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*Planning with your legacy in mind.*

## *Estate Planning Guide*



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# *What is Estate Planning?*

No matter how large or how small, everyone has an estate. Your estate is comprised of everything you own — your car, home, other real estate, checking and savings accounts, investments, life insurance, furniture, personal possessions, your retirement accounts, etc.

Estate planning is much more than naming whom you want to receive the things you own after you die. Estate planning also can:

- Include instructions for passing on your values (religion, education, hard work, etc.) in addition to your valuables.
- Include instructions for your care if you become disabled before you die.
- Name a guardian and an inheritance manager for minor children.
- Provide for family members with special needs without disrupting government benefits.
- Provide for loved ones who might be irresponsible with money or who may need future protection from creditors or divorce.
- Include life insurance to provide for your family at your death, disability income insurance to replace your income if you cannot work due to illness or injury, and long-term care insurance to help pay for your care in case of an extended illness or injury.
- Provide for the transfer of your business at your retirement, disability, or death.
- Minimize taxes, court costs, and unnecessary legal fees.

Your plan should be reviewed and updated as your family and financial situations (and laws) change over your lifetime. It is an ongoing process, not a one-time event.

**A well-structured estate plan is vital to any family’s overall financial strategy. The best estate plans always begin with choosing a winning team of advisors because a collaborative, team-oriented approach to client planning just makes sense.**



# *Common Misconceptions about Estate Planning*

## **Estate planning is only for the rich.**

Estate planning is about the responsible transfer of wealth from generation to generation. What matters is what you do with what you have, regardless of how big or small that may be, and how it affects those whom you love.

## **Estate planning is a morbid process.**

Just the opposite is true. When fully understood and structured, estate planning is perhaps the most positive family experience in which anyone can engage.

## **Estate planning is just for the elderly.**

Not so. People die who are young, as well. Leaving your loved ones with emotional and financial chaos that could have been avoided or lessened can be averted with proper planning. Give yourself and your family peace of mind.

## **All you need is a simple will.**

This can be a mistake. While a simple will can be sufficient for some, for most people, a will may be the least beneficial of all estate planning documents.

## **After you're dead and gone, what happens to your estate is no longer your responsibility.**

Your journey after death is not very different than any trip you take while still living. If you go away for a vacation, you generally leave instructions and guidance for the people you love. It's simply the responsible thing to do. This responsibility is even greater when you take the trip from which you are never going to return. Your family needs your love and direction even more.

## **Saving money on taxes and avoiding probate are the only reasons to do estate planning.**

When estate planning is truly understood, its financial benefits are not the most important. More significant is the management of personal purpose and family or social guidance.

## **All trusts are the same. You can find the same protection from an online source or bargain-basement attorney.**

Every year, attorneys are hired to deal with lawsuits generated from the use of cheap living trusts or other inadequate estate planning products. The difference between a custom estate plan from an attorney who concentrates in that field versus an online vendor, or from an attorney who does not concentrate in estate planning is tremendous. It's like the difference between using a specialist or a general practitioner for brain surgery. There is no such thing as a one-size-fits-all document or planning strategy.

## **A living (revocable) trust gives you less control of your assets.**

If you don't have a trust and become temporarily incapacitated, your assets and affairs will likely be placed under the control of a judge for a conservatorship. With a properly structured trust, you have the right to do anything and everything you want to do with your assets while you're living. Then if you die or become incapacitated, your affairs stay out of the court system, remain private and are managed by persons you personally select.

# Wealth Transfer Planning Strategies

“The method that you choose to transfer your assets is a vitally important decision for you and your family.”

## **Last Will & Testament** Using the Courts to Transfer Wealth

Traditionally, people commonly use the “Last Will and Testament” as a means of transferring wealth. To be effective, the Will must invoke the probate court’s jurisdiction after death. Currently, many individuals have sought alternative methods of wealth transfer due to concerns over court costs, privacy issues, administrative delays, etc. (Note: Wills do not govern the transfer of joint tenancy property or assets with beneficiary designations.)

## **Beneficiary Designations** Using Form Contracts to Transfer Wealth

Certain assets pass automatically at death by virtue of certain “beneficiary designations.” Commonly, assets such as retirement accounts, insurance policies and annuities carry “beneficiary designations.” While expedient, these designations require immediate transfer when it is often undesirable, and they lack the flexibility necessary to provide for all contingencies.

## **Jointly Held Property** Using “Titling” to Vest Property with “Survivor”

“Joint Tenancy with Rights of Survivorship” enables property to pass to the surviving “joint tenant.” However, when only one tenant remains, the asset will eventually be subject to probate. Some people have concluded that adding another joint tenant will continue the “non-probate” descent of the property. But this strategy comes with a high price tag. Continued joint tenancy may result in increased capital gains exposure – as well as the risk of loss to the other joint tenant’s creditors and loss of control of your assets.

## **Revocable Living Trust** Using a Coordinated “Funnel” to Transfer Wealth

A revocable living trust (RLT) provides a comprehensive alternative for transferring assets. You retain the right to modify it at any time. An RLT can “funnel” all types of assets to the intended beneficiaries privately without court intervention or the risk of loss to the beneficiaries’ creditors. It can also provide for contingency planning for your disability or your beneficiaries’ and can provide for the continuation of beneficiary protective trusts long after you have passed away.

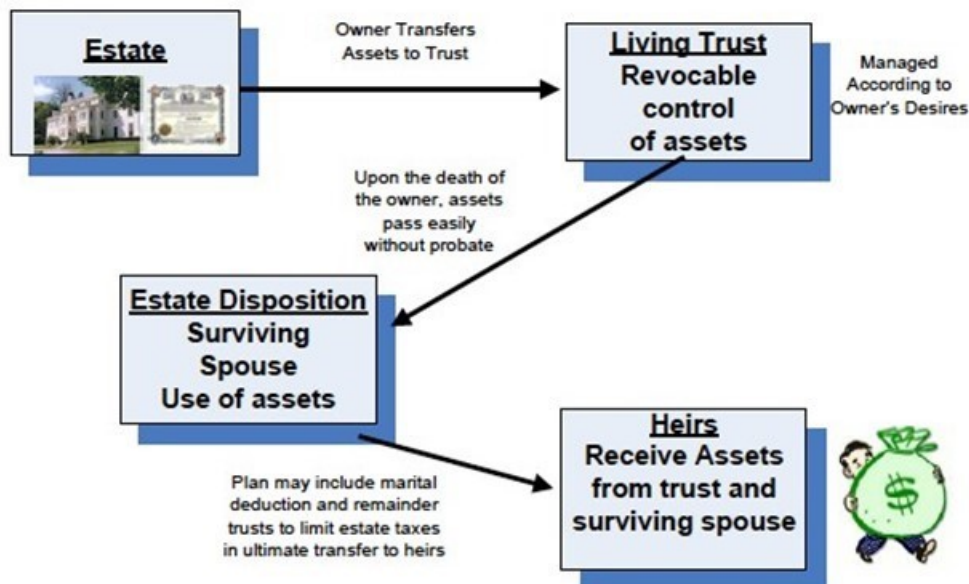
# The Revocable Living Trust

A living trust is a comprehensive planning tool that:

- Is the client-preferred method of preserving and transferring wealth and inheritances.
- Avoids the stress, costs, time and publicity associated with the court probate process.
- Acts as a “funnel,” centralizing the preservation and distribution of assets.
- Avoids guardianship proceedings in the event of the owner’s incapacity.
- Can minimize estate taxes when incorporating A-B trusts and other vehicles to take full advantage of the marital deduction and unified credit.
- Provides enhanced flexibility for your family.
- Can be easily administered without court proceedings – even when you have assets located in more than one state.

## HOW IT WORKS:

The Trustmaker simply transfers asset “title” to trust – retaining full control over those assets. The Trustmaker names a “successor trustee” to take over in the event of death or incapacity. The Living Trust operates as a “funnel” to transfer property privately, outside of probate, to trusts or directly to the named beneficiaries. It can be changed prior to death and the assets are managed exactly as they were before the transfer to the trust.



### Key Advantages

- Avoids court intervention in your affairs
- Seamless control of assets during incapacity
- No need for conservatorship proceedings
- Can reduce risks of contests and conflicts
- Easy vehicle for marital estate tax planning
- Very flexible and easily amended
- Reduces administrative costs at death
- Fewer hurdles/obstacles to distributing wealth
- Creditor and predator protection for heirs (optional)

# *Beneficiary Protection Planning Strategies*

Inheritance is more than just transferring wealth – it’s also about protecting loved ones, transferring values and leaving a lasting legacy.

## **Guardians**

Serving as “Backup Parents”

Minors need parents, and if you pass away prior to the time your child turns 18, the law requires a “back-up parent” – a “guardian” - to be appointed. The guardian is responsible for the care, nurturing, education, and discipline of your child. Your estate plan should nominate your desired guardian and provide clear instructions as to the ways you want your children raised in your absence.

## **Spendthrift Trusts**

Protection for Young, Financially Immature Beneficiaries

Minors and young adults are simply incapable of handling their inheritance. Because they lack the ability to make appropriate decisions regarding the investment and spending of their inheritance, parents routinely establish trusts to protect minors and young adults “from themselves.” Only after the parents believe their children will be financially mature will the trust be “lifted” and the children given unfettered access and control.

## **Incentive Trusts**

Instilling Values and Providing Incentives for Desired Behavior

Often parents desire to establish trusts designed to instill “values” and provide incentive for accomplishments. These types of trusts are usually custom drafted to comport with the parents’ wishes. Conditions are placed on the distribution of inheritance. Common conditions include: educational goals; career goals; and social goals. Conversely, “disincentive trusts” can focus on eliminating known problems like drug and alcohol use, and risky behavior.

## **Lifetime Inheritance Protection Trusts**

All the Benefits, Plus Asset Protection

Lifetime inheritance protection trusts can provide all the benefits of the other identified trusts. But they can do much more. Even when the “conditions” are met (i.e. age, maturity, accomplishments), the trust continues. The purpose of the continuation is not to “govern” the beneficiary – but to keep the trust principal free from “creditors and predators.” These trusts can be designed to safeguard inheritances from divorces, judgements, creditors, etc.

## *Is Your Plan Sufficient?*

	Yes	No	I Don't Know
1. <b>Do you have a plan?</b> Without a plan of your own in place, Virginia has generously agreed to provide its own. Besides not matching your desired outcome, this is likely the most expensive way to transfer your assets.			
2. <b>Have you reviewed your plan in the last three years?</b> Your life is not the same as it was three years ago, and the laws or economic circumstances that guided your planning at that time also may have changed.			
3. <b>Are your adult heirs financially responsible?</b> We all love our children, but not all of them can handle their money. Under state law, under-age children are given guardians to handle their finances. But your adult heirs are given no such protection, and proper planning is vital to protect your estate, and protect your heirs from themselves.			
4. <b>Do you know how your assets are held?</b> There are only certain types of assets that, if not held in a trust, can change hands without probate. Everything else is subject to the expense and proceedings of the probate court.			
5. <b>Have you protected your assets from your heirs' debts, divorces, or bankruptcies?</b> Once your assets have been distributed, they are fully the property of the beneficiary, and can be used up to pay your beneficiary's debts. Is that what you want?			
6. <b>Is this the first marriage for you or your spouse or your adult children?</b> Without proper planning, and especially when there are children from other relationships, poorly considered planning can lead to unanticipated and undesired results.			
7. <b>Do you have a plan for incapacity?</b> How will decisions get made when you are unable? Your obligations do not stop just because you can't take care of them yourself.			
8. <b>Can the right people access your health information?</b> By law, doctors will not release your medical information except to specifically authorized people. Do the people with authority to make medical decisions for you have access to that information?			
9. <b>Have you taken full advantage of your marital and gift exemptions?</b> You are provided with the opportunity to pass assets to your spouse (marital exemption – unlimited), to anyone at death (estate tax exemption), or to anyone during life (gift tax exemption). Does your plan maximize the value that the exemptions provide?			
10. <b>Have you considered the affect the SECURE Act (eff. 1/1/2020) will have on your retirement?</b> The Act not only changes the rules for your retirement, the rules for distribution of retirement accounts you pass onto your beneficiaries also radically changed.			

*If you answered anything but YES to any of these questions, you should make an appointment to speak with an attorney and review your estate planning.*

# ***Our Estate Planning Process***

## **Initial Consultation**

Our relationship typically begins with a brief phone call during which we discuss basic information about you and your goals. If we decide to work together, we will send you an engagement letter, and, if the planning is for you and your spouse or partner, a potential conflict disclosure and waiver letter. Completing the Estate Planning Questionnaire (available on [LawtonLegacyPlanning.com](http://LawtonLegacyPlanning.com) under the Resources tab) will assist you in identifying basic information that is necessary for the planning process. Not only does the Estate Planning Questionnaire assist us in determining the best plan for your needs and goals, it also helps you to mentally inventory your current estate.

## **Planning Meeting**

Our planning meeting to discuss in detail your needs and goals, and any issues identified in the Estate Planning Questionnaire that require further consideration generally takes about two hours. With the goal of reducing any risks related to COVID-19, we are meeting with clients by telephone conference call or video calls through Zoom.

## **Initial Draft of Documents**

Based on our discussions, we will prepare drafts of your estate planning documents and send them to you for your review. After your review, we will work through any questions or concerns you may have to ensure that your estate plan meets your goals and objectives while addressing your concerns. We can do this either by telephone or video conference.

## **Review & Sign**

Once we finalize the estate planning documents, we will meet with you to sign the documents to implement your estate plan. All signings take place at our office while following the CDC recommendations to avoid the spread of COVID-19. Mask wearing is required for anyone who is not vaccinated and boosted.

## **Funding**

If your plan includes a revocable living trust, we will prepare the deed to transfer your home into the trust; this is not something you should try to do yourself. However, it is possible and relatively easy for you to transfer to the trust your other assets, such as financial accounts, and we will provide you with instructions as part of your estate planning binder. Of course, we remain available to help if you wish to retain us to do this funding work for you.

## **Family Care Meeting**

We are happy to help your family members, executors, trustees, agents and beneficiaries understand your plan and their roles, if you choose. Please note: specific financial information is not revealed during this meeting unless you choose to do so.



## **Regular Maintenance**

We suggest you make an appointment to assess the need to update your plan three years from the date you sign it, or earlier if there are changes in your life such as the birth of children, grandchildren, marriages, divorces, inheritances, or deaths.

## ***Who is Bettina Lawton?***



I am an attorney passionate about helping clients keep control over their lives through documents that allow them to speak for themselves after they have become unable to do so because of disability or death.

My approach is straightforward. I ask questions to help you identify what is important to you. What values do you want to pass-on to your children? If you can no longer take care of your children, who do you want to take on that role for you? Do you want to protect your children from financial harm or unwise decisions? Who do you want to benefit from your life-long accumulation of assets? Do you have charities or causes that are near-and-dear to your heart? In case of your incapacity, who do you trust to make your decisions for you? What guidance do you want to give those people now while you are still able?

I listen carefully to your answers and offer solutions to achieve what you want.

I received my Juris Doctor degree from Georgetown University Law Center in Washington, DC and my Bachelor of Business Administration, *magna cum laude*, from Siena College in Loudonville, New York. I am licensed to practice law in Virginia, Washington, DC (inactive) and New York.

In addition to practicing law, I serve my community as a member of the Fairfax-Falls Church Community Services Board, vice-chair of the Fairfax County Electoral Board, a reserve deputy sheriff in Fairfax County and City, a member of the Rotary Club of Vienna, Virginia, and the president of the Auxiliary to the Veterans of Foreign Wars Post 8469 in Fairfax Station, Virginia.

It would be a privilege to become your trusted advisor. I look forward to speaking with you so we can begin our work together.