

ANSWERS TO FREQUENTLY ASKED ESTATE PLANNING QUESTIONS

Q: What is Estate Planning and why do I need an estate plan?

A: Estate planning is the process by which an individual or a family anticipates and arranges for the transfer of their assets in the event of their death. An estate plan's goal is to preserve the highest amount of wealth possible for the designated beneficiaries and flexibility for the individual during that individual's life.

Effective estate planning will allow you to avoid the havoc and wasted assets of an unplanned estate, provide you with a sense of security, and provide a measure of personal well-being to your loved ones.

Estate planning is for everyone, regardless of factors like net worth, age or marital status. There are only benefits to be gained by having an estate plan. Without an estate plan, you run the risk of having the state or a judge determine who should inherit from you. This is a long, costly process that can be avoided with estate planning.

Q: What does your Family Plan (Nuts & Bolts) package include?

A: Our Family Plan Package includes: a Last Will and Testament, Financial Power of Attorney, Health Care Proxy, Living Will, HIPAA Medical Release, Long and Short-Term Care Guardians and Gifts of Personal Property. We offer Estate Planning packages to both individuals and married couples.

- A Last Will and Testament, more commonly referred to as a “Will”, is a legal document that communicates your final wishes to the judge about who should receive your assets at their death (the beneficiaries) and who should be in charge of that process (the personal representative).
- A Financial Power of Attorney designates one or more agents to make financial and legal decisions on your behalf.
- A Health Care Proxy appoints one or more agents to make medical decisions for you if you are incapacitated and unable to do so.
- A Living Will is a written statement detailing your wishes regarding life-prolonging procedures under specific circumstances.
- The Health Insurance Portability and Accountability Act, or HIPAA, is a law that protects the confidentiality of medical records and medical information. Our HIPAA Release allows you to one or more agents to access such medical records and information on your behalf, and extends your lifetime by two years in case your records need to be accessed after death. This is important for medical malpractice and wrongful death claims.

Q: What does your Trust Plan (Probate Protection) package include?

A: Our Trust Plan package includes a Revocable Living Trust, Financial Power of Attorney, Health Care Proxy, Living Will, HIPAA Medical Release, Long and Short-Term Guardian, Gifts of Personal Property and a Pour-Over Will.

We describe a trust like a basket. Anything you put into the basket can be picked up and carried through time. Inside the basket is a set of instructions to your trustee saying who should get the items in the basket and how. This basket avoids the courts and can begin administration immediately at your passing, or as early as you designate in the trust document.

Technically speaking, a trust is a legal entitlement in property which is held in a fiduciary relationship by one party (the trustee) for the benefit of one or more persons (the beneficiary or beneficiaries).

Furthermore, a trust is a type of property ownership. The individual who has the trust set up is called the "grantor" or the "settlor." The "legal" owner of the trust property is the trustee, and his name is on any document of title. The person who receives the benefits of ownership, like the right to receive the earnings from the trust's investments, is the beneficiary.

Q: Are there different kinds of trusts?

A: There are several different kinds of trusts. Many revocable trusts aim at avoiding probate at death such as a Family Trust, Living Trust, and Intervivos Trust. These types of trusts are all set up and financed while the grantor is still alive and is revocable. The grantor oftentimes names his or her self as both trustee and beneficiary of these types of trusts. A Testamentary Trust, by comparison, is a trust which takes effect under the terms of a Will, after the grantor has passed. There are many types of irrevocable trusts for asset protection such as a Medicaid Asset Protection Trust (MAPT), Veteran's Asset Protection Trust (VAPT), Irrevocable Life Insurance Trust (ILIT) and a few singularly focused trusts such as a Gun Trust which is created to own certain firearms or Pet Trust that may provide for pets and their care at your passing.

Q: Why should I create a trust?

A: Unlike a Last Will & Testament, a trust has the advantage of avoiding probate. Probate is a costly and lengthy legal procedure in which a Judge oversees the transfer of assets.

When an estate is transferred through a Will, the probate court has to validate the Will before the assets are transferred. The probate process can take years. In contrast, assets held in a trust are not required to go through probate. While we feel avoiding probate is an attractive attribute of a trust, here are a few other benefits:

- A Living Trust allows your assets to be distributed to your beneficiaries as rapidly as your trust agreement instructs and the taxing authorities permit rather than being required to wait on a judge and statutory time frames as required by probate laws.
- The costliness of probate is completely avoided for all assets that are held in your living trust. Probate can cost 3% or more of the value of the assets going through probate.
- Since a Living Trust is a private agreement, its terms are not made public at your death like the terms of a Will are when it is entered into probate. Only your trustee and beneficiaries are made aware of your assets and intentions.

Q: Who can benefit from a trust?

A: Anyone can benefit from a trust. Many people mistakenly believe that trusts are only for the wealthy. This is simply not true. A trust can avoid the probate process as we have mentioned above. However, the benefits do not stop there. Beneficiaries can be protected from themselves in a trust. For example, you can set up your trust to prevent distribution to a beneficiary if it would disqualify them from public benefits, if one is facing a divorce, is a minor child or simply is not good at managing money. In the instance of asset protection trusts, the person setting up the trust may also benefit from creditor protection and/or be able to qualify for public benefits that would be impossible without the trust (such as a MAPT or VAPT).

Q: What happens to our family trust in the event of death or divorce?

A: This all depends on the language in your trust agreement, the types of assets you funded your trust with, and any agreements that may exist between you and your spouse. In the event of death, your trust agreement will designate who should take over as the successor trustee along with when and how assets should be distributed.

Q: Where are my signed original Estate Planning documents kept?

A: After we have set up your signed Estate Planning documents, we organize them in a personal Estate Planning binder for you.

In your binder are all of your original Estate Planning documents, along with a USB containing a copy of the signed documents.

Q: What happens if someone's address/phone numbers change?

A: If someone's address or phone numbers change, we recommend that you contact us immediately so that we can update our records. We can update your documents to reflect the new addresses or numbers. However, if your agent listed in one or more of your documents has moved out of town or out of state, you may want to update the documents to appoint someone local depending on your circumstances.

Q: Should I give copies of my Will and other estate planning documents to my children and to the trustee/personal representative of my estate?

A: It is not a requirement, but we recommend you either give copies to your children, let them know where your documents are located, or simply give them our business card and let them know that if anything happens to you, they should contact us.

Q: When should I have my estate planning documents reviewed?

A: Estate Plans should not be considered permanent. Desires and conditions may change. Estate plans should be reviewed at least every three to five years or if any important change in your life demands instantaneous review. Some of these changes might be:

- The birth, divorce, marriage, disability or death of you or a beneficiary
- A large increase or decrease of your or a beneficiary's net worth
- You move to another state
- There is a change in tax law
- There is a substantial change in the types of assets you own
- You've purchased or sold a business or real property



Have more questions or need further assistance?

Don't hesitate to reach out to us anytime.

- ☎ 407-648-9530
- ✉ admin@bullard-law.com
- 📍 219 East Marks Street
Orlando, FL 32803
- 🌐 www.bullard-law.com