

Published September 24th, 2014

Lynn's Top Five

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cases, a will alone may be a viable option."

How could I benefit by including a living trust in my estate plan? Nancy Gibbons, a Walnut Creek-based attorney who specializes in estate planning, shares: "Typically, a revocable trust is a 'will substitute' and it provides a continuing authority to manage trust assets after a person becomes incapacitated or dies since you name successor trustees. This allows the successor trustee to transfer and manage assets without having to go through a probate proceeding in court." Other types of trusts can also be created within your estate plan. For example, we hear a lot about special needs trusts these days. In my next column, I'll go into detail about these unique trusts and the

Over the years we've nagged, cajoled and tirelessly encouraged clients to worry about many things. But not many topics elicit as much dragging of the proverbial feet and uncertainty as Estate Planning. We've been asked everything from: Do you think I really need an estate plan? If I just put my kid's names on all my accounts, isn't that enough? Since I'm married, doesn't everything just go to my spouse? to Oh, and by the way, what the heck IS an estate plan? As a Certified Financial Planner it's my pleasure to be able to collaborate with some of the best estate planning attorneys in the business, two of whom have graciously participated in this column. So, even if you are ready for a more advanced estate planning discussion, I think this article will give you some great ideas for next steps in your own planning.

What is an estate plan? An estate plan is a series of written documents that outlines your intent for the care of you, your family, and your assets during your life and the distribution of your assets at your death. Think about what a broad topic that is and you start to understand the complexities that can arise. Everything from how to care for me and my assets if I'm alive but lack physical or mental capacity, to where my assets go when I pass away, and how that distribution should happen. As I warn my children regularly, my estate plan gives me the power to still have some control over things even after I'm long gone!

Is a will alone sufficient? "After-death planning can be done with a living trust or a will," according to Annette Knox, estate planning attorney specialist in Walnut Creek. She adds "With a will, you risk having to pass assets through an expensive and public probate. However, sometimes clients may not want a trust, or may not own real property or have sufficient assets to warrant a trust. Sometimes they want the court oversight in passing their assets at death. In those unusual

planning opportunities they offer.

What are the "must haves" for every estate plan? Annette reminded me that the most important part of estate planning starts with a conversation. "I think it is most important to start with a discussion with each other and your attorney about your goals and your family dynamics so that proper planning can be done to preserve the family relationships. So you first must have that conversation." From a practical standpoint, both attorneys advise that a well-crafted estate plan should include not only a will and living trust, but also a comprehensive review of beneficiary designations, advanced health care directives and durable powers of attorney. Nancy added that another "must have" really pertains to keeping your plan current. For example, she says, "Too often, we find people have an old, outdated trust or an 'unfunded' trust. Since we have a historic high \$5.34 million exemption, many clients have stale, older trusts that split the estate when the first spouse passes away. These 'bypass' trusts may no longer be appropriate and clients should get a review to determine if they need to change the structure of their trusts."

What are "powers" in estate planning? We all hear about powers of this and that as they pertain to estate planning. Annette clarifies some of this terminology for us as follows: "Defined, a power is the right, ability, or authority to do something. In estate planning, we plan for our incapacity or death. To protect our estates, our families and our relationships, we must give powers to persons we trust to carry out our wishes or to provide for our needs in the event we cannot do so ourselves. A trust or will typically contains a list of powers for the trustee or executor for that purpose. The California Probate Code also defines the powers and duties of trustees and executors. California law is very concerned with protection of the rights of beneficiaries and creditors of an estate, so the powers and duties under California law reflect this concern."

Bottom line: Each of us has an estate plan even if we do nothing. But that estate plan will not be one of our choosing - it will be handled by the government. If you want a say in what happens if you become incapacitated and at your death, hire a great attorney who specializes in estate planning so that you can create an estate plan of your design. And then, revisit your plan from time to time, but mostly just get on with your life and enjoy!

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