

What is an Estate Plan and Why Do You Need One?

By Christopher Pickhardt

Many people have the idea that only the ultra-rich have “estates” and therefore need an “estate plan” to manage their vast wealth and valued properties, which in the event of their death, would allow for their beneficiaries to inherit the bounties within this estate with little headaches. These misconceptions are understandable, given that estate planning and all the associated topics like Wills, Trusts and Advanced Care Directives are things not often discussed during our early years of public and continued education.

While most of us are being lectured on American history, or struggling to grasp algebra or calculus and wading through the depths of classical literature, we are being dealt a vast disservice by the omission of education on “real life” topics that are just as important as learning about World War II, Trigonometry and Hemmingway. Sadly, the average person is unprepared for the struggles that real life often produces; especially regarding the often-taboo topics of Wills, final expenses and all other unpleasant legalities surrounding the inevitability of death. It is for these reasons that it is advisable for everyone to learn as much as possible about Estate Planning so you can ensure that you and your loved ones are prepared, legally, for when the inevitable occurs.

What is an Estate?

An estate is a term that regularly brings with it visions of opulence and grandness. But in reality this concept is greatly misconstrued. An estate is simply defined as anything you own; which can include financial wealth (aka bank accounts, stocks and other investments), real estate properties, cars, life insurance policies and any number of other “possessions” which you would choose to leave to either a spouse, children or designated next of kin – all of which can range in scope from modest to exorbitant in means. Regardless of its size or complexity, an estate applies to just about everyone and it would behoove each and every one of us to consider formulating an official “plan” for said *estate* to organize and expedite all the financial and proprietary affairs that will be addressed upon death.

It can often get very messy and complicated for one’s survivors if there were no Will or “Estate Plan” in place prior to a loved one’s passing; resulting in the necessity for Probate Court, which is a long and potentially-expensive process that can be avoided with careful planning. So, given all this, where do we go from here, you may ask?

Types of Estate Plans:

Will vs Revocable Trust

A Will (aka Last Will) is a means to organize and distribute your wealth, property and possessions to designated beneficiaries under the supervision of an Executrix (a chosen representative) whom then ensures that the deceased individual’s or “testator’s” (he/she who drafted the Will) wishes are properly granted. This process must go through what is known as Probate Court, wherein a Probate Judge authenticates and verifies the Will while ensuring that the Executrix administers the Will accordingly.

Additionally during the probate process, which can sometimes take close to two years depending on the circumstances, a probate Judge may need to settle any disputes that may arise (for example, say a descendent from a previous marriage contests the Will).

Electing to compose a costlier Revocable Trust over a standard Will, may often avoid the probate process all together and expedite the distributions designated within to the beneficiaries. This is an important distinction for many, mainly because a Will in the probate process will remain in public record, where a Trust will not and remains a private document that creditors, for example, cannot gain access to.

By choosing to draft a Revocable Trust, you are simply putting all of your assets as described earlier, into a “trust,” which can be modified accordingly. Through this arrangement you are the “settlor,” and generally named the “Trustee,” as you will oversee your assets throughout your life. In the event of declining health or a period of “incapacitation” and eventual death, you would also assign someone to be your “Successor Trustee” who will then manage your Trust going forward according to the Trust’s guidelines. Generally this should be the same person you designate to be your Power of Attorney, who will be granted access and the ability to oversee your financial affairs. Additionally under a Revocable Trust it would also be wise to designate someone to be your Health Care Proxy, who would be responsible to carry out your wishes in the event that you are unable to make them yourself.

All of these important topics can be contained within your Revocable Trust, which can be revised and amended at any time up until your passing. Both options offer protection and peace of mind so that you and your family can rest assured that you have covered all your bases. It is just a matter of which route fits more in line with your budget and tally of assets.