

# Estate Planning Basics for Consumers (Not Subject to Estate Tax)

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A KEY ESTATE PLANNING GUIDE Law Easy ChronicIllnessPlanning.org

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# Estate Planning in 12 Steps



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Estate Planning Basics for Consumers in 12 Easy Steps

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## Caveat

- Nothing in these slides or any accompanying presentation is to be considered tax, legal, investment or other professional advice. The information is merely provided for educational purposes and no action should be taken without the individual consulting his or her own tax, estate, legal, financial, investment, insurance and other advisers.
- This program may constitute attorney advertising.
- More complex issues you should address with professionals are highlighted in orange and won't be discussed.

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### General Disclaimer

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### What Was Estate Tax Planning?

- Estate planning had often been focused on minimizing estate taxes which were viewed as potentially devastating 50% + of what wealth you accumulated. For most taxpayers this is no longer the case.
- For many consumers this translated into bypass trusts, marital trusts and insurance trusts. Even if these steps still make sense the focus of planning and application of those techniques has changed.
- Now only about 3,000 decedents a year will pay estate tax:
  - \$5 million inflation adjusted exemption (2016 – a couple can bequeath \$10,890,000 without federal estate tax).
  - A surviving spouse can capture (“port”) the exemption of the deceased spouse without a bypass trust.

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### What is Modern Estate Planning?

- Providing peace of mind for you and your loved ones on a broad range of planning issues.
- Address human issues: religious considerations, health challenges, charitable giving, and more.
- Financial planning, longevity planning and other financial decisions must lead most estate planning decisions.
- Protection from lawsuits, creditors and divorce.
- Insurance of varying types to meet many planning needs.
- An integrated plan that coordinates your investments, retirement, insurance, emergency and disability planning, and more while you are alive, disabled, retired and for your heirs
- Maximizes the basis step up for income tax purposes.
- You have to define what “estate planning” means to you.

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## Overview of Estate Planning – Document Perspective

- **Powers of Attorney**
  - Springing vs. not
  - General vs. Special
  - Why standard forms aren't sufficient
  - Special provisions to include
- **Living Wills**
  - What they are and why they are important
  - Address specific health and religious issues
- **HIPAA Releases**
- **Health Proxy**
  - Special considerations in selecting agent
- **POLST**
- **Insurance Trusts**
  - Multi-purpose ILIT or MILIT
- **Wills and Revocable Living Trusts**
  - New Bypass trusts.
  - Boilerplate forms rarely address nuances needed.
  - What can and should you have.

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## How Financial and Estate Planning Are Changing

- Technology improving
  - You can get a wealth of information and even legal documents on line, but how can you protect yourself from what is worthwhile and what isn't?
- Demographic changes
  - Aging population requires a focus on later life (longevity) planning to protect people as the age from elder financial abuse, identity theft, challenges of chronic disease and more
  - 20% of boomers support an elderly parent, many support adult children. How does this impact planning?
- Diversity expanding
  - Addressing different financial, religious and other considerations in planning and documents
  - Only about 20% of households are mom, dad and kids from that marriage. Be wary applying planning designed for a model that is not you!

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## Income Tax Focus of Financial and Estate Tax Planning

- The income tax is the new estate tax.
  - Saving estate tax is not the focus for most even wealthy people.
  - Capital gains costs to your heirs may outweigh state estate tax costs so maximizing basis step up may be more important than estate tax savings.
  - Do your LLCs and partnerships permit 754 elections?
  - Do your irrevocable trusts have swap powers?
  - Partnerships and irrevocable trusts can be used to shift income to lower bracket taxpayers.

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## Introduction to the 12 Steps

- Every person is unique – it has to be your plan and address your goals.
- Reflect your personal wishes and circumstances.
- Create a strong foundation of a plan and documents to build upon.



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## Step 1: Organize Emergency, Financial, Information and Advisors Information

- Contact People (names and numbers)
- Financial Information (account information)
- Passwords and Security Codes
- Documents (Estate planning documents, legal documents, and more)
- Budget and Financial Plan
- Tax Basis Information

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## Investment and Financial Information is Critical to Organize and Communicate

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|--|---|
| <ul style="list-style-type: none"> <li>• <b>Title to Accounts</b> <ul style="list-style-type: none"> <li>- Your name alone</li> <li>- Revocable trust</li> <li>- Joint</li> <li>- Other (POD, TOD, etc.)</li> </ul> </li> </ul>  | <ul style="list-style-type: none"> <li>• <b>Beneficiary designations</b> <ul style="list-style-type: none"> <li>- Update for new laws (e.g. remove bypass trusts)</li> <li>- Should trusts be named?</li> <li>- Of others that benefit client living with chronic illness.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>Account Management</b> <ul style="list-style-type: none"> <li>- Duplicate statements</li> <li>- Consolidation and simplification.</li> <li>- Asset location decisions.</li> <li>- Access to safe deposit box.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>Automation</b> <ul style="list-style-type: none"> <li>- Online Organizing Records</li> <li>- Online Payments</li> <li>- Automatic Deposits</li> </ul> </li> </ul>   |

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## Step 2: Designate a Person to Handle Financial and Legal Issues

### Power of Attorney

- Agent (Successors)
- Compensation
- Begin date (Trigger)
- Powers (Authority)
- Durability (Disability)



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## Powers of Attorney Decisions

- Who should be named agent? What if you don't have reliable people? Worse, what if you think you have reliable people but you don't?
- Gift powers have been standard. Should they be? Might it be safer, to prevent elder financial abuse, to prohibit gifts?
- More complex tax powers for the wealthy:
  - What about gifts of remaining exemption?
  - What about gifts of remaining exemption but solely to already established trust, such as a SLAT?
  - What about express powers to loan to fund exercise of a swap power?
- Consider practical steps to make the power of attorney effective.
  - Consolidated and simplify financial holdings.
  - Organize and automate records.
  - Bills and deposits on automatic.

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## Step 3: Designate a Person to Make Health Care Decisions and Access Medical Records

### Health Care Proxy Medical Power of Attorney

- Agent (Successors)
- Powers (Religion)
- Signature (State Law)
- Move (State; Facility)
- HIPAA Release



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### Step 4: Other Health Care Documents

## Prepare a Living Will



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### Health Care Document Considerations

- HIPAA Release (Health Insurance Portability Accountability Act) – authorizes someone to access medical records and speak with physicians.
- Living Wills – Statement of health care wishes.
  - Address end of life decision making, funeral/burial.
  - Organ donations.
  - Nutrition and hydration.
  - Specify religious considerations.
- POLST (Physician Order Life Sustaining Treatment) – permitted in more than 20 states. A statement in your patient chart prepared by your physician to govern end of life decisions.

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### Step 5: Planning For Minor Children

- Disclose child's care information.
- Plan for medical emergencies.
- 529 Plans.
- Child trusts in your will.



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## Planning For Children

- How do you define "children" in your legal documents? Does that include those you want but exclude those you don't want provided for? Consider adopted children, out of wedlock, reproductive technologies, etc.
- Should you take special precautions in your planning for a special needs child? Be certain planning for a special child contemplates your disability, the child's unique circumstances, and potential changes.
- How do you plan for boomerang children (adult children who move back home)? Do you permit their support? How much? What about other children?

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## Trust Planning For Children

- Why ever set up a child or grandchild's trust? Does it ever make sense? In many cases a trust for your spouse/partner, all children and descendants may be more advantageous. Why leave out your spouse? What if you need access to the money?
- Modern Trust Drafting:
  - Create a dynastic trust to benefit spouse and all descendants. Why lose ability to benefit as it provides no tax or asset protection advantage?
  - Broad class of beneficiaries to maximize income shifting opportunities.
  - Creative use of general powers of appointment to maximize basis step up.
  - Powers of appointment, decanting provisions, trust protectors, and more techniques to add flexibility.

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## Step 6: Sign a Will



**A legal document to designate where your assets should be distributed in the event of death.**

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## Wills – Does it Work?

- Most consumers focus on the contents of their wills. While this is appropriate for many people most of their assets may pass outside of their will. This could be based on:
  - Beneficiary designation forms (e.g., for your IRA and life insurance)
  - On how accounts are owned (titled) (e.g., a bank account that is Pay On Death to a child, joint accounts, etc.)
  - On legal documents (e.g., a deed that has your house owned jointly with an heir)
- Coordinate all of these different "transfers" to be sure your intent is really met.
- Few consumers understand the implications of title and beneficiary designations and greatly overestimate the importance of their wills relative to other planning.

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## Wills – What is Different for the Wealthy?

- Always use a revocable trust.
- Do not rely automatically on testamentary dispositions. Consider instead creating more robust lifetime trusts in a trust friendly jurisdiction like Delaware.
- Bypass trusts – Consider new powers to distribute capital gains as part of trust accounting income, powers of appointment to cause estate tax inclusion, naming broader class of beneficiaries to shift income to lower brackets, and more.
- QTIP Trusts – plan for 2519 disclaimer, Clayton rather than disclaimer, etc.
- Other – investment allocation permitted to consider overall family investment allocation and tax status of each trust so can maximize benefits.

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## Step 7: Create a Revocable Living Trust

- Establish a personalized (not boilerplate) living trust.
- Transfer assets to a trust during your lifetime.
- Manage assets as you age or during disability or illness.
- It should be about much more than avoiding probate.



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## Step 8: Be Sure Your Insurance Coverage is in Order

- Property and casualty insurance.
- Long term care coverage.
- Disability income replacement.
- Life insurance.
- Liability.



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## Life Insurance

- Do you have a reasonable amount of life insurance to cover your real needs? Too much diverts money that you could add to savings. Too little may leave your loved ones in financial hardship.
- Your circumstances and needs change over time. Review existing policies and coverages – do they still meet your needs? Can you change them to better serve your goals?
- Use permanent life insurance as an asset class – part of your investment strategy + income tax benefits.
- Other creative uses of life insurance.

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## Life Insurance – What is Different for the Wealthy?

- Instead of survivorship to pay estate tax, permanent coverage on one life as part of a robust MILIT-SLAT.
- MILIT:
  - Instead of a simple life insurance trust use a more robust trust that accomplishes multiple goals, a **M**ulti-purpose **I**revocable **L**ife Insurance **T**rust.
  - Simplified Crummey powers.
  - Hold other assets. Income from those assets pay insurance premiums.
  - Asset protection when it is really needed.
- Review and repurpose existing policies and ILITs.

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### Step 9: File Beneficiary Designations and Confirm

- Standard provisions are not always adequate.
- Coordinate with Revocable Trust.
- What powers should agent have.
- Give copies to your advisers.
- Update when banks merge.
- Revise when tax laws change.
- Should you ever name bypass tru:
- 5 year payout may become law.



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### Step 10: Give Back

- Demonstrate important values to heirs.
- Thank those that have helped.
- Inspire others to give.



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### Charitable Giving Should be About More than Taxes

- Giving back, by volunteering, donating things you don't need, writing a check, or using more sophisticated techniques.
- Permit trustees and agents to make contributions to teach values to heirs.
- Harvesting gains and losses each year to minimize the amount taxable.
- 2 Generation CRUT for IRA.
- Why ever make a bequest under your will to charity? It might be a good way to demonstrate values for your heirs but giving while you are alive may generate a better tax break.

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## Step 11: Communicate

- Educate and inform your fiduciaries (agents, trustees).
- Preparation of beneficiaries.
- Advisory team must cooperate.



31 Having a real conversation is one of the most important steps you can take

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## Communication

- A team approach is more vital than ever before – especially for those advancing in years or facing a health challenge.
- If you cannot afford a meeting with a CPA, attorney, investment adviser and insurance consultant you can achieve similar results in an affordable manner.
- Integrated planning is the only approach to succeed.
- Every adviser brings something to the table.
- Everyone at every wealth level needs checks and balances. Use advisers, family members, etc.
- Planning is more complex than ever before so efficient planning team operation is vital.
- Broaden the concept of who should be part of your team.

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## Step 12: Review, Revisit, Revise

- Nothing remains static
  - Tax and property laws.
  - Family situations.
  - Assets and net worth.
  - Health.



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## Annual Reviews with your Team are Vital

- Your plan must be reviewed regularly. Does it still work?
- All insurance must be reviewed and managed.
- Who is your team? If you can afford an attorney and CPA they should be part of your team. If you can't you might collaborate with family and friends and help check each other.
- If you have a bad egg as an agent or adviser it is the regular interaction of your team that will help identify it.
- Coordinating the complex interplay of income and estate taxes, asset protection, and other goals will never work without regular checkups – this is important especially for those with lesser wealth since a loss will have a more adverse impact.
- You change oil every 5,000 miles and go to your internist for a physical each year, you had best meet your advisers once a year too.
- Web meetings and other technology can make it quite cost effective.

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## Make an Action Plan



## And Get Started

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## Action Steps

- If you haven't met with your CPA to discuss anything other than a tax return in the last year, call him/her now. If you cannot afford a CPA use the resources on line websites have, tools personal checkbook/financial programs like Quicken have and more.
- If your life insurance has not been reviewed in two years, call your insurance agent. If you don't have an agent comparison check using online resources.
- Do you know what your beneficiary designations say? Do you have current copies?
- If you have not updated all of your estate planning documents in the past two years, you're overdue for a review.
- Have you reviewed all existing/old entities and trusts?
- Have you considered practical steps to make your documents function?

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### Additional information

- Email: [Shenkman@shenkmanlaw.com](mailto:Shenkman@shenkmanlaw.com)
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