

# One More Gift to Give

## Five Lasting Gifts That Put Your Mind at Ease

The Christmas season, with its gifts and family memories, has come and gone once again. Perhaps one more gift should be given to your family this year — your estate plan.



By Scott M. McCullough

**ONE REASON** people put off estate planning is because it can evoke powerful emotions, attitudes and feelings that accompany thinking about death, disability and taxes.

However, failure to plan is simply determining that someone else will decide how to care for you if you are unable to and what happens to your assets upon your death. Planning now can help you avoid confusion, delay, expense and family fighting that occurs when parents die without a plan. Planning your estate can involve many factors that can be simple or complicated, depending on your circumstances and desires. Most importantly, your planning should reflect your values, goals and objectives. Whatever your needs, every plan should involve the following documents:

### **1-WILL**

A will provides instruction for the distribution of your assets upon your death, either outright to chosen individuals or pursuant to a trust. In your will, you appoint a personal representative (also known as an executor) who is responsible for making an inventory of your assets, paying debts and expenses, carrying out your funeral arrangements and distributing any assets held pursuant to your will. A will is also the place where you designate a guardian for your minor children. You may wish to establish parameters for those appointed guardians, such as a couple still being married.

A will, unlike a trust, is only effective upon your death, thus not beneficial if you become disabled or incapacitated. Also, for a will to be effective, it must be probated in court. Probate is the process of appointing a personal representative to transfer your assets and pay your debts and expenses in a court-supervised orderly manner. If you die without a will, the state laws and judges where you live (and where you own property) will decide who receives your assets.

### **2-TRUST**

There are many different types of trusts with different names and different objectives. The most-often used type is

a revocable living trust, named as such because it is created while you are living and can be revoked or amended at any time during your life.

Every trust has three key players: the settlor or grantor (the person who establishes and funds the trust); the trustee (the person who holds legal title to the assets within the trust and who is charged with a fiduciary duty to manage and distribute the assets held by the trust); and the beneficiaries (those entitled to receive distributions from the trust).

Within a revocable living trust, the settlor can play each role or can appoint another individual as trustee or use a corporate trustee, such as Zions Bank.

If you were to become disabled, the trustee would manage your assets for your benefit until your death. Upon your death, and possibly for future generations, the trustee would manage and distribute your assets to the beneficiaries in the manner you have directed.

A revocable trust can help avoid probate, especially in states where you own property, but do not reside. A trust also prevents your personal information from becoming public record as it does within probate. Revocable trusts do not provide any income tax savings or benefits (they may provide gift or estate tax savings), nor are they a vehicle to protect your assets from your own creditors.

### 3-POWERS OF ATTORNEY

A power of attorney is a legal document wherein you appoint someone as your agent to act on your behalf if you are unable to do so. You can give an agent broad or limited powers that are either currently available to them or that “spring” to life upon triggering events such as an injury or illness. Powers of attorney terminate upon your death. There are two types of powers generally granted:

#### TYPE 1: FINANCIAL

A financial power of attorney gives your appointed agent the power to handle your financial affairs. Common powers include opening mail; paying bills; filing taxes; selling, investing or spending assets;

and filing insurance claims. This power should only be granted to the most trusted individual. The actual document should only be physically given when needed and should be physically reclaimed if circumstances change (i.e. divorce) such that you no longer want your appointed agent to have the powers granted. Failure to appoint a financial agent may require a court to appoint a conservator and to oversee their conduct, a process that can be time consuming and expensive.

#### TYPE 2: MEDICAL

A health care or medical power of attorney gives your appointed agent power to access your medical records and make medical decisions on your behalf when your physicians confirm that you are unable to do so. This includes the power to consent to or withhold medical treatment. Your health care power of attorney should understand and be able to comply with your health care wishes. A medical power of attorney and a living will act in conjunction with one another providing instructions to medical personnel to act as you have directed.

### 4-LIVING WILL

Different from a medical power of attorney, which appoints another to make decisions for you, a living will, or medical directive, is a written statement outlining your wishes concerning your end of life medical care. When two or more doctors confirm there is no hope for recovery from a terminal illness, accident or injury, and life-sustaining medical procedures are only unnaturally postponing the dying process, this document is your directive to withhold or withdraw the life support systems so that death may be permitted to occur naturally.

If you do not have a living will, you leave family members in the uncomfortable, and sometimes combative, situation of determining your wishes and directing medical personnel accordingly. A living will removes this burden from them and makes the decision yours, helping avoid the cost, delay and emotional strain of allowing you to die.

### 5-LETTER TO YOUR FAMILY

Your estate planning can either be a stack of legal documents or a gift to your family and an opportunity to teach them, once again, about the values you hope to pass on to them. While a letter to your family is not generally considered an official estate-planning document, it provides you an opportunity to explain for the last, or perhaps the first, time to your family your goals, values and expectations of them. It can also be a vehicle to explain your feelings behind specific gifts of personal property made in your will or trust.

A plan that includes a personal touch (more than a “who-gets-what” philosophy) can avoid the all too frequent bitter feelings, disagreements and lawsuits between family members and can help your family’s grieving process.

Thinking about and planning your estate does not need to be the overwhelming task you might imagine it to be. It can be the opportunity to consider your values, goals and objectives related to your personal wealth and your passing and to share those values with your family. By working with a team of professionals, you can create a plan that provides you peace of mind and leaves a lasting gift to your family. ■

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