

PRACTICAL ADVICE

FROM TAXATION & WEALTH PLANNING DEPARTMENT



Fox Rothschild LLP
ATTORNEYS AT LAW

Estate Planning 101

Estate planning is a method by which an individual's objectives for the disposition and management of their affairs and property are accomplished. A typical estate planning client must weigh the needs of their spouse/partner and/or children, the obligations for support of those individuals, as well as their desires with respect to distribution of property and wealth among family, friends and others. Some individuals may have charitable inclinations that provide tax saving advantages. Business owners must prepare for business succession planning and the control over and continuity of their business. Additionally, end-of-life planning should be addressed at the same time, including the nomination of someone to handle financial and medical decisions on your behalf should you be unable to make those decisions for yourself. If you prepare and organize your affairs during your lifetime, you ensure a smoother transition and administration of your estate for your loved ones with the possibility of tax savings and increasing their inheritance. The following steps will help you to focus on what should be considered when embarking on an estate plan to accomplish your goals and objectives.

1. Identify your assets/liabilities

- a. Consider titling issues – joint tenancy, tenants-in-common, etc.
 - Real property ownership in different jurisdictions may require ancillary probate and the potential filing of out of state estate and inheritance tax returns
 - b. Retirement assets – IRAs, 401Ks and beneficiary designations
 - c. Insurance policies and ownership (outright/in trust) – term, whole life
 - d. Liabilities – mortgages, debts, creditor issues, taxes, including estate
2. Identify the individuals and organizations you would like to benefit from your estate. Consider whether those individuals should receive their inheritance outright or in trust, and finally, consider who will be nominated in your will to carry out your wishes
- a. Consider support obligations – current or previous spouse/partner, children from current or previous marriage or union, obligations under divorce decrees or separation agreements.

b. Beware of misconceptions regarding intestate succession and inheritance rights of domestic partners.

c. Consider your executors or personal representatives, trustees and guardians for minor or incompetent children, as well as alternate or back-ups for those individuals.

d. Consider burial or funeral wishes.

3. Ancillary documents to be prepared at the same time you prepare your last will and testament.

- a. Power of attorney – New York now has a new statute regarding powers of attorney, including the necessity of a statutory gifts rider – the agent may sign legal documents should you be unable to take care of your own affairs.
- b. Health care proxy – the health care agent will have the authority to make health care decisions if you are too ill to make them for yourself.
- c. Living will – you can indicate your wishes regarding life-support should you become terminally ill or unconscious.

4. Other considerations

- a. Tax planning, including lifetime gifting and more sophisticated planning
- b. Long-term health care insurance
- c. Irrevocable trusts to hold life insurance proceeds
- d. Organizing your financial records, including deeds, titles, marriage and birth certificates, divorce decrees and tax records
- e. List accounts, passwords, safe deposit boxes and key locations, including arranging for access
- f. Citizenship of individual as well as their spouse/partner

The above list is by no means exhaustive. Seeking professional advice and having documents drafted with precision and clarity that anticipate your individual circumstances, needs and wishes is paramount. Your advisers (financial planner, accountant, attorney) should work together to make sure you have a coherent plan that incorporates all aspects of your individual situation and wishes. The formalities surrounding the execution of a will in any jurisdiction must be adhered to. Changes in circumstances such as marriage, divorce, birth or adoption of a child, moving to a new state or changes in tax law should prompt individuals to have their documents reviewed.

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