

THE TOP TEN REASONS TO PLAN YOUR ESTATE

There are many reasons to establish and maintain an estate plan for the benefit of you and your family, but here are what I think are the top ten most important:

1. ***Control.*** A properly drafted estate plan allows you to ensure that your estate goes to whom you want, when you want, and the way you want. In addition, you want a plan that can be updated over time to deal with changing circumstances and needs.
2. ***Care for Minor or Disabled Children.*** If you fail to select a Guardian for minor or disabled children, you leave that decision up to the Courts. Often times, this results in grandparents and/or siblings on each side of the family being pitted against each other in a struggle over who should be appointed as Guardian. By naming a Guardian, you can ensure that the people you want to care for your children are in fact appointed to serve as Guardian.
3. ***Asset Protection for You and Your Spouse.*** I usually recommend the establishment of separate revocable trusts for husband and wife. I do this so that, should something happen to either husband or wife (e.g., lawsuit, bankruptcy, serious medical illness or injury), the assets of the spouse's trust are not subject to attachment by creditors. Separate trusts are also easier to amend should something happen to either spouse, and are easier to title and equalize.
4. ***Asset Protection For Your Children.*** I also recommend that, instead of distributing your assets directly to your heirs at your deaths, you instead provide that upon the death of both you and your spouse all assets going to your heirs be held in lifetime trusts for their benefit. Lifetime trusts serve two primary purposes. First, they can be drafted to utilize each of your generation-skipping transfer tax exemption which maximizes the amount of funds that would go to your heirs' children without being subject to estate tax at your heirs' death. In essence, we could keep a portion of the assets of the trust out of your heirs' estates for estate tax purposes and "skip" them directly to the next generation. Second, because the trust is created and funded by the two of you and not your heirs, the assets of the trust would be protected from the claims of any of their potential creditors, or even potential ex-spouses. This is so even though we could allow the heirs to be the trustees of their own separate trusts and manage them for their own benefit.
5. ***Reduce or Eliminate Potential Estate Taxes.*** Depending on the size of your estate, you could be subject to estate taxes of more than fifty percent (50%). A properly drafted estate plan can ensure that no estate taxes would be owed on the death of first of you to die and the least amount of estate tax possible on the death of both of you. Your estate plan can also be designed to asset protect the assets in the deceased spouse's trusts for the benefit of the surviving spouse for his or her lifetime.

6. ***Avoid Probate.*** By utilizing a revocable living trust, you can save your heirs legal fees, taxes and time in settling your affairs. By planning ahead with trusts instead of wills, you may be able to accelerate the settlement process and avoid a lengthy estate proceeding. The cost savings are multiplied if you have property in more than one State, because you may otherwise have to file multiple probates.
7. ***Maintain Privacy.*** Probate is the court supervised process of changing title to assets. Probate filings are all public record, meaning that all your personal information is available to anyone who wants to look at it. This information would include details on your family, your assets, and how you plan on dividing those assets. By utilizing a revocable living trust and properly funding it during your life, you can avoid probate all together and avoid having to publicly disclose any of that information.
8. ***Ability to Address Special Circumstances.*** What if your family is the result of multiple marriages? Without a plan, children from different marriages may not be treated as you would want. With a plan, you determine what goes to your current spouse and to the children from a prior marriage. In addition, if you have children with special needs and you don't have a properly drafted plan, that child risks being disqualified from receiving Medicaid or SSI benefits and may have to use his or her inheritance to pay for care. With the right plan, you can establish a special needs trust that will allow the child to remain eligible for government benefits while using the trust assets to pay for non-covered expenses.
9. ***Loss of Capacity.*** What if you become incapacitated and unable to manage your own affairs? Without a plan, a court will select a person to manage your affairs, which typically involves costly guardianship/conservatorship proceedings. By utilizing medical and financial powers of attorney, you can often times avoid these types of proceedings and ensure that the people you want to make these decisions have the authority to do so.
10. ***Peace of Mind.*** A well thought out and executed plan can actually make you feel more secure and comfortable knowing that you have a plan in place for the unknowns in life.

David R. York is a shareholder and director with the law firm of Callister Nebeker & McCullough, where his law practice focuses on estate planning, tax, business planning, and non-profit entities. Additional resources and information on estate planning can be found at www.cnmlaw.com/attorneys/david-r-york/