

Estate planning is not “one size fits all”

Married, never married, widowed, divorced—each of us has unique needs when it comes to how and to whom we make our bequests. Here, in a brief discussion, are a few checkpoints people who are on their own may find helpful in developing an estate planning strategy.

Review your will regularly

The passage of time and changes in personal circumstances, or in your investment, business or real estate holdings, as well as in the economy and the law, all may wreak havoc with your will and the ways that you have decided to transfer your assets.

Remember, too, that not all of your assets pass by way of your will. Property held jointly with a right of survivorship passes *outside* your will. Retirement plan benefits and life insurance will be paid to whomever you named on a beneficiary designation form. Make it a point to review your designations regularly. Often there are circumstances—a beneficiary’s death is one example—that may require you to make a change.

Establish a program of gifts

If you have substantial assets, consider making “annual exclusion” gifts. You can make gifts of up to \$13,000 in 2009 to as many people as you wish, gift tax free. Why? The gifted cash or property, no longer part of your estate, cannot be taxed at your death. And you will be able to enjoy seeing the results of your generosity. However, the gifts must be of a “present interest”—the person receiving the gift must be able to use the money or property now, not just at some later time.

The tuition and medical expense exclusions allow you to help out family members or friends with these expenses without gift tax consequences. If it’s tuition, be sure to make the payments directly to the school, not the attendee. There is no cap on how much you may give, tax free. Similarly, you can defray someone’s medical expenses if you make the payments to the health care provider. These amounts are nontaxable without limitation as well. (Amounts reimbursed by insurance are not eligible for this exclusion.)

Plan your charitable gifts

Be sure to consult your advisors if you will be making a substantial gift to charity. You'll want to fashion your gift to take maximum advantage of the tax breaks available. The charitable bequests that you make in your will won't be subject to estate tax. But there are more tax benefits that may be available by taking an organized approach to philanthropy.

For example, if appreciated securities are sold to fund a charitable gift, you will realize long-term capital gain, and there will be tax to pay. When you donate the securities directly to the charity, and the charity sells the shares, no tax will be due.

By setting up a charitable remainder trust, you can make a substantial gift and reserve income payments from the trust for your life. (If you set up the trust in your will, you may name someone to receive the income.) And you will be able to treat part of your gift as an immediate charitable deduction. A charitable lead trust works in reverse: The charity receives the payments for a specified number of years; then the remainder passes to the beneficiaries that you have designated.

Make sure someone can “step in”

Consider naming someone to take control of your financial life if a disabling illness or injury occurs. With a durable power of attorney, you delegate the duties and responsibilities as outlined in the durable power document.

In theory, a durable power should work for you as long as you remain disabled. Unfortunately, sometimes third parties will refuse to honor an apparently valid durable power of attorney simply because some time has passed since the power was created.

A living trust may offer more comprehensive financial protection and security. You can create the trust now but continue to control the assets that you place in the trust. The trustee takes over investment management and other important financial decisions only if and when you become disabled. The trustee that you name will act only as you have directed in the trust agreement. The trustee's responsibilities may be as far-reaching as managing your investment portfolio or as routine as paying your household bills while you are incapacitated.

Without executing a durable power or a living trust, court proceedings may be necessary in order to name a guardian to manage your finances. The process can be time consuming and often costly, and the proceedings are public, there for anyone to scrutinize.

Have a medical emergency plan in place

Closely allied to questions of financial decisions in the event of incapacity are questions of medical treatment decisions. An advance medical directive allows you to exercise control over your medical care in the event that you cannot make decisions yourself.

A *living will* lets you express your wishes regarding your care should you be in a terminal condition and, generally, deals with questions concerning what life-sustaining treatments (if any) should be undertaken. With a *durable power of attorney for health care*, you delegate someone to make major health care decisions for you, based upon your directions.

Obtain a second opinion

Estate planning, in at least one respect, may be more difficult for a single person than a married couple—you face some difficult decisions alone. Family and friends may be helpful, but it's especially important as well to gather together a professional, trustworthy team of advisors. They can provide the benefit of a reliable second opinion, when you need it.

We would be pleased to serve on your estate planning team.

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Any developments occurring after January 1, 2009, are not reflected in this article.