PRESIDENT'S MESSAGE

With a Little Help of My Friends, a Simple Overview of Estate Planning

BY PAOLA ARMENI, PRESIDENT, STATE BAR OF NEVADA

Admittedly, my knowledge of estate law is limited. I know enough to have my own estate plan and encourage everyone I know to do the same. I also have collaborated with attorneys in this practice area when I need an administrator of the estate appointed in my civil cases.

You know what you know, and for what you don't know, you seek help. With that advice in mind, this article has been written with the assistance of my friends and fellow Board of Governors members. Thank you to Kari Stephens from the law firm of Jeffrey Burr and Joel Locke at Allison MacKenzie for sharing the following insight.

Life happens and, unfortunately, so does death. Many people (including attorneys) put their estate planning off because they don't want to think about their own death, but then death unexpectedly happens. In the aftermath, their loved ones are scrambling and are hit with a financial and time burden they did not expect.

Estate planning provides certainty and peace of mind by allowing a person to designate who they would like to oversee handling their affairs, whom the beneficiaries of their assets should be, and how they would like their assets to pass to their beneficiaries, i.e., outright or in trust until certain ages or events, etc.

Without an estate plan, the laws of intestate succession govern the disposition of a person's estate as well as dictate the priority of persons who would administer the estate. These laws are not always in line with a person's intent or desires.

The simplest estate planning documents include a will, financial power of attorney, healthcare power of attorney, and an advanced directive. The power of attorney allows friends or family members to make financial and healthcare decisions on behalf of the person who created the documents, should they become incapacitated. The purpose of these documents is to avoid the need for a guardianship. The advanced directive allows the person executing the documents to make certain end-of-life decisions, and the will directs how your property is to be distributed upon your death.

A very common misconception is that having a will avoids probate, when in fact it does not. Many people are surprised to find out that even if you have a will, it must be admitted to probate, and your assets must go through the probate process under the supervision of the court. Probate administration can be expensive and lengthy. It can take several months before your personal representative is appointed by the court and able to collect the assets. Then several more months must pass before the assets can be distributed to the beneficiaries.

That is why it is important to create a living trust. The persons creating the trust are referred to as the "grantors" of the trust. They will also be the trustees and beneficiaries of the trust during their lifetimes. You will have the power to use trust funds for your benefit during your lifetime. You will also continue to be able to use your assets normally; however, the assets will be held in the name of the trust. The trust document, much like the will, directs how your property will be distributed upon your death. Additionally, if you are a parent, the trust document directs who will be your children's guardians after your death.

The advantage of setting up a revocable living trust is that it avoids probate. A trust is funded during a person's lifetime, so there would be no assets left in a person's name that would be subject to probate upon their death. With a trust, your successor trustee can step in almost immediately to access and administer your assets without court supervision.

Once a trust is set up, it's important to make sure that your assets are funded into the trust during your lifetime. Sometimes assets change (e.g., buy a new house) and it's important to make sure that newly acquired assets are transferred into your trust as well (otherwise they will be subject to probate). For people who already have an estate plan in place, it's important to periodically review your plan to make sure that it continues to meet with your intentions.

A revocable living trust can always be amended to change your successor trustee, beneficiaries, and the way in which property is distributed.

Finally, it is also important to consult with an attorney regarding your estate planning to make sure it meets the legal formalities. Often when people attempt their own estate planning or utilize non-attorneys to prepare their documents, or even attorneys who don't practice in this area, there are mistakes that could have been avoided and unintended consequences that end up being costly to fix—if they can be fixed at all.

In honor of this issue, I would like to recognize the Probate and Trust Law Section of the State Bar of Nevada whose officers include Julia Gold, chair; F. McClure Wallace, vice chair; and Kendal Weisenmiller, secretary. The next section meeting will take place virtually on December 16, 2022.

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