



Foundational Estate Planning A Practical Guide to the Essential Decisions

Let's talk about death, baby. The idea of planning for your own demise can be a daunting one for several reasons. For starters, very few people get excited to ponder their own mortality, much less the idea of dying prematurely, which is the primary driver for many of our clients to take on this task. As well, there are just so many decisions involved! And then there are all the confusing estate and gift tax rules that seem to change constantly, the prospect of engaging an attorney who will charge you a lot for the pleasure of drafting documents in service to these uncomfortable conversations, and the promise that once you begin down this path you're likely to have to revisit it from time to time.

So the goal of this document is to make all of this feel a little more approachable. It is intended to be paired with an Estate Planning Questionnaire that we have created, which is largely a fill-in-the-blanks exercise. We hope this short document arms you with some explanations to make those blanks easier to fill.

The documents can become very technical very quickly. But the essential decisions are profoundly straightforward: Who should benefit from my estate? Who can I trust to see it through?

The short version: An estate plan should answer two questions: who gets my stuff, and who is in charge? Everything else is largely detail, contingency and implementation.

Preliminary: Orienting Our Approach

We use “basic” estate planning and “foundational” estate planning interchangeably. In using those terms, we intend to mean ignoring estate and gift taxes and focusing on the “who, what, when, and how” questions. For foundational planning we ignore transfer taxes because these issues are worthy of consideration regardless of whether someone has two dollar bills or two billion dollars. First, we lay the foundation and then worry about taxes later. In 2026, the federal estate and gift tax exemption is \$15mm per person (\$30mm for a married couple), and we can discuss tax planning needs and ideas separately.

At death, property generally changes hands in one of three ways. Understanding the distinction matters because even a beautifully drafted will cannot override the title on an account, a beneficiary designation or a binding business agreement.

How it passes	Common examples
By Operation of Law	Jointly owned property may pass automatically to the surviving owner (titling known as JTWRROS or Joint Tenancy with Rights of Survivorship, which in some states for married couples is known as Tenancy By The Entireties).
By Contract	Retirement accounts, life insurance and other assets may pass under a beneficiary designation. Business interests may be governed by an operating or buy-sell agreement. Notably, a beneficiary designation form can designate your estate or the trustee of a trust.
By Trust, Testacy, or Intestacy	Assets not otherwise directed pass under your will or trust - or under state law if you have no effective plan (i.e., by “intestacy”).

The lesson is simple: estate planning is a coordination exercise. Asset titling, beneficiary designations, wills, trusts, and business agreements should tell the same story.

One final orienting comment: broadly speaking, there are only three possible groups of potential recipients of your assets at death:

- 1) The people you love
- 2) The charities you care about
- 3) The government

Without intending to speak for anyone in particular, most of our clients tend to prefer disinheriting group #3 in favor of groups #1 and 2, to the greatest extent possible.

Who Gets My Stuff?

The first of the “Who” questions is about who benefits. For many married couples, the initial answer is straightforward. We commonly refer to this as the Sweethearts approach (everything that’s mine is hers, and everything that’s hers is mine). A thoughtful plan should ask what happens when life doesn’t unfold in the expected order of things. Said another way, a big part of estate planning is hypothetically killing people off in random orders and gauging your reaction to that fact pattern... Some specific questions that are useful to consider:

- Initial Bequests: Are there any individuals or charities that should receive a specific bequest (of cash or particular items) “off the top” (meaning, before the balance of the estate is placed in trust)?
- Tangible Personal Property: items of jewelry, art, collectibles, etc. can carry financial value, emotional value or both. Are there any items that should pass to a particular person?
- Per Stirpes: If an intended beneficiary (like a child of yours) were to die before you with descendants of his or her own, would you want the predeceased beneficiary’s share to pass to their descendants?

- Modern Family: How do you want to treat adoption, stepchildren, children's spouses or other potential beneficiaries who are not part of the traditional line of descent?
- Contingent Beneficiaries: Are there any individuals or charities that should receive some portion of your estate in the event of a common accident (i.e., all your "natural beneficiaries" die simultaneously with you)?

Who's In Charge?

Truthfully, many people find it more difficult to select fiduciaries than to choose beneficiaries. We use "fiduciaries" as a collective reference for the individuals or institutions you appoint to see your plan through when you're not there to do it yourself.

There are five different potential roles. We tend to group the first three such roles as "financial" in nature. Those include an Attorney-in-Fact under a Durable Power of Attorney (DPOA), a Personal Representative or Executor under a Last Will and Testament, and a Trustee under a Trust.

While each of those three roles is a different office, each performs a fundamentally similar function arising at a different interval or stage. As such, we often encourage the appointment of the same capable persons, in the same order, to promote continuity and avoid unnecessary baton passing. (In a revocable trust, you will ordinarily serve as the initial trustee; the continuity question concerns the successor trustee.)

Financial Fiduciary	When	Primary Functions
Attorney-in-Fact under DPOA	During life	Handle financial matters when you are unavailable or unable to act.
Executor / Personal Representative	After death	Administer your estate under your will (collect assets, pay debts, navigate probate, fund trust).
Trustee	During the life of the trust	Hold and manage trust property for its beneficiaries, exercise discretion as the trust dictates.

Although the same people may serve in the remaining two fiduciary roles, those appointments call for slightly different considerations. One consistent "tiebreaker" in the case of Guardian and Health Care Agent is often proximity!

Guardian of Minor Children: Who should raise your minor children if neither parent can? Shared values, stability, and willingness to serve matter most. This is the appointment that should never come as a surprise to the person selected. And as mentioned, geography is a factor worth considering. If this provision is being triggered, minimizing further disruption to the child's life could be a factor.

Health Care Agent. Who should make medical decisions if you cannot? The right person should understand your wishes, remain steady under pressure, and be reasonably available

when needed. The best ability is availability, so being local or being able to get proximate quickly is worth considering.

Appointing someone in one or more fiduciary roles is a dubious honor. There are a few general considerations worth keeping in mind.

- Competence, judgment, availability, and poise are more important than birth order or family expectations.
- In all cases, it's advisable to name at least one or two successors to the initial appointment.
- Parents often feel like a natural choice, but it's important to also consider relative age, health, and the likely sequence of events.
- It's not uncommon to name people to serve jointly. In those instances, it's important to consider how disagreements would be resolved.
- Most likely, you will amend these appointments over time in subsequent revisions to your estate plan.
- With trustee appointments, we sometimes encourage consideration that your children or other beneficiaries could become their own trustee (with limits and at a certain age).

The What, When, and How

Once the beneficiaries and the trustees have been identified, we move to implementation. This is really about the nature of how inherited assets should be made available to beneficiaries.

Outright or in trust?

An outright gift is simple: the beneficiary receives the property and controls it. A trust separates legal ownership from beneficial enjoyment. The trustee manages the property under standards you establish, and the beneficiary may receive distributions without necessarily owning the assets outright.

A trust may be useful for reasons that have little to do with age:

- Protection from creditors, lawsuits or a future divorce;
- Management during disability, addiction, immaturity or financial difficulty;
- Preservation of assets for descendants or other downstream beneficiaries, like the potential avoidance of inclusion in a beneficiary's taxable estate; and
- Flexibility to respond to circumstances you cannot predict today.

Lifetime trusts can offer meaningful protection without requiring lifetime dependence. As such, as a default setting we tend to eschew mandatory distributions at ages of attainment in favor of lifetime trusts of which the beneficiary may eventually be named as his or her own trustee.

As it relates to marital bequests in particular, the question of outright or in trust is important to consider. Most married clients want the survivor to be secure and in control. They may also

want the remaining assets ultimately to benefit children or other intended beneficiaries, particularly if the survivor remarries. Outright ownership maximizes simplicity and control. A marital trust can add protection and preserve a destination for what remains. The right balance depends on the family, the assets, and the degree of flexibility desired.

Guidance without ruling from the grave

A trustee needs enough guidance to carry out your intent but enough discretion to respond to real life. Many trusts authorize distributions for “health, education, maintenance and support”, which is a familiar legal standard sometimes abbreviated as “HEMS.” A plan can also identify particular goals, such as education, a first home or starting a business.

Detailed restrictions may occasionally be appropriate, but we do caution clients against trying to anticipate every future circumstance. The more rigid the instruction, the greater the risk that a sensible distribution will be prohibited or an unwise one technically permitted. Choosing the right trustee is often more valuable than writing more rules.

Charity Considerations

Charitable gifts can be stated as a dollar amount, a percentage or a contingent gift if family beneficiaries do not survive. A donor advised fund can receive assets during life or at death and may give children or later generations a continuing role in the family's charitable legacy. Private foundations may provide additional structure, but they also bring additional complexity and expense.

Sic Vos Non Vobis

The Latin phrase, sic vos non vobis, roughly means, “thus you labor, but not for yourselves.” That is the central paradox of estate planning. The work is yours, but most of its benefit belongs to others.

A good plan cannot remove grief or predict every turn in the road. It can make your wishes intelligible, put the right people in charge and spare those you love from avoidable confusion. The goal is a thoughtful, coordinated plan that can endure the unexpected.

Your mission, should you choose to accept it:

- 1)** Complete as much of the accompanying questionnaire as you comfortably can and flag the questions you would rather discuss first before answering.
- 2)** Gather your existing estate-planning documents, a directionally accurate balance sheet, beneficiary designations (i.e., retirement accounts and insurance policies), and any relevant business agreements.



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