Estate Planning:
Why Failing to Plan = Planning to Fail

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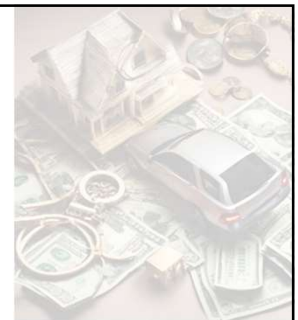
What is an Estate?

- Your home
- Bank accounts
- Investments
- Employer retirement benefits
- IRAs
- Insurance policies
- Personal belongings (furniture, jewelry, cars, etc.)



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Why do Estate Planning?

After Death:

- Control "who" receives assets
- Controls "how" and "when" assets are received
- Pay less or no taxes
- Pay less legal fees
- Avoid Probate
- Protect minor or disabled children

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Why do Estate Planning?

While Living:

- Control and protect assets
- Control medical decisions
- Make sure the person you want is actually the person making the decisions
- Avoid costly guardianship
- Protect your family

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When should you plan?

- Before you need it
- You are never too young or too old
- Not planning may seriously affect you and your family

NOW is the time!

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Scenario: Married, No Will

Minor Children
- ½ of estate to spouse
- ½ of estate to children, divided equally among them

Adult Children
- $100,000 + ½ of estate to spouse
- ½ of estate to children, divided equally among them

No Children
- 100% of estate to spouse

No Children, No Spouse
- 100% of estate to living parent(s)

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Scenario: Single, No Will

1. Children
2. Grandchildren
3. Parents
4. Brothers & Sister
5. Nieces & Nephews
6. Grandparents
7. Aunts & Uncles
8. Cousins

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Estate Planning Tools

- Wills
- Durable Power of Attorney
- Advanced Directives
- Ownership/Titling of Assets
- Life Estate Deeds
- Gifting
- Naming Beneficiaries
- Revocable Living Trusts (RLT)
- Testamentary Trust
- Irrevocable Trusts (IRT)

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Tool #1: Will

- Directs property after your death
- Appoints the guardians of minor children

BUT:

- Only controls assets titled in your name
- All property passing under your will is subject to "probate"
- No asset protection
- No help if you become incapacitated

Everyone should have a will!

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What is Probate?

Probate is the legal processing of transferring assets in your name

With a Will = Testate	No Will = Intestate
Will submitted to Orphans Court in county of residence for validation	Request made to Orphans Courts in the county of residence to open an estate
Probate fee paid based on value of assets in estate	Probate fee paid based on value of assets in estate
All assets titled in your name are accounted for	All assets titled in your name are accounted for
Attorney's fees, debts, and taxes paid	Attorney's fees, debts, and taxes paid
Remaining assets distributed according to will	Remaining assets distributed according to will

Probate is generally 9 months, but could take years

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Digital Assets

Make a list:

- Email accounts
- Websites
- Hard drives
- Important Word & Excel documents and files
- Online storage accounts
- Social media accounts

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Digital Assets

Fiduciary Duties:

- Shutting down the account(s)
- Doing nothing
- Archiving contents
- Creating an auto-reply on email account(s)
- Forwarding messages
- Cancelling account(s)

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Tool #2: Durable Power of Attorney

- Effective upon execution or "springing"
- Not affected by disability
- Allows a specifically-appointed individual to handle your financial affairs if you are unable to do so
- Can avoid guardianship proceedings
- *In Maryland, all POAs executed prior to October 1, 2010 should be redone

Help with financial affairs.

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Tool #3: Advanced Directive for Healthcare

- a.k.a. Living Will or Healthcare Power of Attorney
- Effective upon execution
- Allows a specifically-appointed individual to assist you with all healthcare needs
- Directs your medical treatment when death is imminent:
  - Food & Water
  - Resuscitation
  - Ventilator
  - Pain Medication

Help with health matters.

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NO Power of Attorney or Advanced Directive? Incapacity Happens – What Then?

Guardianship

- No capacity to sign documents
- Costly → Court filing fees and legal fees for 2 attorneys
- 4 – 6 month process
- Public court hearing
- Don't get to choose who makes financial and medical decisions
- If family disagrees, attorney or government employee could be appointed

****Could be avoided with planning****

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Tool #4: Ownership/Titling of Assets

Three Types of Legal Title/Ownership in Maryland:

1. Tenants in Common = share passes by will or statute
2. Joint Tenants = right of survivorship
3. Tenants by the Entirety (husband & wife only) = right of survivorship

Most common title issues in estate planning:

- Bank Accounts
- Real Property

Do you know "how" you own property with another person?

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Don't Disinherit Your Children

Bill & Jane's Story

Bill and Jane are married, and their home is owned as tenants by entirety.

Jane has a daughter from a previous marriage.

Bill and Jane have a son together.

The Result?

Jane's daughter gets nothing.

Jane dies → Bill inherits home 100% → Bill dies → In his will, Bill leaves home solely to his son

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Tool #5: Life Estate Deeds

- **Property passes outside of probate by operation of law**
- **Will does not dictate who gets the property**
- **Two Types of Life Estate Deeds:**
  1. With Powers
  2. Without Powers

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Tool #6: Gifting

Advantages

- Gift up to $19,000 per person per year without gift tax issues
- Reduces property in estate so less property is subject to probate
- Great way to reduce estate taxes

Disadvantages

- May need the assets later
- May create a penalty period resulting in a denial of medical assistance
- Carryover basis in property → no step-up → create potential capital gains on sale of property

Give some assets away now.

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Basis: Step-Up vs. Carryover

Step-Up (transfer on death)

Selling Price: $300,000
Basis: - $300,000
Gain: $ 0

No Capital Gains Tax

Basis = FMV as of date of death

Carryover (lifetime gift)

Selling Price: $300,000
Basis: - $100,000
Gain: $ 200,000

Capital Gains Tax: $40,000*

Basis = Original Purchase Price

**Note: There are three brackets for long-term capital gains depending on your income tax bracket. Rates are zero, 15% or 20%.*

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Tool #7: Naming Beneficiaries

IRAs

Insurance Policies

Retirement Plans

Some Bank Accounts

Pros

- Avoid probate
- Pass outside of will

Cons

- What if beneficiary dies first?
- Minors or young adults potentially receive large sums of money
- No creditor protection for heirs

Many assets allow you to name beneficiaries.

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Tool #8: Revocable Living Trust

- Created now while you are alive → asset management if incapacitated
- No loss of control
- Avoids probate at death
- Prevents unintentional disinheriting
- Step-Up in Basis on Property = tax benefits to beneficiaries
- Trust "lives on" after your death
  - Assets can stay in trust until beneficiaries reach a certain age
  - Asset protection for beneficiaries
  - Can direct how the money/assets in the trust are used to address:
    - Special Needs/Supplemental Income
    - Gift to Minors or Young Adults
    - Creditor Protection

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Revocable Living Trusts

GRANTOR → Creates & Controls Trust

TRUSTEE → Manages Trust (can be Grantor)

SUCCESSOR TRUSTEE(S) → Steps in for Trustee

BENEFICIARIES → Receives assets when Grantor dies

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Tool #9: Testamentary Trust

Created by a person's Will and comes into effect upon their death.

Benefits:

- **Control**: The testator retains control over the distribution of their assets even after their death by specifying detailed instructions in their will.
- **Asset Protection**: Trust assets may be protected from certain creditors and legal claims.
- **Tax Planning**: Testamentary trusts can be structured to minimize estate taxes and income taxes, depending on the jurisdiction and applicable laws.
- **Flexibility**: The terms of the trust can be tailored to the specific needs and circumstances of the testator and their beneficiaries.

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“Death” Taxes

- Maryland Inheritance Tax
- Maryland Estate Tax
- Federal Estate Tax

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Domestic Partnership Law

Domestic Partners are now eligible for more protection and benefits under Maryland inheritance laws.

If the couple qualifies as domestic partners and REGISTERS their domestic partnership while they are both alive, the surviving partner will be fully exempt from inheritance tax.

“Declaration of Domestic Partnership”

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Estate Planning is MORE Than Documents

1. Execute Key Documents
2. Asset Retitling and Beneficiary Designations
3. Tax and Fee Minimization and Asset Protection
4. Create the future you desire both in health, sickness and death
5. Legacy Planning → set your family up for success

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Take Action Now: What Is Your Legacy?

1. Make a list of your objectives
2. Take inventory of your assets & debts
3. Select professionals to help
4. Prepare legal documents
5. Evaluate asset titling and change if needed

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