BREEN LAW FIRM PC

"Everyone gets organized at some point, they just might not be around for it." Sue DeRoos

Estate planning is one of those things that often gets put off to the proverbial tomorrow. Perhaps it is the natural aversion to facing your mortality, or simply the daunting task of having to gather all that personal "stuff" together. Nonetheless, when done effectively, an estate plan is a powerful tool for managing your personal and financial affairs not only post-death, but also during your lifetime.

Through your estate plan, you can determine:

> How your assets will be managed, and who will manage them during your lifetime, should you become unable to manage them yourself;
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> When and under what circumstances your assets may be distributed during your lifetime;
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> How and to whom your assets will be distributed after your death; and
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> How and where you wish to be cared for during your lifetime if you are unable to care for yourself.

The primary document in an estate plan is either a will or a trust. Both documents are essentially a set of instructions that set forth how you wish your personal and financial affairs to be handled. There are two main differences between a will and a trust. First, a will only takes effect at your death. A trust, on the other hand, takes effect according to its terms, so that it becomes effective immediately. Second, a will is filed with the court, and the court supervises how its instructions are carried out, through a process called "probate." This necessitates payment of court fees, and the court will then order administration and legal fees which are set by statute. A trust requires no such supervision or mandatory fees. Depending upon your particular circumstances, court supervision may or may not be desirable.

One common misconception about trusts is that they allow you to avoid estate tax. This is not true. There is a type of trust, a marital trust, which allows for estate taxes to be deferred until the surviving spouse is deceased. This used to be a significant concern in estate planning, when the estate tax exemption was determined annually by Congress, and fluctuated wildly. However, when Congress passed the Taxpayer Relief Act in 2012, it instituted a threshold exemption of $5,000,000 per individual, which increases annually. In 2014, that exemption amount is $5,340,000. What this means is that any estate where the net value at date of death is equal to or less than the exemption, will not be subject to estate tax. Thus, the tax deferral aspect of marital trusts is not invoked nearly as often as prior to 2012.

There are two additional documents that are important to a sound estate plan: a durable power of attorney, and an advanced health care directive. A durable power of attorney (DPA) allows you to appoint someone to act on your behalf, and carry out your wishes, concerning your finances, taxes, personal and real property, should you be unable, or unwilling, to do so yourself. A DPA can be executed to become effective upon your incapacity, whether temporary or permanent, or even immediately at your election. It can also be revoked at any time so long as you maintain the capacity to revoke it.

The advanced health care directive (AHCD) serves a similar function as the DPA, but concerns health care decisions. The AHCD allows you to decide whether and to what extent you wish for life-sustaining procedures to be used if you are terminally ill. It allows you to make anatomical gifts, to state your preferences for independent living and end-of-life care, and decide how virtually every aspect of your health is to be managed once you are no longer able to make those decisions.

The greatest benefit of the effective estate plan is peace of mind. It allows for you to control how you will be cared for, and how your assets will be managed, when you are no longer able to make those decisions for yourself.