minor. In addition, the assets are generally invested in very conservative investments.



#### What is a trust?

A trust is a legal entity that is created for the purpose of transferring property to a trustee for the benefit of a third person (beneficiary). The trustee manages the property for the beneficiary according to the terms specified in the trust document.

## Conducting a Periodic Review of Your Estate Plan

### What is conducting a periodic review of your estate plan?

With your estate plan successfully implemented, one final but critical step remains: carrying out a periodic review and update.

Imagine this: since you implemented your estate plan five years ago, you got divorced and remarried, sold your house and bought a boat to live on, sold your legal practice and invested the money that provides you with enough income so you no longer have to work, and reconciled with your estranged daughter. This scenario may look more like fantasy than reality, but imagine how these major changes over a five-year period may affect your estate. And that's without considering changes in tax laws, the stock market, the economic climate, or other external factors. After all, if the only constant is change, it isn't unreasonable to speculate that your wishes have changed, the advantages you sought have eroded or vanished, or even that new opportunities now exist that could offer a better value for your estate. A periodic review can give you peace of mind.

### When should you conduct a review of your estate plan?

#### ***Every year for large estates***

Those of you with large estates (over the applicable exclusion amount, formerly known as the unified credit, of \$2 million in 2008) should review your plan annually or at certain life events that are suggested in the following paragraphs. Not a year goes by without significant changes in the tax laws. You need to stay on top of these to get the best results.

#### ***Every five years for small estates***

Those of you with smaller estates (under the applicable exclusion amount) need only review every five years or following changes in your life events. Your estate will not be as affected by economic factors and changes in the tax laws as a larger estate might be. However, your personal situation is bound to change, and reviewing every five years will bring your plan up to date with your current situation.

#### ***Upon changes in estate valuation***

If the value of your estate has changed more than 20 percent over the last two years, you may need to update your estate plan.



#### ***Upon economic changes***

You need to review your estate plan if there has been a change in the value of your assets or your income level or requirements, or if you are retiring.

#### ***Upon changes in occupation or employment***

If you or your spouse changed jobs, you may need to make revisions in your estate plan.

#### ***Upon changes in family situations***

You need to update your plan if: (1) your (or your children's or grandchildren's) marital status has changed, (2) a child (or grandchild) has been born or adopted, (3) your spouse, child, or grandchild has died, (4) you or a close family member has become ill or incapacitated, or (5) other individuals (e.g., your parents) have become dependent on you. For example, many states have a law revoking all or part of your will if you divorce or remarry.

#### ***Upon changes in your closely held business interest***

A review is in order if you have: (1) formed, purchased, or sold a closely held business, (2) reorganized or liquidated a closely held business, (3) instituted a pension plan, (4) executed a buy-sell agreement, (5) deferred compensation, or (6) changed employee benefits.

#### ***Upon changes in the estate plan***

Of course, if you make a change in part of your estate plan (e.g., create a trust, execute a codicil, etc.), you should review the estate plan as a whole to ensure that it remains cohesive and effective.

***With your estate plan successfully implemented, one final but critical step remains: carrying out a periodic review and update.***

***Upon major transactions***

Be sure to check your plan if you have: (1) received a sizable inheritance, bequest, or similar disposition, (2) made or received substantial gifts, (3) borrowed or lent substantial amounts of money, (4) purchased, leased, or sold material assets or investments, (5) changed residences, (6) changed significant property ownership, or (7) become involved in a lawsuit.

***Upon changes in insurance coverage***

Making changes in your insurance coverage may change your estate planning needs or may make changes necessary. Therefore, inform your estate planning advisor if you make any change to life insurance, health insurance, disability insurance, medical insurance, liability insurance, or beneficiary designations.

***Upon death of trustee/executor/guardian***

If a designated trustee, executor, or guardian dies or changes his or her mind about serving, you need to revise the parts of your estate plan affected (e.g., the trust agreement and your will) to replace that individual.

***Upon other important changes***

None of us has a crystal ball. We can't think of all the conditions that should prompt us to review and revise our estate plans. Use your common sense. Have your feelings about charity changed? Has your son finally become financially responsible? Has your spouse's health been declining? Are your children through college now? All you need to do is give it a little thought from time to time.





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