

The Estate Plan

1. An Estate Plan. An estate plan prepares for the transition that occurs when one dies.
 - It organizes and identifies the information needed by the survivors.
 - It directs the transfer of assets.
 - It provides for substitute decision making regarding assets and medical care should the person become incapacitated.

An estate plan is more than just a Will, which only directs the transfer of probate assets. There are also assets whose transfer is directed by contract. These are generally known as non-probate assets because they pass outside of the probate process. Non probate assets can make up most of the value of an estate. They include insurance proceeds, accounts held with a right of survivorship, and IRA and 401(k) accounts.

The transfer scheme for all of these assets and interests must be coordinated in order to achieve the intended result and maximize the benefits. To complicate matters, it makes a difference if an asset is separate property or community property. An owner can transfer only what is his. If an estate is subject to transfer taxes (Gift, Estate and Generation Skipping), matters are further complicated by the necessity of paying the taxes from the estate. Which part of the estate is going to bear the burden of paying the taxes? An additional complication that must be addressed is that peoples' lives are continuously changing. Assets come and go, and family members live, die and get sick.

2. The Estate Plan Documents. An estate plan usually consists of four documents:
 - Will. The will directs the transfer of probate assets and appoints the person to represent the estate.
 - Durable Power of Attorney. The Durable Power of Attorney grants authority to another person to act on behalf of the signer in the management of his assets.
 - Medical Power of Attorney. The Medical Power of Attorney grants authority to another person to act on behalf of the signer in the management of his medical treatment.
 - Medical Directive. The Medical Directive is a statement by the signer of his desires with respect to his medical treatment.
 - An estate plan that is implemented by a Living Trust/Revocable Trust will have the same documentation with the addition of the Trust agreement and a certificate of Trust and any necessary transfer documents such as deeds, new and financial account agreements. All estate plans require a review of beneficiary designators in financial accounts, retirement accounts, annuities and life insurance contracts.
3. The Estate Planning Process. The process for preparing an estate plan usually takes three meetings of an hour to an hour and a half each over a period of weeks. How long the process takes is usually a matter of how anxious people are to get it done. I have prepared an estate plan in a single day, and I have been working on one for six months.

I use the first meeting to get acquainted and obtain factual information about the clients' estate and their intentions. I also describe the probate process and a proposed plan and offer any alternatives, concerns or suggestions. I then prepare

- a flow chart of the estate plan,
- a balance sheet, and
- draft documents

I mail these documents to the clients for their review and comments, which I ask that they write directly on the drafts.

Either over the telephone or in a second meeting I answer the clients' questions and obtain information to make any corrections, additions or changes.

I prepare and mail out prospective final documents for the clients to review. If there are no further changes or questions, we have a final meeting at which the documents are signed and notarized. I also give my clients a copy of a book which is a three ring binder which prompts them to assemble their financial information and describe what is to occur upon their deaths.

After the clients leave my office, I review, copy and assemble the documents, and mail the originals and two copies in oversized envelopes to the clients for safekeeping.

4. Dealing with an Attorney. I always work from a form of contract, typically called an engagement letter. The engagement letter describes the services to be performed, the way my compensation will be determined and for what items I will be reimbursed. It also makes some disclosures regarding the nature of our relationship. If I am representing a husband and wife in preparing an estate plan, it comments on how the attorney's duty of confidentiality to the client is affected by his duty of loyalty to both of them. If I am representing an executor of an estate, it comments on how the attorney represents the executor as the fiduciary of the estate, not as an individual.

Attorneys generally charge a set fee based upon the amount of time they believe a matter will take. If an attorney is uncertain about how long a matter will take he will charge by the hour. If an attorney charges by the hour, it is reasonable to require him to send itemized statements of services and expenses with time broken down in tenths of an hour. There are numerous reasons for an attorney to be uncertain about setting a fee: the likelihood of litigation, the complexity of the matter, the uncertainty of the law, the need for extensive research, the client being excessively demanding of attention (time), and the client not being very businesslike (disorganized, indecisive or overly talkative). Even if an attorney cannot quote a set fee, he should be able to give an estimate, interim benchmarks and a commitment to an early alert if a reassessment is necessary.

5. What to Expect. For husband and wife estates under \$900,000, the cost of a plan and Wills should not exceed \$1,500 and will typically cost less than \$1,000, perhaps even as little as \$600. For husband and wife estates between \$900,000 and \$1.9M the cost should not exceed \$3,000 and will typically cost between \$1,200 and \$2,500. For husband and wife estates over \$1.9M the cost depends on how sophisticated and customized the couple wants its plan and documents to be. The difference in the cost is due largely to the difference in complexity. The first situation

requires wills, Medical Power of Attorney, Medical Directive and Durable Power of Attorney. The second situation will require that a Bypass Trust and Terminable Trust be included in the wills. The third situation may require the preparation of irrevocable trusts such as a life insurance trust or a charitable trust. A Living Trust will typically cost an additional \$1,000.