Chapter 1

Fundamentals of Estate Planning

In This Chapter

- Understanding what your estate is and why you need to plan it
- Realizing that your estate-planning goals are different from others'
- Comprehending estate-planning lingo
- Understanding the critical path method to planning your estate
- Getting help with your estate planning

The protection and control that you need. No, this phrase isn't the marketing slogan for a new deodorant. Instead, it expresses the two most important reasons for you to spend time and effort on your estate planning:

- After you die, the government will try to take as much of your estate as possible, so you want to protect it to the greatest extent that you can.
- For the portion of your estate that you are able to protect from the government, you want to have as much control as possible over how your estate is divided up. Basically, you want to decide what will happen to your estate instead of having a set of laws dictate who gets what.

Before you can plan your estate, you need to understand what your estate really is. Many people think that estate planning involves only two steps:

- Preparing a will
- Trying to figure out what inheritance and estate taxes — the so-called "death taxes" — apply (and if so, how much money goes to the state and federal governments)

But even though wills and death taxes are certainly important considerations for you, chances are your own estate planning involves much, much more. This chapter presents the basics of estate planning that you need to get started on this often-overlooked topic of your personal financial planning. Here you also discover that estate planning is every bit as important as saving for your child's college education or putting away money for your retirement.

What Is an Estate?

In the most casual sense, your estate is your *stuff,* or all your possessions. However, even if your only familiarity with estate planning comes from watching a movie or television show on which someone's will is read, you no doubt realize that you aren't very likely to hear words such as, "I leave all of my stuff to. . . ." Therefore, a bit more detail and formality is in order.

The basics: Definitions and terminology

What's that, you say? You don't own a house or any other real estate, so you think you don't have any property? Not so fast! In a legal sense, all kinds of items are considered to be your property, not just real estate (more formally known as *real property,* as discussed later in the' "Property types" section):

- Cash, checking, and savings accounts
- Certificates of deposit (CDs)
- Stocks, bonds, and mutual funds
- Retirement savings in your individual retirement account (IRA), 401(k), and other special accounts
- Household furniture (including antiques)
- Clothes
- Vehicles
- Life insurance
- Annuities
- Business interests
- Jewelry, baseball card collection, autographed first edition of *Catcher in the Rye,* and all the rest of your collectibles

Your estate consists of all the preceding types of items — and more — divided into several different categories. (For estate-planning purposes, these categories are often treated differently from each other, but we cover that later.)

The types of property listed almost always have a *positive balance,* meaning that they are worth something even if "something" is only a very small amount. Of course, an exception may be your overdrawn checking account, which then is actually property with a negative balance. In the case of an overdrawn checking account, the "property" is the amount that you owe a person or company (your bank, in this case). So your estate also includes *negative-value* property:

- The outstanding balance of the mortgage you owe on your house or a vacation home
- The outstanding balances on your credit card accounts
- Taxes you owe to the government
- Any IOUs to people you haven't paid yet

REMEMBER

Basically, all the debts you have are as much a part of your estate as all the positive-balance items.

In addition to understanding what your estate is, you need to know what your estate is worth. You calculate your estate's value as follows:

1. **Add up the value of all the positive-balance items in your estate** (banking accounts, investments, collectibles, real estate, and so on).
2. **Subtract the total value of all the negative balance items (remaining balance of the mortgage on your home, how much you still owe on your credit cards, and so on) from the total of all the positive-balance items.**

The result is the value of your estate. In most cases, the result is a positive number, meaning that what you have is worth more than what you owe.

(If calculating a *net value* by subtracting the total of what you owe from the total of what you have seems familiar, you're right! In the simplest sense, calculating the value of your estate involves essentially the same steps that you follow when you apply for many different types of loans: mortgage, automobile, educational assistance, and so on.)

WARNING!

However, in many cases — including perhaps your own — determining what the parts of your estate are, and what they are worth, can be a bit more complicated than simply creating two columns on a sheet of paper or in your computer's spreadsheet program and doing basic arithmetic. If you are a farmer, for example, you need to figure out the value of your crops or livestock. If you own a small one-person business, you need to calculate what your business is worth. Or perhaps you and six other people are joint owners of a complicated real estate investment partnership; what is your share worth?

For now, another point to keep in mind is that, in addition to what you have right now, your estate may include other items that you don't have in your possession but will have at some point in the future:

- Any future payments that you expect to receive, such as an insurance settlement or the remaining 18 annual payments from that $35 million lottery jackpot that you won a couple of years ago
- Future inheritances
- A loan that you made to your sister to help get her business started, and when she plans to repay you

When you're figuring out what your estate contains and what your estate is worth, you also need to include your own personal *accounts receivable* — a business and accounting term that refers to what people or businesses owe you — along with your banking accounts and home.

One final term to cover is estate planning. By definition, *estate planning* means planning your estate. (Duh!) More precisely, you need to follow a disciplined set of steps that we discuss later in this chapter. Why? You want to protect as much of your estate as possible from being taken away, and you (not the government or a scheming family member) want to control what happens to your estate after you die.

Your estate plan typically includes the following components:

- Your will
- Documents that substitute for your will
- Trusts
- Tax considerations, with the idea of minimizing taxes
- Various types of insurance
- Items related to your own particular circumstances, such as protecting your business or setting aside money to pay for your healthcare costs or a nursing home in your later years

We discuss all of these aspects of estate planning in this book. If this collection of estate-planning activities seems a bit overwhelming, think of estate planning as parallel to how you plan your personal finances and investments. Your investment portfolio may be made up of individual stocks, bonds, and mutual funds, along with bank CDs or other savings-related investments. Then within each type of investment, you have further categories (for example, different types of mutual funds) that you may want to use.

Your investment objective is to sort through this menu of choices and put together just the right collection for your needs. You must also do the same with your estate plan. You need to have the right will and insurance coverage, possibly accompanied by trusts, if they make sense for you and your family. Furthermore, you may need additional estate-planning activities and strategies particular to your own needs.

Property types

You can have several types of property within your estate. Make a distinction between these types of property because various aspects of your estate planning treat each type differently. For example, in your will (see Book VII, Chapter 2), you can use different legal language when referring to various types of property, so remember to keep these distinctions straight.

We already mentioned one type of property — *real property* — and noted that real property refers to various types of real estate:

- Your home (a house, condominium, co-op apartment, or some other type of primary residence that you own)
- A second home, such as vacation property on a lake or near a ski resort
- A "piece" of a vacation home, such as a timeshare
- Any kind of vacant land, such as a building lot in a suburban development or even agricultural land that you may own next to your "main" farm
- Any investment real property that you own either by yourself or with anyone else, such as a house that you rent out or your share of an apartment building

In addition to the actual real property itself, your estate includes any improvements that you can't even see. For example, if you and three of your friends bought 200 acres of land with the intention of turning that land into a subdivision and you have spent loads of money on infrastructure — water lines and hookups, sewer lines and hookups, in-ground electricity and cable, and so on — those improvements (or, more accurately, your share of those improvements) are also considered to be part of your estate, along with the original real property itself.

Your estate also includes *personal property,* which is further divided into tangible and intangible personal property. Your *tangible personal property* includes possessions that you can touch, such as your car, jewelry, furniture, paintings and artwork, and collectibles (baseball cards, autographed first-edition novels, and so on).

Your house is considered to be real property, not tangible personal property, even though you can touch it. Why? Because your house is permanently attached to (and thus made a part of) the land upon which it is built.

Your *intangible personal property* consists of financially oriented assets such as your bank accounts, stocks, mutual funds, bonds, and IRA. Of course, you can hold a stock certificate or mutual fund statement in your hand, but the stocks or mutual funds are still considered intangible personal property.

Technically, that stock certificate or mutual fund statement isn't actually what you own; it represents your portion of the ownership of some company (in the case of the stock certificate) or your portion of that mutual fund in the companies' stocks in which it invests. Financially oriented paper assets are typically intangible personal property, whereas actual possessions are tangible personal property. If you have any doubt about what category any particular item of your possessions falls into, just ask one of your estate-planning team members who we discuss later in this chapter.

Types of property interest

For each of the three types of property in your estate — real, tangible personal, and intangible personal — you also need to understand what your interest is. “Of course I’m interested in my property,” you may be thinking; “After all, it’s my property, isn’t it?”

In the world of estate planning, *interest* has a somewhat different definition than how that word is used in everyday language, or even how the word is often used in the financial world (interest that you earn on a certificate of deposit or that you pay on your mortgage loan). More important, the specific type of interest in any given property determines what you specifically need to be concerned about for your estate planning.

Property interest is an essential part of almost all of your estate planning, from the words that you put in your will to how you may set up a trust, for two very important reasons:

- You need to clearly understand what type of interest you have in your property so that you can make accurate decisions about how to handle your property when you plan your estate.
- As you decide what to write in your will and perhaps also set up trusts as part of your estate plan, you need to make decisions about what type of interest in each property you want to set up for your children, your spouse, other family members, or institutions such as charities.

The two main types of property interest are legal interest and beneficial interest. If you have only a *legal interest* in a property, you have the right to transfer or manage that property, but you don’t have the right to use the property yourself. By way of a very brief introduction to that topic, when you set up a trust, you name a *trustee,* a person who manages the trust.

Suppose that you set up a trust for your oldest son, Robert, as part of your estate plan, and you name your brother-in-law, Charlie, as the trustee. Charlie isn’t allowed to use Robert’s trust for his (Charlie’s) own benefit, such as to withdraw $10,000 for a trip to Paris. That’s called “Uncle Charlie goes to jail for stealing!” Assuming that Charlie does what he is supposed to do — and, more important, doesn’t do what he’s not supposed to do — Charlie has a legal interest in your son’s trust as the trustee.

Unlike his Uncle Charlie, Robert has the other type of property interest in his trust: a *beneficial interest,* meaning that he does benefit from that trust. Basically, you set up that trust to benefit Robert.

Now, to complicate matters a bit more, two "subtypes" of beneficial interest exist: present interest and future interest. If you have a *present interest* (remember, that means "present beneficial interest"), you have the right to use the property immediately. So if Robert has a present interest in his trust his Uncle Charlie manages, Robert may receive payments from the trust of some specified amount — say, $30,000 every three months, for this example. After Robert receives the money, he can do whatever he wants with it; the money is his to use, with no strings attached.

The other type of beneficial interest — *future interest* — comes into play when someone with a beneficial interest (that person is allowed to benefit from that property) can't benefit right now, but instead must wait for some date in the future.

For example, you can set up the trust described to benefit not only your oldest son, but also your other two sons, Chip and Ernest. But you decide to take care of your three sons differently within that same trust. Suppose that after Robert receives his quarterly $30,000 payments for five years, his payments stop, and Chip and Ernest each begin receiving $30,000 quarterly payments at that point. Essentially, Chip and Ernest have a future interest in the property (the trust) because they can't benefit right now; they benefit in the future.

Complicating factors just a bit more (last time, we promise!), someone with a future interest in property can have one of two different types of future interest: vested interest and contingent interest. If you have a *vested interest,* you have the right to use and enjoy what you will get from that property at some point in the future, with no strings attached.

TECHNICAL STUFF

In the world of estate planning, the word *vested* means basically the same as it does in the world of retirement plans, stock options, and other financial assets. When you are vested in your company's retirement plan, you have the right to receive retirement benefits according to the particulars of your company's plan, even if you leave your job. Similarly, if you have stock options that have vested, you have the right to "exercise" those options and buy your company's stock at your "strike price." Furthermore, if you want, you can immediately sell those shares for a quick profit if your company's stock price has gone way up. (Unless you worked at Enron, but that's basically the same story. . . .)

However, if you have the other type of future beneficial interest — *contingent* interest — you have to deal with some "strings attached" other than the simple passage of time. For example, you may set up that trust for your three sons in such a way that, for Chip and Ernest to *realize* that future benefit, each must graduate from college and spend two years in the Peace Corps.

(Or you may set up the trust so that Chip receives his future benefit only if he marries and his wife gives birth to a set of triplets, if the earlier example reminds you of the old television show *My Three Sons*.)

Why You Need to Plan Your Estate

Of course, you can decide to leave what happens to your estate after you die totally up to chance (or, more accurately, the complicated set of state laws that will apply if you haven't done the estate planning that you need to do). But because you're reading this book, chances are, the two fundamental goals of estate planning at the beginning of this chapter — protection and control — are uppermost in your mind.

But going beyond the general idea of protecting your possessions and being in control, you have some very specific objectives that you're trying to accomplish with your estate planning:

- **Providing for your loved ones:** You have people, including your spouse or significant other, children, grandchildren, and parents, who may rely on you for financial support. What will happen to that financial support if you died tomorrow?

  

  Even if you have a "traditional" family (that is, the kind of family typically shown in a 1950s or early 1960s situation comedy that is in perpetual reruns on TV Land or some other cable network), financial and other support for family members after you die can get very complicated if your estate isn't in order. But if your family is one that may be described as (quoting Nicholas Cage in the movie *Raising Arizona*) "Well, it ain't *Ozzie and Harriet,*" you absolutely need to pay attention to all the little details of protecting your family members if you die. Specifically, if your loved ones include former spouses, children living in another household, stepchildren, adopted children, divorced and remarried parents, or an unmarried partner, you have a lot of decisions to make regarding your estate and who gets what.

- **Minimizing what your estate will have to pay in estate taxes:** Yes, we know, we said that estate planning involves much more than the inheritance and estate (death) taxes, but make no mistake about it: Death taxes are certainly a consideration. Why pay more than you have to? You can take several steps — such as giving gifts while you're still alive — to reduce the value of your estate and, therefore, reduce the amount of death taxes that will have to be paid.

- **Protecting your business:** Politicians love to talk about the small business owner or the family farmer when describing how they are "a friend of the little guy." Still, if you own a small- or medium-scale business, such as a retail store or a farm, that business can be turned topsy-turvy if you die without a solid estate plan in place. (So actually, you want to make sure that, if you're a farmer, your farm is protected after you've "bought the farm.")

Sure, it's human nature to just let things happen. You're very busy with your career and your family. After all, do you really want to dwell on morbid thoughts, such as your own death? Because you really can't take any of your property with you, you do leave behind people and institutions (charities, foundations, and so on) that you care about along with all of your possessions. Why wouldn't you want to take the time to appropriately match up your property with those people and institutions?

Besides, estate planning is as much (if not more) about what you do during your life to manage your estate than it is about what happens after you die. Sure, it makes good theater to have a deathbed scene where the aged family patriarch or matriarch dictates what will happen to the vast family fortune, but the place to begin your estate planning isn't on your deathbed! That last-minute approach usually opens up the probability of one or more disgruntled family members trying to overturn your dying words. More than likely, your lack of estate planning will leave your estate dwindling away through more legal fees and taxes than what should have been paid.

(And not to be morbid, but if you die suddenly and unexpectedly, you may not even have the "opportunity" for that dramatic deathbed scene. If you haven't done your estate planning, chances are, nobody in your family will have any idea of what you want to happen to your estate.)

Need more? How about the game that the U.S. Congress is playing with the federal estate tax? As part of the estate tax laws, you have an *exemption* — an amount that you may leave behind that is free of the federal estate tax. (The estate tax doesn't kick in until your estate exceeds the exemption amount).

TECHNICAL STUFF

As part of Congress's latest overhaul of the tax code, the federal estate tax exemption will rise each year, to $3.5 million in 2009. Then, in 2010, the federal estate tax goes away entirely, but only for one year! In 2011, the estate tax not only "comes back from the dead" (appropriately enough, huh?), but the exemption also becomes $1 million, or $2.5 million less than it was only two years earlier.

For federal estate tax purposes, your estate planning is actually a moving target between now and 2011. If you die between now (the time you're reading these words) and 2011, the amount of federal estate tax could be all over the map if your estate is very valuable. If you die in 2010, under the current law, you won't owe any federal estate tax; however, if you die in 2011, you could owe a lot. Now, most people won't try to work "die in 2010" into their estate plans for the sole purpose of saving money on federal estate taxes, but the point is that you really need to stay on top of your estate-planning activities to try to minimize the amount of those taxes.

Another reason to plan your estate deals with a mistake that many married couples make with their respective estates. Regardless of the federal estate tax and varying exemption amounts we've already discussed, you can leave an unlimited amount of your estate to your spouse, free of federal estate taxes.

However, sometimes you're better off not leaving your entire estate to your spouse, especially if your spouse also has a sizable estate (not only property jointly owned with you, but personal property that only your spouse owns). Why? Because then your spouse (assuming that you die first) now has an even larger estate, which is then subject to a potentially larger tax liability than if you had done something else with your estate. Basically, your children or whomever else you and your spouse are leaving your respective estates to will likely be stuck with paying more in federal estate taxes just because you decided to take the easy step with your estate and leave it all to your spouse.

Many states also impose inheritance and estate taxes, which your estate pays in addition to federal estate taxes. The answer? You need to proactively conduct your estate planning, consider all the matters in this section, and create a personalized estate plan.

Why Your Estate-Planning Goals Differ from Your Neighbors'

You are a unique individual.

No, not as part of the latest feel-good pop psychology designed to boost your self-esteem (not to mention make tons of money for the guru with seminars and videotapes). It's a statement to stress why you need to take time to create an individualized estate plan for your own situation.

Many people finally and grudgingly acknowledge that they need to worry about their estate plans, but then they take a haphazard, lackadaisical approach to estate planning: a generic fill-in-the-blank will purchased in a stationery store, a cursory review of active insurance policies, and a check to see whose names are listed as beneficiaries on the retirement plan at work. But that's all; everything else will fall into place, right?

Besides, is it really worth putting in any more time and effort beyond those basic tasks? After all, you're the one who will be dead. Why make all that effort for a series of events that will take place after you've died?

However, consider all the factors that make up many different aspects of your life:

- Your marital status: married, divorced, separated, single, widowed (or “widowered”), or maybe unmarried but living with someone
- Your age
- Your health (Not to be excessively morbid, but if you know that you have a potentially fatal condition or illness, or are in generally poor health, time is of the essence for your estate planning.)
- Your *financial profile,* such as the property (real and personal) you have and what that property is worth
- Any potentially complicated business or financial situations that you have, such as investment partnerships
- Any money that you expect to receive — particularly large sums — such as an inheritance, a lawsuit settlement, or severance pay from a job you are leaving
- Insurance policies you have, and the type and the value of each
- Information on whether any of your assets are particularly risky, such as stock or stock options in a start-up company that, on paper, are worth millions of dollars but that you can’t do anything with, for some reason (for example, your stock options haven’t fully vested)
- Details on your children, if any, including their ages, their respective financial states, and their respective marital statuses
- Details on your grandchildren, if any, and whether you want to explicitly take care of them as part of your estate planning or, alternatively, leave it to your children to take care of their own children as part of their own estate planning
- Details on your parents, if they are still alive, and whether they are still married to each other, whether either has remarried, their financial status (together or, if divorced, separately), and whether you need to take care of them
- Details on your brothers and sisters, and if whether you want or need to take care of them as part of your estate planning
- Information on any other family members (cousins, aunts, uncles, and so on) or even friends that you want to include in your estate planning
- Charities and foundations that you support

Just consider the items in this list — not to mention dozens of others that you can probably think of — and the answers for you and your life. Sure, somewhere in the United States, you can probably find someone else with more or less the same profile as yours, but the point is that no estate plan is a one-size-fits-all plan that you can effortlessly adapt to your situation.

Additionally, even a canned plan that seems to be suitable for your situation may actually be a poor choice when you really dig into the details. Think of the man's suit or woman's evening dress that looks great in a magazine advertisement or even on a store mannequin. It may seem to be bodily proportional to your own, but when you try on that suit or dress, something may not look or feel right.

We strongly recommend that you make your credo for estate planning "No shortcuts allowed!" The time and effort, and even expense, that you put into developing a solid, comprehensive estate plan will be well rewarded. True, you won't necessarily be alive to fully see the benefits of your efforts, but the people you care about enough to include in your estate plan likely will be grateful.

The Critical Path Method to Planning Your Estate

Estate planning is a process that we can further divide into multiple steps or activities (or, for you computer and business types, *subprocesses*). In business, building computer applications, or even life itself (weddings, for example), most processes tend to take days, weeks, months, or even years from start to finish; rarely does any process happen overnight.

Treat your estate-planning activities as a process. The process includes a disciplined method created from a set of steps that lead you from a state of *estate-planning nothingness* (that is, you have no estate plan) to the point at which you have a well-thought-out estate plan in place. We recommend using the *critical path method* to planning your estate.

If you've taken a college business class in operations research, quantitative methods, or a similar topic, you may already be familiar with the critical path method, which is defined as the most effective way through a series of steps to reach your objectives. In other words, even when you have a seemingly infinite number of possible paths in front of you, you can find one particular path that is the most effective and efficient.

In estate planning, you often face many side roads when working on your will or setting up a trust. Before you know it, the side road has turned into a detour and your estate plan is in a state equivalent to your car being stuck up to its lugnuts in mud. (For the automotively challenged, the previous sentence means you aren't going anywhere anytime soon.)

If the terms *operations research* and *quantitative methods* cause you to draw a blank stare or if those terms cause shudders and tremors as you flash back to long-forgotten, hated college courses that you barely passed, simply think of the critical path method as a map. If you're standing on a corner in Winslow, Arizona, and you want to go to Phoenix, Arizona, you can get in your car and, after checking a map, drive approximately 190 miles of interstate highway. Or maybe you don't know the area very well and you're one of those I-never-check-a-map kind of people, so you get in your car and just start driving. First, you head to Los Angeles, then drive up to San Francisco, then maybe go over to Chicago, drive back to Denver, and then drive toward Phoenix. ("By the time I get to Phoenix, she'll be on Social Security.")

Anyway, the critical path method is fairly straightforward and includes the following steps:

1. **Define your goals.** Before you begin your estate planning, decide what you're trying to achieve. Are you trying to make sure that your spouse has enough income for some period of time (say, five years, or maybe longer) if you died suddenly? Are you trying to make sure that your children have enough money for college after you're gone? Is your estate worth more than $10 million, and are you trying to protect as much as possible from the eventual federal estate tax bite?

   As we mention earlier in this chapter, your estate-planning goals are almost certainly different than anyone else's that you know, so make sure that you take the time to define those goals.

   TIP

   Write down your goals; don't just think about them. Often by actually writing down your goals instead of just visualizing them, you get a better handle on how your goals relate to one another, and you make sure that you haven't forgotten anything.

2. **Determine which estate-planning professionals you want to work with.** Financial planners, insurance agents, attorneys, and accountants (all of whom we discuss in the next section) can provide valuable guidance and service to you. You need to determine which professionals best help you meet your goals. For example, have an attorney work with you on your will to be sure you meet all of your own state's requirements for the will to be legally binding. You may also decide to work with other professionals, depending on the complexity of your estate and the particular goals you defined in the previous step.

3. **Gather information.** Whether you work with professionals or not (more on this particular decision point in the next section), you need to have as much available information as possible so that you know where you are currently in your estate-planning process. Ask yourself the following questions:

   1. Do you have a will right now? If so, when did you prepare that will?
   2. What in your life has changed since you created that will?
   3. What insurance policies do you currently have?
   4. Have any insurance policies expired?
   5. Perhaps most important, what property is in your estate and what is the value of that property?

4. **Develop your action plan.** Basically, get ready to do the many different activities we discuss in this book: Work on your will. (Create your will, if you don't have one, or perhaps update your will if the will is outdated.) Decide whether trusts make sense for you and, if so, choose which ones. Figure out what you need to do to protect your business, and so on.
5. **Actually conduct your action plan.** People often trip up on this step during their estate planning (or anything else they like to procrastinate on). Actually do the plans that you developed in Step 4. If you die without a will, complications may arise even if someone in your family finds a sheet of paper on your desk that reads "Step 4: Prepare my will."
6. **Monitor your action plan.** You may like going through all the previous estate-planning steps, finishing them, and then just forgetting about them all. But in estate planning, you never really finish. You periodically need to resynchronize your estate plan with any major changes in your life. For example, have you gotten divorced and remarried? You had better get cracking on those updates! Even-less dramatic changes in your life can trigger changes, so your best bet is to double-check everything in your estate plan once each year so you can make sure that your estate planning reflects all changes to your life, great and small, in a timely fashion. You can even tie your "checkup" to an annual occurrence, such as your birthday, or the beginning or end of daylight saving time (unless you live in one of those places like Arizona that doesn't "spring ahead and fall back" each year), or to some other occasion that you won't easily forget.

By following these steps and staying on the critical path, you greatly reduce the chances of taking all kinds of unnecessary and potentially serious detours with your estate planning, and you can typically get through the tasks with minimal stress.

TIP

Take the initiative to meet with each member of your estate-planning team annually. Or ask someone on the team to remind you annually to review your estate plans — the way your dentist reminds you to come in for a checkup.

Getting Help with Your Estate Planning

You can do all of your estate planning by yourself, but you don't have to. Even more important, we don't recommend that approach. But can you turn to someone with a job title along the lines of Professional Estate Planner for help?

Not exactly. As we mention several times in this chapter, estate planning actually consists of several different specialties or disciplines. If you want, you can work with one or more people in each of those specialties as part of your estate planning.

The number of people with whom you work largely depends on two main factors:

- How comfortable you are with the overall concepts and mechanics of estate planning
- How complicated your estate is

The material covered in this book can go a long way toward helping you with the first of those two factors. But even if you thoroughly understand little nuances of the clauses to include in your will or the basic types of trusts, you may still want to tap into a network of professionals if your estate is particularly complicated. Sure, you'll spend a bit more money on fees, but in the long run, you are more likely to avoid a horrendously costly mistake (financially, emotionally, or both), particularly if your estate is rather complicated.

How to make sure your team of advisers is "FAIL" safe

So whom do you work with? Use the FAIL acronym to help you remember the people you need to think about for your estate-planning team:

- Financial planner
- Accountant
- Insurance agent
- Lawyer (or attorney, the more familiar word we use in most places in the book)

The order of the professionals in this list doesn't indicate any type of priority (that is, your financial planner isn't more important than your accountant) or any type of sequence (you don't have to work with your accountant before you work with your insurance agent). The order shown is solely for the purposes of the FAIL acronym, to help you remember these different professions and how they may help you.

TIP

You don't necessarily need a full slate of estate-planning professionals on your team. For example, you may work with your attorney and accountant. But if you've decided that insurance is only a minimal part of your overall estate plan, you may not need to work with an insurance agent. Or if you are well versed in investments and financial planning, you can handle that aspect of your estate plan by yourself and work with team members from the other specialization areas.

Straight talk

Talk candidly and honestly about personal and sometimes sensitive — or even painful — matters with your estate-planning team. The last thing you want is for your insurance agent to recommend a certain type of insurance policy that the issuing insurance company could invalidate because you hid some important fact. And your attorney needs to thoroughly understand all aspects of your relationships with your family, to help you create a will that accurately reflects your wishes. For example, if you really want to cut someone out of your will and leave that person nothing, make sure your attorney knows so that you can construct your will appropriately.

The best professionals sometimes set things into motion that can have unintentional and less-than-desirable consequences if another member of your estate-planning team isn't aware of what was done. For example, you need to be certain that you understand all the tax implications — federal income, state income, gift, estate, and so on — of a trust that your financial planner recommends and that your attorney sets up. Therefore, your accountant needs to work side by side with your attorney and your financial planner before the trust is created, to be certain that no unpleasant tax surprises pop up.

Working with Certified Financial Planners (CFPs) and other professionals

Because a significant portion of your estate likely involves your investments and savings, consider working with some type of financial planning professional. You can work with a financial planning professional solely on an advisory basis. If you want, you can make your own decisions about your investments and savings after consulting with a professional. Your financial planning professional also can play a much more active role, such as making major decisions for your financial life (with your consent, of course).

All financial-planning professionals aren't created equal, nor do they necessarily have the same background and qualifications. In the following paragraphs, we provide a brief overview.

Before you decide to work with any financial-planning professional, you need to understand just who these people are, what type of formal training and credentials they have, and how using them relates to your estate planning.

Other financial-planning professionals

If your financial life is particularly complicated, you may need to work with several types of financial-planning professionals in addition to a basic financial planner (who may or may not be a CFP).

Two other types of financial-planning professional are the *Investment Adviser* (*IA*) and the *Registered Investment Adviser* (*RIA*). IAs and RIAs specifically advise their clients about securities (stocks, bonds, and so on). Any IA who manages at least $25 million in assets must register with the Securities and Exchange Commission (SEC). You can check out this information at `www.adviserinfo.sec.gov`.

Chartered Financial Analysts (*CFAs*) are typically portfolio managers or analysts for banks, mutual funds, or other institutional clients (in Wall Street lingo), but some CFAs also advise wealthy individuals and families who have particularly complicated investment situations. CFAs take a series of examinations covering portfolio management, accounting, equity analysis, and other subjects, and must have at least three years of professional experience in investments. CFAs are also required to sign an ethics pledge every year.

A *Certified Investment Management Consultant* (*CIMC*) works with the wealthiest of the wealthy — high-net-worth private clients. A variety of examinations and continuing education, plus at least three years of professional experience, is required.

A *Certified Fund Specialist* (CFS) works with clients on mutual funds. (Some CFSs also provide general financial-planning services.) Examinations and continuing education are required to retain CFS status.

Certified Financial Planners (*CFPs*) provide financial-planning services and general financial advice on a wide range of topics, from investments to taxes and from estate planning to retirement planning. CFPs are required to pass college-level courses in a broad range of financial subjects and then must pass a two-day, ten-hour examination. CFPs must also have either a bachelor's degree and at least three years of professional experience working with financial planning clients, or. without a degree. at least five years of experience doing financial planning.

You can check with the Financial Planning Association at `www.fpanet.org` or search for planners by state, city, or zip code, or call 404-845-0011 (toll-free 800-322-4237). You can find financial planners who have the CFP credentials. You can then verify a planner's CFP status with the CFP Board of Standards at `www.cfp-board.org`.

You can regularly check *Money* magazine, *Smart Money,* and other personal finance publications for the latest information, even problems and scandals in the profession.

Make sure you clearly understand how your financial-planning professional — CFP or otherwise — gets paid. Some financial-planning professionals get paid on a “fee-only” basis, meaning that they don’t receive any commissions for selling you financial products; they are compensated only for advice (basically, they’re consultants).

Fee-based financial-planning professionals not only earn fees from the advice they give you, but they also earn commissions for selling you financial products. Commission-based financial-planning professionals make money only from the products they sell you.

You can certainly find both ethical and unethical people (not to mention competent and incompetent ones) in any of these three categories. However, pay particular attention to recommendations from fee-based or commission-based financial-planning professionals. Perhaps those investment choices are the perfect match for you, but you need to make that decision, not your financial-planning professional who stands to benefit financially from selling you some type of product.

Knowing what to expect from your accountant for your estate planning

Your accountant can do a lot more for you than fill out your tax returns for the previous year. Businesses use accountants for planning purposes, trying to steer what happens in the future for tax purposes by doing certain steps today. Plan on working with an accountant on your estate planning for those very same reasons, even if you do your own income taxes and haven’t really worked with an accountant before.

Make sure the accountant on your estate-planning team presents you with scenarios of what can likely happen, based on recommendations from other members of your estate-planning team. If your CFP recommends certain investments or insurance products, what are the tax implications when you die? What are the tax implications if you die tomorrow versus dying ten years from now?

Your accountant can also have a more active role in your estate planning, suggesting certain tactics with an eye toward reducing your overall estate tax burden (giving gifts, in particular).

Never do any financial gift-giving (as contrasted with birthday gift-giving or holiday gift-giving) without consulting an accountant for tax implications.

Seek out an accountant who is a Certified Public Accountant (CPA*),* meaning that the accountant has passed the American Institute of Certified Public Accountants (AICPA) examination.

TIP

You may also consider combining two of the roles on your estate-planning team — the financial-planning and accounting specialists — by working with someone who is a Certified Public Accountant/Personal Financial Specialist, (CPA/PFS). In other words, this person is a CPA who also provides overall financial planning and has passed the PFS exam. Check out www.cpapfs.org.

Working with your insurance agent

Depending on your particular estate-planning needs, various forms of insurance (life, disability, liability, and other types) may play a key role. Most people who have dependents (particularly a spouse and children) wind up working insurance into their estate plan to meet the "protection" objective of estate planning.

Therefore, consider your insurance agent a part of your estate-planning team. For example, when you discuss life insurance and make decisions about different types of life insurance policies, make sure that your insurance agent is aware of any estate-planning strategies, such as trusts, so that you can have your policy beneficiaries listed correctly.

TIP

Some insurance companies are *agentless,* meaning that, unlike traditional insurance companies, in which you have an assigned insurance agent, your contact with the company is through any one of hundreds or even thousands of customer service representatives, almost always over the phone or the Internet. In these situations, ask one of the customer service representatives whether you can speak with or even work with anyone at the company on estate-planning matters. Chances are, the representative will say yes, so even though you don't technically have an insurance agent, you may still have access to short-term estate-planning assistance when you need it.

Working with your attorney

Even though your attorney is last on the list of the members of your estate-planning team (courtesy of the "L for Lawyer" that we used in our FAIL acronym), he or she may quite possibly be the most important member, for one simple reason: Your attorney keeps you from inadvertently making very serious mistakes.

All kinds of problems can trip you up and cause serious headaches in the future — well, not headaches for you, because you've already died, but for someone else. For example:

- How should your will read to make sure that your significant other, to whom you are not married, receives what you want out of your estate?
- How should the deed to your home be written to make sure that your unmarried significant other isn't forced to move if you die first?
- If you have an elderly parent who needs to go into a nursing home, what are the implications to your parent's estate and your own?

Basically, think of your attorney as your "scenario-planning specialist." Your attorney considers all kinds of information about you and your estate. He or she then presents you with options, based on various scenarios, such as you dying suddenly next week (morbid, but definitely an eye-opener for many people when first doing their estate planning) versus you dying at the ripe old age of 134 (courtesy of advanced biotechnology), having outlived everyone else in your family.

Beyond the scenario planning, make your attorney your primary advisor for your will, trusts, legal implications for your business, and pretty much any other legal matter that directly or indirectly relates to your estate planning.