

There's More to Estate Planning Than Just Writing a Will – Nagle Law Group

It's been estimated that as many as 7 out of 10 people die without having prepared a will; certainly a will is one of the most crucial documents people need to prepare, but in this blog we will explain and compare the other equally-important documents you need as part of a comprehensive estate plan in Arizona. No matter how old you are, every adult needs to prepare an estate plan, especially if you are married and/or have children.

You probably already know that, in a will (also called Last Will & Testament), you name whom you want to handle your final affairs and whom you want to receive your assets after you die. But did you know that your will only controls the assets that are titled in your name? Your will does not control assets that are titled in joint ownership and go to your spouse or another joint owner when you die. And it doesn't control assets with beneficiary designations, like your IRA, retirement benefits or life insurance policies.

So, to begin with, your will does not give you control over all of your assets.

What about the assets your will does control? After you die, these assets will have to go through a court-controlled process called "probate." Probate is the legal process through which the court makes sure that, after you die, your will is valid, your debts are paid and your assets are distributed according to your will.

Probate is the ONLY legal way to change the title on an asset when the person listed as the owner cannot sign his or her name.

Now, of course, if you're not alive anymore, you can't sign your name. And your family and friends can't just sign FOR you. Only the court can change titles after someone dies.

A will is no help if you become incapacitated -- because a will only goes into effect AFTER you die. If you can't conduct business due to mental or physical incapacity (for example, from Alzheimer's disease, stroke or heart attack) only a court appointee can sign for you -- even if you have a will.

Having the court involved can be expensive and time consuming. It's a public process. And it doesn't replace probate when you die.

There is a legally-binding document called a "durable power of attorney" that can allow someone to handle your financial affairs if you become incapacitated. However, some financial institutions won't accept ANY power of attorney. Others will only accept one if it is on their own form. Why? Because they do not want the liability that could result from handing over your assets to someone else.

As an alternative to a will, there is what is called a "revocable living trust." It is being used more and more by people of all ages, marital status and wealth. It's important to compare a revocable living trust and a will.

Both are legal documents in which you name someone to handle your affairs after you die. In a will, this person is called personal representative (also commonly referred to as an executor). In a living trust, this person is called a trustee. And in both, you name whom you want to receive your assets after you die.

But, unlike a will, a living trust avoids probate when you die, can control all of your assets and prevents the court from controlling your assets at incapacity.

When you change the titles of your assets from your name to your trust, YOU no longer own anything. So, when you die, or if you become incapacitated, there is nothing for the courts to control.

The concept is very simple, but this is what keeps you and your family out of probate. Importantly, you still have full control of the assets in your trust. As trustee of your trust, you can do anything with your assets that you could do before you put them in your trust. In fact, you'll actually have MORE control with your assets in a living trust than you do now.

One of the most powerful benefits of a trust is, unlike a will, a trust doesn't have to die with you. Assets can stay in your trust, managed by the trustee you select, until your beneficiaries reach the age(s) you want them to inherit.

Does this remind you of anyone in your family? If so, you may prefer to give children or grandchildren their inheritances in installments, so they have more than one opportunity to use the money wisely. Or if you are concerned about the spending habits of one of your beneficiaries, you could provide periodic income and keep the rest in the trust.

You can provide for a loved one with special needs without disturbing valuable government benefits. You can safeguard a minor child's inheritance. You could also supplement the income of a child who wants to be a teacher or do other low-paying-but very important-community service work.

Even if you feel that your beneficiary would handle the inheritance well, you may want to keep the assets in the trust to protect them from creditors, current spouses, ex-spouses, potential lawsuits and future death taxes. Your trustee can make distributions to the beneficiary as needed, but the assets that remain in the trust would be protected from these creditors and predators and, if invested well, could even help provide for future generations.

Most people like to leave their children or grandchildren with enough so they can do anything they want, but not so much that they do nothing. With a trust, you can do this and more. No other estate plan gives you this much flexibility and control.

As you have seen, a living trust gives you far more control than any other estate plan. For example, a living trust can:

1. Avoid probate at death;
2. Prevent court control of assets at incapacity;
3. Provide maximum privacy;
4. Allow quick distribution of assets to beneficiaries; or
5. Let you keep assets in the trust (where they are protected from the courts, creditors and irresponsible spending) until you want your beneficiaries to inherit;
6. Prevent unintentional disinheritance; and
7. Reduce or eliminate estate taxes. In 2010, there is currently no federal estate tax. But Congress may reinstate it. If Congress does nothing, it will be back in 2011.

Now, as good as a living trust is, remember that it can only control your assets. A good estate plan will let you keep control over your financial *and* medical decisions. Let's look at two documents that pertain to medical decisions, and see how much control they each give you.

The first is a living will. Although the name is similar to a living trust, it does something very different. A living will lets your physician know the kind of life support treatment you would want in case of a terminal illness or injury. It is very limited - it only applies to life support in terminal situations. But, an "advance directive for health care" is better. It lets you give legal authority to another person (like your spouse or adult child) in advance to make any health care decision for you - including the use of life support - if you become unable to make them yourself. This document is much broader than a living will, and it can be legally enforced.

If you want an estate plan that will give you all this control - both financially and medically - follow our **Five-Step Action Plan**:

1. Write down your objectives. Whom do you want to receive your assets after you die - and when? Whom do you want to manage your financial affairs - and make medical decisions - for you when you can't? If you have minor children, who do you want to take over for their care?

2. Inventory your assets and debts. Find out how much you own. Make a written inventory of everything.

3. Select a professional to help: someone with whom you will be comfortable sharing this information, who can answer your questions and who will be there when you need him or her. You can contact the caring, experienced estate planning attorneys at Nagle Law Group at 602-595-3156.

4. Have the legal documents prepared.

5. Change titles to your living trust. Remember, a living trust can only control the assets you put into it.

Preparing estate planning documents that are legally binding is important for you and your family; contact the caring, experienced estate planning attorneys at Nagle Law Group for assistance. Call us today at 602-595-3156.