IN THIS CHAPTER

- Understanding what your estate is
- Planning what will happen to your estate
- Realizing that your estate-planning goals are different from other people's
- Comprehending estate-planning lingo
- Stepping onto the critical path for estate planning
- Putting together your estate-planning team

# Chapter 1
# Congratulations: You Have an Estate!



The protection and control that you need.

No, the above 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 the portion of your estate that the current tax law says it's entitled to, but you have the opportunity to protect your estate by minimizing that tax bite.
- 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 rather than have a jumbled set of complicated laws dictate who will get what.

You may have spent time working on a financial plan throughout your life, as well as crafting your retirement plan. Your estate plan accompanies those other two plans and makes up the third leg that supports your life's overall "financial stool."

WARNING

Without a solid estate plan, however, your "financial stool" can't stand on just those two other legs. Even worse, even though you may not be around to witness the complications and damage, all your hard work on your financial and retirement plans could be severely compromised in the absence of a solid estate plan.

Before you can plan your estate, you need to understand what your estate really is. Many people think that for the average non-billionaire, 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, then how much money will go to the state and federal governments)

But even though wills and death taxes are certainly important considerations, chances are, your own estate planning will involve much, much more.

This chapter presents the basics of estate planning that you need to get started on. In this chapter, we show you why estate planning is every bit as important as saving for your child's college education or putting money away for your retirement. In fact, your estate plan is the continuation and culmination of your personal and family financial planning.

# What Is an Estate?

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

## The basics: Definitions and terminology

"All my property."

Think of that phrase when you plan your estate.

What's that, you say? You live in an apartment and don't own a house or a condo or any other real estate (more formally known as *real property*; see the "Property types" section, later in this chapter), so you think you don't have any property? Not so fast! In a legal sense, all kinds of items are considered your property, not just real estate, including the following:

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

As we discuss in the "Property types" section, your estate consists of all the preceding types of items — and even more — divided into several different categories. (For estate-planning purposes, these categories are often treated differently from each other, but we cover that distinction 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. So, your estate also needs to account for debts that need to be subtracted from your asset values, such as:

- The outstanding balance of the mortgage you owe on your house or a vacation home
- The outstanding balance on all loans (home equity, car, or student loans)
- The outstanding balances on your credit card accounts

- Taxes you owe to the government
- Any IOUs to people that you haven't paid off yet

REMEMBER

Basically, all 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 also need to know what your estate is worth. You can calculate your estate's value as follows:

1. **Add up the value of all the positive-balance items in your estate (again, your banking accounts, investments, collectibles, real estate, and so on).**
2. **Subtract the total value of all the negative-balance items (the 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 net value of your estate, which you could think of as your "personal balance sheet." In most cases, the result is a positive number, meaning that what you have is worth more than what you owe.

TECHNICAL STUFF

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're 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're 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; if so, what is your share worth?

In Chapter 2, we discuss more technical and sometimes more complicated ways to determine your estate's value.

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

- Any future payments 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!

WARNING

## THE RIPPLE EFFECT

The old saying "Don't count your chickens before they're hatched" can definitely be applied in estate planning as it relates to future inheritances you're supposed to receive and then, in turn, pass on to others as part of your own estate plan.

For example, your grandparents, parents, and other loved ones (your *benefactors*) may have informed you that they have provided you with an inheritance — money, property, or something else of monetary value — in their own estate plans. However, you know how things in life often change. Changes in a benefactor's circumstances, such as a health issue that requires unplanned health-care costs, can easily eat into or even evaporate your inheritance. Accordingly, when it comes to these future inheritances that are eventually supposed to be heading your way, you need to keep the "uncertainty factor" in mind and make adjustments as necessary in your own estate plan. Essentially, unforeseen changes to the estate of one of your own benefactors could "ripple" into unforeseen changes in your own estate.

- A loan you made to your sibling to help get their business started that they will eventually repay.

TIP

For planning purposes, you also want to consider future inheritances you *may* receive, which *might* be part of your estate when you die (see the nearby sidebar, "The ripple effect").

If you're familiar with the business and accounting term *accounts receivable* (what people or businesses owe to you), you need to include your own personal accounts receivable along with your banking accounts and home when figuring out what your estate contains and what your estate is worth.

One final term to cover is *estate planning.* By definition, estate planning means to plan your estate (of course!). More precisely, you need to follow a disciplined set of steps that we discuss later in this chapter. Why? Because you want to protect as much of your estate as possible from being taken away, and because you want to control what happens to your estate after you die. An estate plan allows you to preserve as much as you can for your *beneficiaries* (family members, lifelong friends, or maybe even your favorite charities).

REMEMBER

Your estate plan typically includes the following:

- Your will
- Documents that substitute for your will, called (big surprise) *will substitutes*

- Trusts
- Tax considerations, with the idea of minimizing the overall amount of taxes you have to pay
- Various types of insurance, such as life insurance and long-term care insurance
- Items related to your own particular circumstances, such as protecting your business or setting aside money to pay for your health care or a nursing home in your later years

All these aspects of estate planning are discussed in this book. If this collection of estate-planning activities seems a bit overwhelming, think of estate planning as a parallel to how you plan your personal finances and investments. Your investment portfolio may be made up of individual stocks, bonds, mutual funds, and exchange-traded funds (ETFs), along with bank CDs or other savings-related investments. And 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 (see Chapter 7). 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 Chapter 3), you can use different legal language when referring to various types of property, so remember to keep these definitions and distinctions straight!

Earlier, we mention one type of property — *real property* — and note that real property refers to various types of real estate, including the following:

- Your *home* (a house, condominium, co-op apartment, or some other type of primary residence that you own)
- A second home (such as a vacation property on a lake or near a ski resort)

- A "piece" of a vacation home, such as a time-share
- Fractional ownership in real estate (through companies such as Pacaso and Arrived)
- Any kind of vacant land, such as a building lot in a suburban development or even agricultural land you may own next to your "main" farm
- Any investment real property that you own either by yourself or with someone else, such as a house you rent out through Airbnb or Vrbo or on your own, or your share of an apartment building

TECHNICAL STUFF

In addition to the actual real property itself, your estate also 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've spent loads of money on infrastructure — water lines and hookups, sewer lines and hookups, in-ground electricity and cable, and so on — then 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.

In addition to real property, your estate includes *personal property*, which is further divided into two categories:

- **Tangible personal property:** Your tangible personal property includes possessions that you can touch, such as your car, jewelry, furniture, paintings and artwork, and collectibles (baseball and sports cards, autographed first-edition novels, and so on).

  REMEMBER

  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.
- **Intangible personal property:** Your intangible personal property consists of financially oriented assets, such as your bank accounts, stocks, mutual funds, bonds, and your IRA.

TECHNICAL STUFF

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. Sound confusing? Don't worry — just keep in mind that financially oriented paper assets are typically intangible personal property, while actual possessions are tangible personal property. If you have any doubt as to what category any particular item of your possessions falls into, just ask one of your estate-planning team members.

## ARE NFTs REAL, TANGIBLE, OR INTANGIBLE?

What about those trendy yet sometimes perplexing *non-fungible tokens,* or NFTs? Aren't NFTs imaginary? After all, a digital image of a baseball card or a bored ape isn't really a physical baseball card or an actual piece of artwork featuring that really popular bored ape. Essentially, you have sort of a "receipt" recorded on a digital ledger — called a *blockchain* — that tells the world that you own that image.

Still, for estate-planning purposes, you can think of an NFT as just one more type of intangible personal property. In fact, you can draw a parallel between an NFT and the way you would own today, say, 100 shares of Tesla stock. You no longer have a physical stock certificate featuring elegant lettering stating that you own those Tesla shares. Instead, your Tesla shares are electronically recorded out in cyberspace.

You'll find some differences between how your Tesla shares are recorded versus how your ownership of an NFT is established. Most likely, your ownership of stocks, bonds, and mutual fund shares are recorded in some type of traditional database, whereas NFTs are part of the world of blockchains and cryptocurrency. However, the movement toward the so-called "Web 3.0" could eventually provide a blockchain underpinning for your stocks, bonds, and mutual funds, just like your NFTs.

The good news, though, is that for estate-planning purposes, you don't need to worry about blockchains and Web 3.0 and all that — you only need to know that if you jumped into the NFT game, you would treat those NFTs that you own as *intangible* personal property rather than real property.

## 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 as the word is often used in the financial world (for example, interest that you earn on a CD or pay on a loan). And 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 your estate planning, from the words that you put in your will (Chapters 3 through 6) to how you may set up a trust (Chapter 7), for two very important reasons:

- You need to clearly understand what type of interest you have in your property, so 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 that 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
- Beneficial interest

If you only have 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. For example, Part 3 of this book discusses the very important (and very complicated) subject of trusts that may be an essential part of your estate planning. 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 you set up a trust for your oldest son, Alvin, as part of your estate plan, and you name your aunt, Jackie, as the trustee. Jackie isn't allowed to use Alvin's trust for her own benefit, such as withdrawing $10,000 for a trip to Paris. That's called "Aunt Jackie goes to jail for stealing!" Assuming Jackie does what she's supposed to do — and, more important, doesn't do what she's *not* supposed to do — Jackie has a legal interest in Alvin's trust as the trustee.

Unlike Aunt Jackie, Alvin 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 Alvin.

Now, to complicate matters a bit more, two "subtypes" of beneficial interest exist:

- Present interest
- 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 Alvin has a present interest in his trust that is managed by Aunt Jackie, he may receive payments of some specified amount — for example, $30,000 every three months — from the trust. After Alvin receives the money, he can do whatever he wants with it; the money is his to use, 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 the 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 not only benefit Alvin, but also benefit your other two sons, Simon and Theodore. But you decide to take care of your three sons differently within that same trust. Suppose that after Alvin receives his quarterly $30,000 payments for five years, his payments will then stop, and Simon and Theodore will each begin receiving $30,000 quarterly payments. Essentially, Simon and Theodore have a future interest in the property (the trust) because they can't benefit right now; instead, they benefit in the future.

Complicating factors just a bit more (last time, we promise!), someone with a future interest in property can actually have one of two different types of future interest:

- Vested interest
- 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. After you're 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 (unless you worked at Enron, but that's another story . . .). 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* — then 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 Simon and Theodore to *realize* that future benefit, each must graduate from college and spend two years in the Peace Corps.

# Why You Need to Plan Your Estate

You can, of course, 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, such as the following:

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

  WARNING

  Even if you have a "traditional" family (that is, the kind of family typically shown in a 1950s sitcom), 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 isn't exactly like the one in *Leave It to Beaver,* then 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, then you have a lot of decisions to make with regard to your estate and who gets what.
- **Minimizing what your estate will have to pay in estate taxes:** Yes, we know that 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 (see Chapter 2) — 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're "a friend to the little guy," but the fact remains that if you own a small or medium-size 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.

Sure, it's human nature to just let things happen. You're very busy with your career and your family. And after all, do you really want to dwell on morbid thoughts such as your own death?

But you really can't take any of your property with you, and you do leave behind people and institutions (charities, foundations, and so on) that you care about along with all your possessions. So, 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 about what you do during your life to manage your estate than 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, due to the result of your lack of estate planning, your estate will dwindle away through legal fees and taxes in excess of what should have been paid.

And not to be morbid, but if you were to 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 what you want to happen to your estate.

Need more? How about the game that the United States Congress is playing with the federal estate tax? As part of the estate tax laws (discussed in Chapter 13), you have an *exclusion* — 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 exclusion amount).

When the first edition of this book was published back in 2003, the federal estate tax exclusion had just been set at $1 million. In 2022, however, the estate tax exclusion (the amount of your estate that is protected from being taxed by the federal government) was much, much higher: $12.06 million for an individual and $24.12 million for a married couple! Even better, the estate tax exclusion will continue to increase indexed to inflation until 2026. And given the resurgence of inflation in the early 2020s, that annual exclusion increase will really help you out when it comes to protecting your estate from inflation.

WARNING

Beware though! In 2027, the *sunset* (a commonly used legal and financial term meaning "the end or expiration") of the Tax Cuts and Job Act of 2017 will cut those personal and married exclusions by a gigantic 50 percent — or even more because of indexing.

This means that an estate that escapes taxes in 2026 because of the generous exclusion could find itself whacked by estate taxes in 2027. But wait, there's more.

In general, estate taxes are an important part of crafting your overall estate plan. But why should you care if your estate value is far below these exclusions? Well, just because the value of your estate is less than the federal tax exclusion levels *now*, or even after the 50 percent cut in 2027, that doesn't mean it always will be. Federal estate tax exclusions are a popular tax issue used as talking points by both Congress and the president as a way to increase tax revenue and make the "wealthy" pay their fair share.

TECHNICAL STUFF

A historical look at some of the estate tax exclusions over the last 20 years highlights that estate tax exclusion amounts are a moving target:

- $1 million in 2003
- $1.5 million in 2005
- $2 million in 2008
- $3.5 million in 2009
- $5 million in 2010

At first glance, it seems that the federal tax exclusions only increase — great news, right? — but the drumbeat continues in Washington to "roll back" these exclusions to much lower numbers. Do we hear $1 million? This is why estate taxes in general, and exclusion amounts in particular, matter so much and why you need to keep an eye on the current exclusions and changes to these exclusion amounts by Congress so you can adjust your estate plan for tax-planning purposes. Suppose your estate is, indeed, subject to federal estate tax; the maximum 2022 estate tax rate is 40 percent. Ouch!

We spend much more time on Congress's little game and what that means to your estate planning in Chapter 13. The main point for now is that for federal estate-tax purposes, your estate planning is actually a moving target between now and 2027. If you were to die between now (the time you're reading these words) and 2027, the amount of federal estate tax could be all over the map if your estate is very valuable. Now, most people won't try to work "Dying in a specific year" 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.

TIP

Another reason to plan your estate has to do with a mistake that many married couples make with their respective estates. Irrespective of the federal estate tax and varying exclusion amounts, you can leave an unlimited amount of your estate to your spouse free of federal estate taxes.

WARNING

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 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 whoever else you and your spouse are leaving your respective estates to will likely be stuck 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 that your estate pays in addition to federal estate taxes (see Chapter 10).

The answer? You need to proactively conduct your estate planning, take all the matters in this section into consideration, and create a personalized estate plan.

## Why Your Estate-Planning Goals Are Different from Your Neighbor's

You are unique.

No, the above statement isn't part of the latest feel-good pop psychology designed to boost your self-esteem. Instead, it's a point we want to emphasize to stress why you need to take time to create an individualized estate plan for your own situation. Your financial plan and retirement plans are specific to *your* individual circumstances and needs, right? Well, your estate plan is no different.

Many people finally and grudgingly acknowledge that they need to worry about their estate plans but then 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 checking 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?

And besides, is it really worth putting in any more time and effort beyond those basic tasks? After all, you'll be dead. Why make all that effort for a series of events that will take place after you're gone?

But consider all the factors that make up many different aspects of your life, including the following:

- Your marital status (married, divorced, separated, single, widowed, or unmarried but living with someone).
- Your age.

- Your health. (Not to be excessively morbid, but if you know that you have a potentially fatal illness, or you're 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 you have, such as investment partnerships.
- Any money you expect to receive — particularly large sums — such as an inheritance, lawsuit settlement, or severance pay from a job you're leaving.
- What insurance policies you have, the types of insurance (see Chapter 17), and the value of each.
- If any of your assets are particularly risky, such as stock or stock options in a start-up company that, on paper, is worth millions of dollars, but you can't do anything with those assets for some reason (for example, maybe your stock options haven't fully vested).
- If you have children and, if so, how many, their ages, their respective financial states, and their respective marital statuses.
- If you have any grandchildren and, if so, if 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.
- If your parents are still alive and, if so, whether they're still married to each other, if either may have remarried, their financial status (together or, if divorced, separately), and if you need to take care of them.
- Your siblings and if you want or need to take care of them as part of your estate planning.
- 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 after you really dig into the details. Think of the outfit that looks great in an ad but, when you try it on, something just doesn't look or feel right.

REMEMBER

We strongly recommend that you make your credo for estate planning "No shortcuts allowed!" The time, 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 those people who you care about enough to include in your estate plan likely will be grateful!

# Why Estate-Planning Lingo Isn't Really a Foreign Language

Part of the reason many people shy away from doing the proper amount of estate planning is because of the many different disciplines involved, including law, accounting, personal finance and investments, and insurance. And with each of those disciplines comes an entire set of complicated terminology — some more complicated than others, such as the many legal terms that come into play.

Abatement statue. Antilapse statute. Exordium clause. Inter-vivos trusts. Uniform probate code. The technical terms go on and on and on.

And you thought cryptocurrency lingo was confusing? But instead of throwing your hands up in disgust, we suggest the following plan of attack to get through the complicated terminology.

Even though we use and explain many different technical estate-planning terms throughout this book, we also provide plain-language alternative definitions. For example, in Chapter 3, we discuss the *exordium clause* of your will, but we suggest that you think of that clause as the introductory clause because the clause is your will's introduction.

You're more than welcome to try to remember all the Latin-root legal terms that we use when discussing wills, trusts, and the other topics, but if you're more comfortable with plain-language definitions, use the easier definitions instead. Leave the legal-speak and technical terms to the estate-planning team members who we discuss later in this chapter.

REMEMBER

Don't worry about being overwhelmed by estate-planning legal definitions. It's more important to understand the concepts than worry about learning legal jargon. If you're working with a good estate-planning team, your attorney can handle all the legalese and make sure all your estate documents reflect the proper clauses and conditions, which, in turn, reflect your wishes for your estate.

## The Critical Path Method to Planning Your Estate

Estate planning is a process that can be further divided into multiple steps or activities. Whether in business or in life itself (planning a wedding, for example), most processes tend to take days, weeks, months, or even years from start to finish; rarely does any process happen overnight. All these things take planning.

You need to 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 at all) to the point where you have a well-thought-out estate plan in place. We recommend using the *critical path method* to planning your estate.

TECHNICAL STUFF

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 of all those alternatives.

In estate planning, you're often faced with 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 lug nuts in mud. (If you're automotively challenged, the previous sentence means you aren't going anywhere anytime soon.)

TIP

If the terms *operations research* and *quantitative methods* cause shudders and tremors as you flash back to 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 people who never checks a map, so you get in your car and just start driving. First, you head to Los Angeles, then you drive up to San Francisco, then maybe you go over to Chicago, then back to Denver, and then you 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 were to die suddenly? Are you trying to make sure that your children have enough money for college after you're gone? Is your estate worth upwards of $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 from anyone else's, so make sure you take the time to define exactly what those goals are.

TIP

Write down your goals — don't just think about them. Often by actually writing your goals rather than 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 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 you know where you are currently in your estate-planning process. You need to ask yourself the following questions:

   1. Do you have a will right now and, 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 out of date); decide if 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). Take the plans that you developed in Step 4 and actually do them! 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'd 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 a year so you can make sure that all changes to your life, great and small, are reflected in your estate planning in a timely fashion.

   TIP

   You can even tie your "checkup" to an annual occurrence, like your birthday, or the first of the year, or to some other occasion that you won't easily forget. Just add a recurring calendar reminder to your calendar app so you remember.

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 a minimum amount of 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 your estate planning by yourself, but you don't have to and, 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, and 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 (see Chapter 3) or the basic types of trusts (see Chapter 7), 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're 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, who do you work with? Here's an acronym to help you remember who you need to think about for your estate-planning team: FAIL, which stands for:

- Financial planner
- Accountant
- Insurance agent
- Lawyer

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 (such as you must 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. You may, for example, work with your lawyer and accountant. But if you've decided that insurance is only a minimal part of your overall estate plan, then you may not need to work with an insurance agent. Or if you're well versed in investments and financial planning, then you can handle that aspect of your estate plan by yourself and work with team members from the other specialization areas.

### STRAIGHT TALK

You need to 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 that was later found out. And your lawyer 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 at all, make sure that your lawyer knows that so your will can be constructed appropriately.

WARNING

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 lawyer and your financial planner before the trust is created to be sure that no unpleasant tax surprises pop up.

## Working with a financial-planning professional

Because a significant portion of your estate is likely to involve 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).

WARNING

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, and you can also find a very candid, no-holds-barred discussion of financial planners in *Personal Finance For Dummies* by Eric Tyson (Wiley).

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).

Another type of financial-planning professional is the *investment adviser* (IA) or 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), and you can check this information out at `https://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 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 a two-day, ten-hour examination. CFPs must also have a bachelor's degree and at least three years of professional experience working with financial-planning clients *or*, without a degree, they must have at least five years of experience doing financial planning.

TIP

You can check with the Financial Planning Association at `www.financialplanningassociation.org` and search for planners by state, city, or zip code. 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.letsmakeaplan.org`. Just enter your location, and the site gives you not just names, but also the specific services they offer — estate planning, tax planning, insurance planning, and so on.

You can regularly check *Money* (`https://money.com`), *Kiplinger* (`www.kiplinger.com`), and other personal finance publications for the latest information, and even problems and scandals in the profession. Searching online reviews for someone you're thinking about working with is a good way to get an overall consensus about the good, and less good, points about working with a specific financial professional.

**WARNING**

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're only compensated for advice (basically, they're consultants).

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

You can certainly find both ethical and unethical people (not to mention competent and incompetent) in either of these categories. However, always 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. You can work 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 will likely happen, based on recommendations from other members of your estate-planning team. If your CFP recommends certain investments or insurance products, then 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 play 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.

WARNING

Never do any financial gift giving (as contrasted with birthday gift giving or holiday gift giving) without consulting with an accountant for all the tax implications (see Chapter 11 for details of financial gifts and the gift tax).

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, find a CPA who also provides overall financial planning and has passed the PFS exam.

## Your insurance agent and your estate

Depending on your particular estate-planning needs, various forms of insurance (life, disability, liability, and other types we discuss in Chapter 17) 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.

So, consider your insurance agent a part of your estate-planning team. For example, when you discuss life insurance and choose among different types of life insurance policies (see Chapter 17), make sure that your insurance agent is aware of any estate-planning strategies, such as trusts, so you can make sure that your policy beneficiaries are listed correctly.

TIP

Some insurance companies are *agentless*, meaning that, unlike traditional insurance companies, where 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 online. 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 use in our *FAIL* acronym), they could 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 (if not headaches for *you*, because you've already died, then headaches for someone you care about). 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 takes all kinds of information about you and your estate into consideration. They then present you with options, based on various scenarios, such as your dying suddenly next week (morbid, but definitely an eye-opener for many people when first doing their estate planning) versus your 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 adviser 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.