

COMPTON LAW

ESTATE PLANNING 101

An estate is comprised of everything you own: your car, home, other real estate, checking and savings accounts, investments, life insurance, furniture, personal possessions. No matter how large or how modest, everyone has an estate and everyone has certain responsibilities that do not end with death or incapacitation.

Estate planning is a comprehensive set of tools and instructions utilized to carry out your wishes, protect and provide for loved ones, and continue your business responsibilities upon incapacitation or death. Estate planning should not only be considered preparation, it should be considered a necessity of every responsible adult.

Life is filled with uncertainties as well as complicated rules. When something expected or unexpected happens everyone needs a comprehensive set of tools, instructions, and authorizations to best handle these uncertainties and rules.

The most basic issue that we all want to control is how our things are given to the people or organizations we care most about. To ensure our wishes are carried out, we all need to provide instructions stating who is to receive the items, specifically what they are to receive and when. Moreover, we want this to happen with the least amount of burdens, taxes, legal fees, and court costs.

Proper and thorough estate planning is making a strategic and comprehensive plan in advance of life's uncertainties, and should consider:

- Instructions for passing your assets.
- Instructions for your care if you become disabled.
- Name the person(s) responsible for handling your assets, business needs, and health care.
- 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 hurt by the money or assets 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.
- Minimize the burdens and difficulties of complicated probate laws
- Be an ongoing process, not a one-time event. Your plan should be reviewed and updated as your family and financial situations (and laws) change over your lifetime.

Estate planning is for everyone.

It is not just for “retired” people, although people do tend to think about it more as they get older. Unfortunately, we can’t successfully predict how long we will live, and illness and accidents happen to people of all ages. Middle aged individuals with minor children are most at risk.

Estate planning is not just for “the wealthy,” either, although people who have built some wealth do often think more about how to preserve it. Good estate planning is often very crucial for families with modest assets, because they can afford to lose the least.

Too many people don’t plan.

Individuals put off estate planning because they think they don’t own enough, they’re not old enough, they’re busy, think they have plenty of time, they’re confused and don’t know who can help them, or they just don’t want to think it. Then, when these uncertainties happen, their families can be significantly burdened by and unprepared to deal with your affairs.

If you don’t have a plan, the State of Oklahoma has one for you, but most of us probably won’t like the results. At disability: If your name is on the title of your assets and you can’t conduct business due to mental or physical incapacity, only a court appointee can sign for you. The court, not your family, will control how your assets are used to care for you through a conservatorship or guardianship. It can become expensive, burdensome, and time consuming. Moreover, it is open to the public, and it can be difficult to end even if you recover.

At your death: If you die without an intentional estate plan, your assets will be distributed according to the probate laws. If you are married and have children, your spouse and children will each receive a share. That means your spouse could receive only a fraction of your estate, which may not be enough to live on. If you have minor children, the court will control their inheritance. If both parents die (i.e., in a car accident), the court will appoint a guardian without knowing whom you would have chosen.

We all prefer these matters be handled privately by the people we have selected and not by the courts, we all prefer to control of who receives what and when. Significantly, we all prefer to select who care for and raise our children if we can’t?

An estate plan begins with a will or living trust.

A will provides your instructions, but it does not avoid probate. Any assets titled in your name or directed by your will must go through the state’s probate process before they can be distributed to your heirs. Moreover, if you own property in other states, your family will probably face multiple probates, each one according to the laws in that state. The process varies greatly from estate to estate, and it can become very expensive with legal fees, executor fees, and court costs. Sometimes the most complicated and expensive estates are ones that have many creditors and little or no liquid assets available for paying these creditors. The process can also take anywhere from nine months to two years or longer. With rare exceptions, probate files are open to the public and excluded heirs are encouraged to come forward and seek a share of your estate. In short, the court system, not your family, controls the process.

Not everything you own will go through probate. Jointly-owned property and assets that let you name a beneficiary (for example, life insurance, IRAs, 401(k)s, annuities, etc.) are not controlled by your will and usually will transfer to the new owner or beneficiary without probate. But there are many problems with joint ownership, and avoidance of probate is not guaranteed. For example, if a valid beneficiary is not named properly, the assets must be probated and distributed along with the rest of your estate. If you name a minor as a beneficiary, the court will probably insist on a guardianship until the child legally becomes an adult.

For these reasons a revocable living trust may be the best tool. As long as the trust is established and funded properly, it can avoid probate, (including multiple probates if you own property in other states), prevent court control of assets at incapacity, bring all of your assets (even those with beneficiary designations) together into one plan, provide maximum privacy and ease, and can be easily changed at any time. It can also protect your family and future generations.

Unlike a will, assets can stay in your trust, managed by the trustee you selected, until your beneficiaries reach the age or occurrence you want them to inherit. Your trust can continue longer to provide for a loved one with special needs, or to protect the assets from beneficiaries' creditors, spouses, and irresponsible spending.

Planning your estate will help you acknowledge, understand and mitigate risk. The planning process forces you to organize your records and also provides an excellent opportunity to correct titles and beneficiary designations and evaluate any insurance needs.

Moreover, absent the planning process, the average person does not have all of their financial records, titles, important information, and insurance policies readily available for someone to find if something happened to them. Planning your estate now will help you compile and organize all of this information so it is readily available for other to locate and access in times of need.

Estate planning does not have to be expensive.

If you don't think you can afford a complex estate plan now, start with what you can afford. For a young family or single adult, that may mean a will, term life insurance, and powers of attorney for your assets and health care decisions. Then, let your planning develop and expand as your needs and financial situations change. An experienced attorney will be able to provide critical guidance and peace of mind that your plan and documents are prepared properly.

The best time to plan your estate is now.

No one enjoys thinking about our mortality or the possibility of being unable to make decisions for ourselves. This is exactly why so many families are caught off-guard and unprepared when uncertainties happen. Every responsible adult owes it to themselves and their families to plan and prepare now.

The best benefit is peace of mind.

Knowing you have a properly prepared plan in place - one that contains your instructions and will protect your family - will give you and your family peace of mind. Uncertainties and lack of organization is a significant distraction and energy drain. Most clients feel relieved and energized after they have engaged in the planning process and allows them to focus more and enjoy life better.

Significantly, planning is one of the most thoughtful and considerate things you can do for yourself and for those you love.

The first step is to request an estate planning worksheet. Download one from our website for free:
www.comptonlawfirm.net