

Protect Your Family; Protect Yourself with a Simple Estate Plan

by:

[Law Offices of Ronald E. Ostrin - Los Angeles Office](#)

December 20, 2010

Previously published by Culver City News on September 2010

In life there are two sure things, death and taxes. People have to confront their taxes at least once a year, but some people go a lifetime afraid to confront the fact that they need to do their own estate housekeeping. The failure to do a simple estate plan can cost you and your family a tremendous amount of money and aggravation, much of which might be avoided with a simple estate plan.

What is a simple estate plan? It depends upon your circumstances, but for most people it will consist of the following:

1. A will, or;
2. A trust and pour-over will;
3. An advanced health care directive; and;
4. A durable power of attorney for finances.

By having these documents prepared by a competent attorney, one can save thousands of dollars, if one becomes incapacitated and possibly save your children hundreds of thousands of dollars in estate tax with the use of a properly funded bypass trust. During your lifetime you have paid your share of taxes, don't have your children pay unnecessary estate taxes because you were too idle to take of your life's business during your lifetime. If you wait too long to have this necessary life housekeeping done, it may be too late. If one waits until one needs these legal instruments, it may be too late to get their full benefit, kind of like trying to get house insurance after you house has burned down. These documents protect you and your children, when someone dies or is incapacitated, and their potential benefits may be lost if you wait too long. The time to do it is when you don't immediately need them, and they will be there for those moments in life when you surely will.

Today I will briefly introduce you to the basic components of the estate plan. Understanding them helps one understand why it is a good idea to have an estate plan.

In order to designate where your property will go after you pass, a will or trust is a legal instrument that speaks for you. A will is a formal document requiring properly witnessed signing and is best prepared by an attorney, although theoretically a [holographic] will can be completely handwritten. A will is probated, in other words, administered through the courts, unless your total estate is worth less than \$100,000.00 and you have no real property. This usually adds to the costs administering your estate with attorney's fees, executor fees and costs. That is one of the reasons people with property and/or children choose a trust rather than a will. However, sometimes it is perfectly appropriate and reasonable to use a will, especially if you have contentious children and you feel that court supervision would be beneficial in the administration of your estate.

A trust is a legal document which creates a new entity called a trust. The most common trust is a revocable bypass trust which allows you to control and use all of your assets during you and your spouse's lifetime, and when the first spouse passes to preserve that spouse's estate exemption. This can save your children hundreds of thousands of dollars upon the passing of the last spouse, and this benefit is lost if you wait to have these documents drafted and the trust funded until after the first spouse dies. Avoiding probate and paying less estate tax are two of the major reasons that people find trusts more attractive than wills as a testamentary instrument. However with the recent amendment to the estate tax by Congress, it looks like the first \$5,000,000.00 of property

will be exempt, thereby excluding many estates from the potential of estate tax, however, the advantages of avoiding probate and the ease of administration still pertain, and the present tax structure is temporary leaving it certain for only two years. Therefore it still makes sense for married couples to have a bypass trust and the option of funding a bypass trust at the passing of the first spouse. It is a blessing to those who follow you to take care of your own life's housekeeping before it is too late.