

THE ESTATE PLANNING PROCESS

You are to be congratulated that you have taken the proactive stance of developing an estate plan. Only about 30% of Americans have taken the initiative to have a will drafted. Without a will, the State of Texas is the one to decide how your hard earned assets and possessions will be distributed upon your death. A carefully constructed estate plan will give you peace of mind in knowing that your wishes are to be carried out in the event of your incapacity or death.

Our Goals:

1. Develop a comfort level with planning for your demise and/or incapacity;
2. Gather sufficient information so that I may draft the necessary documents;
3. Evaluate your needs and desires; and
4. Recommendation and development of the best estate plan along with drafting the necessary documents that will satisfy your needs, desires and comply with your financial objectives.

Why Use S. Barrett, P.C. to Draft Your Will When You Can Buy Inexpensive Wills Software?

There are many reasons to use a competent attorney to develop an estate plan. First and foremost, the wills software and fill in the blank forms you buy at an office supply store or via the internet are too generic, usually not state specific, and more than likely, are not current as to the changing of statutes, codes and court cases that dictate how your will is to be administered. You may well find that what you thought was a bargain in preparing your estate plan yourself turns out to be wholly ineffective and, as a result, your wishes are not carried out and your family may be put in a position that creates turmoil and adds unnecessary cost to the process of distributing your assets upon your death. Additionally, as an estate attorney, I am trained to, and have practical experience in, anticipating potential legal pitfalls. Along with your input, I develop the necessary plan, draft the correct documents and will advise you in a manner that allows your wishes to be carried out in the event you become incapacitated and at your death.

Your Motivation:

In order to develop an estate plan that will reflect your wishes and desires, I must first work with you in discovering your motivation in planning your estate. Motivation is personal and will be treated as such; remember, my job is to help you memorialize and preserve your wishes in a manner that will stand up to legal scrutiny, not to influence your decisions on how your estate is to be distributed.

Information Gathering:

- a. Necessary Information
 - Marital status, marital history, children's information (if necessary);

- Your family history;
 - Value of your assets;
 - Your desires for the distribution of your assets; and
 - Your determination of which persons will serve in various fiduciary capacities.
- b. Information That Will Help Me in Developing Your Plan
- Potential family issues that could cause a will contest;
 - Relationship with beneficiaries that are not family members or a charity.
- c. Marital Status and History
- Information on prior marriages that ended in death or divorce, including names, dates and any Will that has been probated;
 - Name, age and residence of children from a prior marriage; and
 - Name, age and residence of children from the current marriage.
- d. Family History
- Identify all of the family members to be in the Will;
 - Are your parents alive, and if so, where do they live;
 - Any brothers and sisters, and where they live; and
 - Is there any strain in the family that may lead to a Will contest?
- e. Valuation of Your Assets
- Valuation must be current and real; this information is vital to determining if we need to plan for the effects of estate tax:
 - i. All real property, including oil and gas interests;
 - ii. All personal property including stocks, mutual funds and bonds;
 - iii. All bank deposits, CD's and money markets;
 - iv. All retirement benefits;
 - v. The face value or death benefit value of insurance policies insuring your life; and
 - vi. All claims and monies owed to you (loans, winnings, settlements, etc.).

Evaluating Your Needs and Desires:

- a. Disposition of Your Assets at Death
- Who and where would you like your assets to go after your death;
 - Do you wish to make lifetime gifts instead of post death bequests;
 - Do you feel you need a trust to control the use of your assets and why; and
 - Who are your alternative beneficiaries in case your primary beneficiaries do not survive you.
- b. Probate / Non Probate Assets
- Probate Assets
 - i. Any of your property not held as joint tenants with the rights of survivorship:
 1. real property;
 2. stocks and bonds;
 3. bank accounts, mortgages, cash, etc.;
 4. jointly owned property;

5. personal property such as furniture, cars, boats, artwork, clothing, jewelry and other miscellaneous personal property; and
 6. insurance policies payable to your estate or where no beneficiary is designated.
- Non Probate Assets
 - i. Life insurance policy payable to a beneficiary other than your estate;
 - ii. Retirement plans payable to a beneficiary other than your estate; and
 - iii. Property held as joint tenants with the right of survivorship.
- c. Your Fiduciaries (executor, agent, guardian)
- Fiduciary appointments to serve during your lifetime:
 - i. Agent under Statutory Durable Power of Attorney;
 - ii. Agent under Medical Power of Attorney;
 - iii. Guardian of yourself and your estate if you become incapacitated; and
 - iv. Trustee for inner vivos and or irrevocable trust.
 - Fiduciary appointments to serve at your death:
 - i. Executor of your will;
 - ii. Guardian of your minor children and their estate;
 - iii. Trustee of testamentary trust (created by your will); and
 - iv. If desired, an agent to control the disposition of your remains.
- d. Review of Existing Documents
- Do you have documents that currently accomplish your wishes and desires:
 - i. If not, I can work with you to draft new documents that will accomplish your wishes;
 - ii. If your current documents are sufficient, are there any other documents needed to make you estate plan complete?

Estate Plan Recommendations:

Each estate plan will be as unique as you. However, there are some basic documents that will make an estate plan complete. A substantial estate plan includes:

- Simple Will;
- If warranted, a Contingent or any other Trust;
- Statutory Durable Power of Attorney;
- Medical Power of Attorney;
- HIPPA Release;
- Directives to Physicians; and
- Declaration of Guardian in the Event of Later Incapacity.

Additional documents, depending on your situation and needs may also include:

- Declaration of Appointment of Guardian for Minor Children;
- Marital By Pass Trust;
- Generation Skipping Trust;
- Agent to Control Disposition of Remains;
- Survivorship Agreements; and
- Other various documents to accomplish your goals.