

What Does Your Estate Plan Say?

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When the issue of estate planning comes up, some people tell me, “Oh, we’ve already taken care of that.” Then I ask them some specific questions about their plan, and the answer is almost always, “I don’t know.” What kind of a plan is that? That’s like saying you just had surgery, but you’re not sure what surgery it was.

If you “already have” an estate plan, do you have ANY IDEA what it says? After all, these are legal documents and you simply can’t just guess what they say. Therefore, ask yourself the following questions. If you don’t know the answers, it might be a good idea to find out:

1. Do you have a testamentary trust or a living trust? A testamentary trust is not a living trust. The former only comes into existence after you die.
2. What kind of living trust do you have? Is it what you need? There are many different kinds of living trusts. Most people are surprised to learn that...they think there is some kind of “one size fits all” document!
3. Do you have a Schedule A somewhere in your plan? Is it up to date?
4. Who are your Successor Trustees? What is the system of succession, and is it spelled out clearly?
5. Are your assets clearly designated as community property or separate property? Community property assets belong equally to the husband and wife, and in some cases (taxes etc), it can be more beneficial to own assets as community property.
6. Are all your beneficiary designations in order? When was the last time you checked? Do you know which of your assets are controlled by beneficiary designations and which are not? Typically, life insurance, IRAs and other tax deferred accounts are the typical accounts controlled by beneficiaries. Remember it doesn’t matter what a will or trust says when it comes to beneficiaries.
7. Is your life insurance payable to your spouse? Your kids? Your Trust? What is best for you? Perhaps you should remove the life insurance from your estate for tax reasons? If the proceeds are made payable to your kids, please realize they won’t get the money if they are minors, and they will be entitled to all the life insurance proceeds upon reaching

age 18 unless you make other arrangements.

8. Does your trustee or agent under power of attorney have the ability to help you qualify for state assistance if necessary? Some people have a “power of attorney” in place, but it is missing several crucial powers that must be spelled out.

9. Is your trust revocable or irrevocable? Who has the power to do so? If it is revocable, when does it become irrevocable?

10. Do you have a HIPAA authorization? The “HIPAA” laws refer to relatively new privacy regulations that restrict access to your private records (i.e., your medical records).

11. When does your Durable Power of Attorney become effective? Once again, the system of succession is important here. The document should outline when your named agents have power.

12. Was your Health Care Directive executed prior to 1992? If so, it has expired.

13. Does your Health Care Directive really capture your wishes? When is it effective?

14. Are the people youve chosen willing to serve?

15. Do you have a community property agreement? Do you need one?

16. Have you given any direction to the guardian of your children or have you simply nominated someone without any further instruction?

Of course, there are more questions to consider, but this is a good start. Your plan should reflect your wishes, and your lawyer should explain things to you. I want my clients to actually understand their plan not just “have one.”

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