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WHAT IS AN ESTATE PLAN, ANYWAY?

A will is part of an estate plan, but not the only part.

An estate plan consists of multiple documents, all with one main goal—to protect you and your assets, after your death, but also during your life.

The Will. Absent a will, the intestacy laws dictate that all your assets go to your spouse; if none is living, your children; if none is living, your parents; if none is living, your siblings, etc.

A will negates this mandate in favor of your personal wishes, which might include unequal, particularized or no distributions to family members, and gifts to friends, religious organizations, charities or institutions.

A will can also name the guardian for any minor children.

The Trust. Absent a trust, financial bequests are paid in one lump sum.

A trust, in contrast, commonly distributes assets to a beneficiary in defined amounts over specific periods, often to ensure that the trust assets are not dissipated, and the beneficiary is mature enough to handle distributions.

Cont. on page 3

I CAN DRAFT MY OWN WILL!

Yes, you can “draft” your own will or trust. Fill-in-the-blank forms are all over the internet.

But should you? Not if you want a personalized plan which fulfills your unique desires and best protects you and your family, including from adverse tax consequences.

Estate planning is a narrow legal specialty, practiced by attorneys with extensive legal, tax and accounting backgrounds. It involves federal and different states’ inheritance, tax, execution and recordation requirements.

One-size-fits-all forms can’t compare to estate planning attorneys’ experience and expertise. FOS attorneys know their clients, the law, and how to achieve an appropriate individualized plan.

FOS’s estate planning attorneys also combine their substantive estate planning talents with direct, personal client relationships, many of which continue for decades.

Try finding that in a form. Contact FOS for an estate plan that effectively and efficiently protects you and your family, and minimizes your potential tax liabilities, all at a reasonable cost.

BACK TO BASICS

Over the past seven years, FOS’s *The E.P. Express* has delved into all types of estate planning issues.

These have included articles targeting the young and the not so young; the single, the divorced and the remarried; those without children and those with children and grandchildren; the healthy and those with special needs; those in a family business and those otherwise employed; and the wealthy and those aiming for wealth.

The 2019 novel coronavirus has brought illness, loss and anxiety to 2020.

Its unexpected impacts have forced many of us to contemplate how to best protect ourselves and our families.

As a result, this issue goes back to basics.

What is an estate plan?

Why do I need one?

Can I write it myself?

Is it once and done?

We hope to provide you with a basic understanding of the estate planning process, and spur you to act in these uncertain times.



ONCE IS NOT ENOUGH

A proper estate plan is a valuable gift to yourself, your family, and your peace of mind.

That accomplishment, however, can come undone if your plan is not periodically reviewed and updated to conform to the changes which we all experience over the years.

We marry. We divorce. We have a child, and then another.

We take out insurance. We set up retirement accounts.

We buy and sell property.

Make sure your property titles and beneficiary designations are consistent with your will and trust.

Change happens. Your named guardian may announce he hates children.

Your named personal representative may move to another state.

Your named trustee and Durable Power of Attorney agent may engage in questionable financial transactions.

If so, redo your estate plan documents to name a trusted and appropriate guardian, personal representative, trustee and agent in their stead.

Your thoughts may change, from years ago, about what medical measures you want taken (or avoided) if you become incapacitated.

If so, change your Health Care Power of Attorney to say so.

Your son may be off to college.

If so, make sure he signs his own Health Care Power of Attorney so you can be informed and act for him in a medical emergency.

Your daughter, on the other hand, may be frittering away her 30s.

If so, amend your documents to restrict distributions to her until she is 50.

Knowledge is power. So is reviewing and, if appropriate, modifying your estate.

****SECURE ACT ALERT****

There has been much publicity recently about the SECURE ACT, which was enacted in December, 2019 as part of the federal government's spending bill.

The Act contains major revisions to the retirement plan rules.

FOS's Spring, 2020 edition of *The FOS Express* contains an article on the impact of the Act on IRA and retirement plan distributions.

To access the article or issue, go to <http://foslaw.com/news-views/secure-act-creates-ira-anxiety/> or contact info@foslaw.com.

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I DON'T NEED AN ESTATE PLAN - I'LL BE DEAD THEN

We know we need estate plans. And still, we put it off. Until something unexpected happens. Your spouse dies. Or worse, if possible, you and a family member die in an accident. That's what recently happened to Kobe Bryant, 41, and his daughter, 13. We, the public, didn't expect it. But it happened. And happens.

A proper estate plan allows you to:

Designate who will and who will not receive all or part of your assets at your death. It overrides the intestacy laws, and puts you in charge of your dispositional scheme.

Protect your children. In addition to designating who will be your minor children's guardian, you can decide what assets your children will inherit, and how and when they will receive them. For example, you can have unsophisticated young adults receive their inheritance over time. Similarly, if you have divorced or your widow/widower remarries, you can protect your children from sharing your assets with step- or half-siblings.

Protect your assets. You can appoint a trusted, financially knowledgeable person to administer your assets. In addition, even with the currently high federal estate tax exemptions (\$11.58 million per person for 2020), your plan can minimize state and related taxes.

Keep your assets and bequests private. Without proper planning, your estate may be subject to public probate. A proper trust and asset titling can avoid probate and keep your information private.

Avoid family chaos. Without an estate plan, a grieving family may have no idea how to access, manage or divide your assets. In addition to expensive court proceedings, family members may fight over assets, leading to judicial battles.

A proper estate plan helps while you're living, not just at death. It allows you to:

Manage your assets if you become incapacitated. A Durable Power of Attorney appoints a trusted, financially knowledgeable person to manage your assets and pay your bills if you become incapacitated. Without this, the court will likely appoint a conservator, who may be a stranger to you.

Make medical decisions if you become incapacitated. A Health Care Power of Attorney designates a trusted person, often a spouse or family member who knows what you want and do not want, to make health care decisions if you cannot do so.

Provide for a special needs child, even after adulthood. A special needs trust can provide for disabled individuals while minimizing the risk of jeopardizing government benefits.

Be prepared. Create your estate plan today.

What is an Estate Plan, cont. from page 1

A spouse, for example, may receive all interest and principal as she requests each year. An adult child may receive funds, in the trustee's discretion, for education or general welfare purposes at any time, and the trust's principal in installments (for example, 1/3 at age 30, 1/3 at 35, 1/3 at 40).

Beneficiary Designations. Many financial assets, such as insurance policies, retirement plans or IRAs, or other accounts, will be paid to your estate at your death, often requiring probate, unless you designate a specific beneficiary(ies). Beneficiary designations, which often work in tandem with a trust, state to whom, and in what amounts, these assets should be distributed.

Health Care Power of Attorney. This document applies during your life when, by illness, disability or otherwise, you cannot make medical decisions for yourself. It appoints a spouse or trusted family member or friend, who knows your wishes, to make medical decisions for you. You can also specify that certain actions be taken or avoided (feeding tube, DNR).

Durable Power of Attorney. This document, also applicable during your life, appoints a spouse, or a trusted and financially savvy family member or friend, to handle your finances if you cannot do so. The "agent" can manage investments, pay bills, and transfer funds in your stead.

Through a complete, integrated estate plan, all of these documents work together to best implement your goals for yourself, your family, and your assets.



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IN THIS ISSUE

Page 1 What is an Estate Plan/
Back to Basics/My *Own* Will

Page 2 Once Is Not Enough/
Secure Act

Page 3 I Don't Need an Estate
Plan

Page 4 Planning Now, Comfort
Later

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PLANNING NOW, COMFORT LATER

Death happens to us all. What do our survivors do?	initially proper estate plan but did not update it?	parents, if none to your siblings.	Your estate will have to open a court file, file legal notices, file an inventory of assets, and obtain court approval for its distribution.
If you've maintained an up-to-date estate plan, you can likely avoid probate.	What if you wanted to add a friend as one of your account beneficiaries, or exclude a former friend (now enemy?) but "never got around to it?"	Nothing to your favorite charity. Nothing to your best friend in the world who nursed you through your final illness.	Your assets will become public.
Your accounts will be transferred to your named beneficiaries. Your other assets will be transferred as specified in your trust.	Your assets will be transferred as you initially directed, not as you subsequently desired.	If the total assets in your name are not more that \$50,000, they can be transferred by affidavit, without a formal probate.	Your estate will waste time and pay filing, inventory and other fees that could have been avoided.
Your assets and dispositional scheme will remain, for the most part, private.	Your friend will receive nothing. Your enemy will receive the designated bequest.	If you were financially fortunate and garnered assets over \$50,000, you will likely have to file a formal probate.	Control by you, and efficiency and simplicity for your survivors, or control by the court, and time and expense for everyone.
Your survivors will not need to go to probate court.	And what will happen if you did not create any estate plan?	If so, your survivors will be unable to access accounts in your name until the court appoints a personal representative to administer your estate.	Do the right thing. Create and/or update your estate plan. You will be secure and your heirs will thank you.
Your estate will save time and money.	Your assets will be transferred under the laws of intestacy—first to your spouse, if none to your children, if none to your		
But what if you prepared an			