Estate Planning 101:

Why Every Adult Needs an Effective Estate Plan

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WHAT IS YOUR ESTATE?

Your Estate = Your Assets – Your Liabilities

- Assets include bank accounts, retirement plans, stocks and bonds, real estate, automobiles, certificates of deposit, life insurance proceeds, etc.
- Liabilities include car loans, mortgages, credit card debt, etc.
- Example: Joe has a house worth $125,000, a car worth $5,000, a checking account worth $3,500, and a mortgage on his house with a balance of $25,000. Joe's net estate is $108,500 which is his assets (125,000+5,000+3,500) minus his liabilities (25,000).

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WHAT IS ESTATE PLANNING?

- Preparing your estate for an orderly and efficient distribution during life and upon death
- Providing for the continuation or termination of a family or closely held business
- Reducing estate taxes, when applicable

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DO YOU HAVE AN ESTATE PLAN?

- Most Americans do **NOT** have any planning in place
  - 64% of the Americans do not have a Will
  - Up from 57% in 2011

- Source: http://www.forbes.com/sites/nextavenue/2014/04/09/americans-ostrich-approach-to-estate-planning/

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COMMON REASONS

- The same Forbes article looked into the common reasons why people don't have a Will
  - 57% - Just haven't gotten around to it
  - 22% - Felt that it wasn't urgent
  - 17% - Didn't think they needed a Will
  - 14% - Don't have a Will because they don't want to think about death

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WHO SHOULD PLAN?

- All individuals 18 years or older
- Planning is essential regardless of the size of your estate. No estate is too small to make planning unnecessary.
  - Common misconception: it's only for the wealthy
- Any individual recently married, recently widowed, recently divorced, had a child, inherited property, lost a loved one, moved to a new state, etc.

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BENEFITS

Top reasons to plan **NOW**:

- Control
- Tax savings
- Probate minimization/avoidance
- Protection
- Family directives
- Road map

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WHY PLAN?

Planning allows you to control:

- Who will make health care decisions on your behalf if you are unable to do so
- Who will make financial decisions on your behalf if you are unable to do so
- Who will receive property when you die
- Who will be the guardian of your minor children if you die
- Who will be the executor of your estate

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COMMON ESTATE PLANNING DOCUMENTS

- Durable General Power of Attorney
- Health Care Power of Attorney
- Living Will Declaration
- Last Will & Testament (“Will”)
- Trust
  - Note: Many types (NOT ALL TRUSTS ARE THE SAME)

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DURABLE GENERAL POWER OF ATTORNEY

- AKA: Financial Power of Attorney
- Appoints a person as agent to manage your financial and/or personal affairs
- Avoids the necessity of a guardianship (an adult needs a guardianship if mentally disabled)
  - Guardianship involves a judicial proceeding and ongoing court supervision (costly and time consuming)

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HEALTH CARE POWER OF ATTORNEY

- Gives another person (the health care agent) the power to make health care decisions in the event you lose the capacity to make informed health care decisions for yourself
- Also avoids the need for a guardianship over your person
- Ohio has a standard form available

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LIVING WILL DECLARATION

- Governs the use of life-sustaining treatment if you are terminally ill or permanently unconscious <u>and</u> unable to communicate with your doctor
- A living will takes the life-sustaining treatment decision out of others hands (e.g., family)
- Ohio also has a standard form
  - Often goes hand in hand with donor enrollment

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LAST WILL & TESTAMENT

- Directs who receives your estate when you die
- Appoints an executor of your estate.
  - An Executor is the person who ensures the terms of your Will are carried out as directed
- Can appoint a guardian of minor children
  - Can also be included in a Financial POA under the latest Power of Attorney Act

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ADVANTAGES OF HAVING A WILL

- Nominate a guardian of your minor children. If you fail to nominate a guardian then the probate court has sole discretion to select a guardian.
- Control who receives your property rather than leaving it up to state law
  - Intestacy law
- Make specific bequests
- Save needless administrative expenses
- Nominate your Executor rather than having the court appoint an Administrator

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WHAT HAPPENS WITHOUT A WILL

- If you die without a Will, distribution of your property is made according to State law
- Under State law, distribution of property is based on your marital status
  - If you are separated or in the process of getting a divorce, you are treated under the law as a married individual.
  - With proper planning, you can disinherit a spouse.

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DEATH WITHOUT A WILL – SINGLE INDIVIDUAL

- If no spouse, but with children, your assets pass to your children in equal shares
- If no spouse and no children, then your assets pass to your parents, if living
- If no spouse, no children and no parents, then your assets pass to your siblings

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DEATH WITHOUT A WILL – MARRIED INDIVIDUALS

- If married without children or with children of which the surviving spouse is the natural or adoptive parent of all the children, then **all assets go to the surviving spouse**
- If married with one child who is not the natural or adoptive child of the surviving spouse, the surviving spouse takes the first $20,000, plus one-half of the balance of the property, the remainder to the child
- If married with more than one child and the surviving spouse is the natural or adoptive parent of at least one of the children, the surviving spouse takes the first $60,000, plus one-third of the balance of the property, the remainder equally to the children

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Why is Property Ownership Important in Estate Planning?

- A Will only controls certain property (i.e., only property titled in your name alone)
  - Probate property
- Certain jointly owned property passes automatically to the survivor without regard to your Will
  - Jointly owned (with rights of survivorship)
- Insurance proceeds and retirement plan death benefits will be paid to the designated beneficiary
- Payable on death/transferable on death

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TRUSTS

What is a Trust?

- A Trust is a private contract.
- The Trust contract is created by the Grantor.
    - Property is contributed by the Settlor (often the same person(s)
- The Trust contract designates a Trustee.
- The Trust contract names a beneficiary or beneficiaries.

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Types of Trusts

- If established in a Will, called a **"testamentary trust"**
- If created during lifetime, called a **"living trust"** or **"inter vivos trust"**
  - Living Trusts are preferred
  - Testamentary Trusts are subject to ongoing Probate Court supervision making them more expensive to administer
- **Revocable trust** may be amended or revoked at any time by the Grantor
- **Irrevocable trust** may never be amended or revoked by the Grantor
  - Can include powers for third parties to make certain changes

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TRUST FUNDING

- Trust funding is the process of changing ownership of assets from your name to the trust's name
- Often occurs at death through a will or beneficiary designations

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CHOICE OF TRUSTEE

- Individual Trustee: offers a personal touch; may serve for no compensation
  - Often a child or other family member or friend who would otherwise have served as an executor

- Corporate Trustee: provides professional financial management with an emphasis on conservation of principal; has extensive experience in performing the functions of a trustee

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USES FOR TRUSTS

- Benefit minor children
- Protect privacy
- Creditor protection for beneficiaries other than the Grantor (spendthrift provisions/protection)
- Provide for a disabled beneficiary in a way that won't cancel his/her public benefits
  - Special needs trusts
- Estate tax savings
- Probate minimization/avoidance (Note: Avoiding probate does not mean you avoid estate tax)

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OHIO ESTATE TAX

- Currently there is no Ohio estate tax
  - Repealed: Effective January 1, 2013
- 2012:
  - Graduated tax – ranged from 6-7%
  - Started at $338,333

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<u>FEDERAL ESTATE TAX (2025)</u>

- All assets passing between spouses is tax free regardless of amount
- Exclusion Amount: Assets < $13,990,000 = no estate tax
- Assets > $13,990,000 = taxed at 40%
- Surviving Spouse can use the unused portion of the exclusion amount of the deceased spouse
  - Known as "Portability"
  - Tip: It **<u>must</u>** be elected (filing a Federal Estate Tax Return: Form 706)
- Exclusion now scheduled to **<u>NOT</u>** revert back to $5,000,000 (indexed for inflation) in 2026. Instead will **<u>Increase</u>** to $15,000,000

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GIFT TAX

- Did you know…
  - The **giver** pays the gift tax, **NOT** the recipient
- Did you know…
  - If you give more than $19,000 per year to someone, you may need to file a gift tax return

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GIFT TAX

- $19,000 annual gifts pass tax free – per recipient
- Married couples can gift up to $38,000/person tax free
- Maximum life gift per person is $13,990,000
- Medical/tuition exception
  - Pay **directly** for the expense (not to the person)
- No Ohio gift tax

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HOW TO CHOOSE AN ATTORNEY

- Make sure to hire a lawyer who does a lot of estate planning
- Ask a financial planner, life insurance agent, accountant, friend, co-worker, family member or neighbor for recommendations
- Call the local bar association, but be careful because anyone can ask to be on the bar list

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ATTORNEY FEES

- Hourly
- Flat fee
- Discuss fees at the initial meeting

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TOP 10 ESTATE PLANNING TIPS

1. Plan for your own disability
2. Everyone needs a Will
3. Nominate a Guardian for minor children
4. Nominate a trustworthy Executor
5. State law determines distribution of assets without a Will
6. Consider establishing a Trust for minor children
7. Titling of assets is important
8. Do not name your estate as beneficiary of life insurance
9. State and federal law determine estate taxes
10. Contact an attorney before gifting over $19,000

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Estate Planning Lifecycle

- Where are you in the estate planning lifecycle?
  - Single
  - In a relationship/married
  - Family
  - Golden Years

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Lifecycle: Single

- ❑ Living Will
- ❑ Healthcare POA
- ❑ Durable Financial POA
- ❑ Will

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Lifecycle: In a relationship/married

- ✓ Living Will
- ✓ Healthcare POA
- ✓ Durable Financial POA
- ✓ Will
- ❑ **Living Trust**

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Lifecycle: Family

- ✓ Living Will
- ✓ Healthcare POA
- ✓ Durable Financial POA
- ✓ Will
- ✓ Living Trust
- ❑ **Dynasty Trust**
- ❑ **Special Needs Trust**

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<u>Lifecycle: Golden Years</u>

- ✓ Living Will
- ✓ Healthcare POA
- ✓ Durable Financial POA
- ✓ Will
- ✓ Living Trust
- ✓ Dynasty Trust
- ✓ Special Needs Trust
- ❑ **<u>Medicaid/VA Friendly Trusts</u>**
- ❑ **<u>Life Insurance Trust</u>**

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Getting Started

- Build your team
  - CPA
  - Financial Planner
  - Insurance Agent(s)
  - Senior Living & Funeral Pre-Planning
  - Estate Planning Attorney
- Communication
- Upkeep

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REVIEW

- At a minimum, you should review your estate plan every 3-5 years
- You should make changes to your estate plan when major life events occur
  - 5 D's
    - Death, divorce, diagnosis, decline in health, new decade

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Questions

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