Estate Planning Guide

A guide to planning for you and your family.

Compliments of

ESTATE PLANNING LAW CENTER
DAVID J. ZUMPANO CPA/ESQ
It's All About Family!

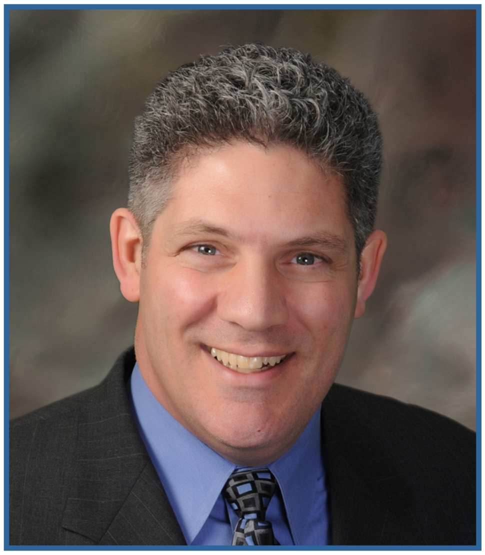
www.eplawcenter.com

WHAT WE BELIEVE

Our legal team is committed to creating a better future and has created a variety of ways to solve problems. We achieve this through our unique educational programs and our TLC™ estate planning process, empowering our clients to make a difference for their family, business, and community. Our firm is unique in that our team members are not just employees, but contribute to the growth and success of our business. Most law firms require clients to depend solely on the attorney. We have developed a business model to better serve our clients by training our team members to facilitate our clients' needs. This business model has proven to be so successful our team members now train other law firms across the country in transforming their practices.

Our Founder:

David J. Zumpano was born and raised in Central New York. He began his professional career with Price Waterhouse as a staff accountant. He later graduated from Syracuse University College of Law and started his legal career with a regional law firm. After two short years, he started the Law Offices of David J. Zumpano, remaining "of counsel" to his former firm. Since, his firm has grown twenty–fold as the Estate Planning Law Center, David J. Zumpano CPA, Esq. The Estate Planning Law Center serves as a "model law firm" for hundreds of law firms across the country.



David J. Zumpano. CPA/Esq.

Dave's practice remains focused on Estate and Medicaid planning, asset and business protection and elder law. Dave has been featured in the Wall Street Journal, on National Public Radio, and is a regular speaker and trainer on estate planning, asset protection and Medicaid Planning to many national legal organizations and banking and financial institutions, including the National Academy of Elder Law Attorneys, National Network of Estate Planning Attorneys, American Association of Attorney-CPAs, Ohio State Bar Association, Oklahoma Bar Association, Elder Law Answers, WealthCounsel, LLC, Advisor's Forum, LLC, ElderCareUSA, Ameriprise Financial, Morgan Stanley Smith Barney, Merrill Lynch, HSBC, Bank of America, Prudential, Mass Mutual, AXA Advisors and others.

In addition to his law firm, Dave is Founder of Medicaid Practice Systems, LLC (MPS) and Co-Founder of Lawyers With Purpose, LLC (LWP). MPS and LWP have educated thousands of attorneys all over the United States on Estate Planning, Asset Protection, Medicaid and Veterans Benefits Planning. Dave is also the creator of a Law Practice System for attorneys to provide comprehensive Estate, Medicaid and Asset Protection Planning to clients, which has been implemented by over 750 law firms nationwide. Dave also serves as a business coach to attorneys across the country.

Dave has published Protect Your IRA: Avoid the 5 Common Mistakes (2015), Irrevocable Pure Grantor Trusts: The Estate Planning Landscape Has Changed. (Syracuse Law Review Vol. 1 Fall 2010), and What Hard Work Giveth, the Nursing Home Taketh Away: Asset Preservation Under Medicaid (the Digest, 1994-95). Dave is also a contributing author to Giving: Philanthropy for Everyone, published October 2002.

Dave's first priority and passion is his wife, Christine, and their children, Maria, Olivia, and Angelo.

We bring diverse experiences to create collective resources for our clients. Our core value of integrity ensures we uphold the highest standard of service.

PLANNING WITH US

A Planning Process with a Difference.

Our Thorough, Lifetime & Complete (TLC™) client process is a unique approach to planning, a step-by-step process that educates and keeps you informed at every stage. Thorough, because we ask all the right questions to help you "discover" the planning strategy that achieves your planning objectives. Lifetime, because our optional lifetime maintenance program makes sure your plan stays current with changes in your family, your finances, your health and the law. And Complete because we guarantee your plan to work as you intended and agree to all the fees associated with the life of the plan before you hire us.

Give what you have to whom you want, when you want, the way you want.

Did you know this was possible? We'll show you how to minimize estate tax implications, the advantages of trusts, and how to protect assets that otherwise may be lost. We'll help you design the most effective plan for your family, to address estate planning, Medicaid planning and qualification, disability, special needs, probate and post-death planning opportunities.

The sooner you start, the more options you'll have.

It's never too late to begin estate planning, and in every case, we anticipate the unexpected. We'll explain your options, given time frames and circumstances. However, the most effective plan is built on long-term goals rather than reactions to immediate needs. Knowing where you want to be at each stage of your life helps with decision-making when circumstances change.

We know the law, that's the easy part.

Our name says it all. We know estate planning. It's where we devote our complete attention. Our comprehensive understanding of this area of the law allows us to create solutions that protect your interests to the fullest. In fact, many experts in the field rely on us for advice and educational resources. We think that speaks for itself.

We don't tell you what to do, we provide options! You choose.

The foundation for your plan is based on your wishes. Your situation is unique and no one knows it better than you. We listen and learn, then educate you regarding your options.

The ultimate decisions are yours to make. We'll guide you every step of the way and make sure you understand all of your options.

Finally, we know that flexibility and longevity are important. So we're in this with you for the long run. That means you'll always be able to make adjustments as your life changes.

Our team approach.

Estate planning is an area where trust and commitment are essential. Teamwork at all stages is vital to the success of your plan. Working with you and your key advisors ensures what you have today is protected for your loved ones tomorrow.

It's all about family!

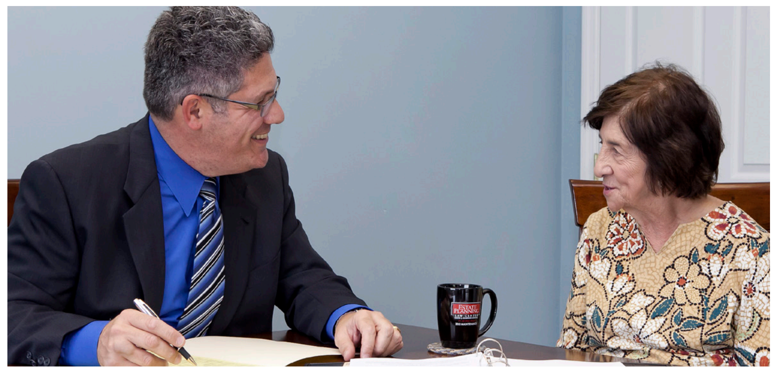
Don't become a burden to your loved ones. You've worked a lifetime building your assets for you and your family. Let us show you how planning can ensure your goals are met even when you can't do it.

You're in control...

You've worked hard for what you have. You should decide what happens to your assets now and when you're gone. The Estate Planning Law Center has the experience and expertise to guide you in doing just that.

YOUR GUIDE TO ESTATE PLANNING FACTS

WHO NEEDS ESTATE PLANNING?



Estate planning isn't about how much money you have, it's about protecting what you have for you, during your life and for those you love, after you're gone. It ensures what you have gets to the people you love, when you want, the way you want.

If you were to die today, are you confident everything will be taken care of the way you wanted? Estate planning is legally ensuring things will be handled the way you want by providing sufficient instructions and the authority to carry them out.

Estate Planning really is for everyone. It doesn't matter if you have $40,000 or $400,000. You still have to plan for the future. Whether it's to name a guardian for minor children or ensure your children don't blow through your assets if you unexpectedly die or become disabled (Terri Schiavo case).

Estate planning can only be done by attorneys, and it can be as simple as a Will, Health Care Proxy, Living Will and Power of Attorney. It can also include a revocable, probate-avoidance trust, asset protection trusts, multi-generational tax–saving trusts, tax-saving charitable trusts, private family foundations, and many other fact-specific strategies.

HOW OFTEN DO I NEED TO UPDATE MY ESTATE PLAN?

Once completed, your estate plan should be reviewed and kept current with life events such as birth, death, marriage or divorce of anyone included in your plan. In addition, you should review your plan if there is a significant increase or decrease in your finances or if the laws related to your estate plan change.

The Estate Planning Law Center offers a maintenance program that provides you access to us to make sure your estate plan stays current with your wishes, family, finances and law.

The following is a list of common situations and "triggers" that may indicate the need to update your estate plan. If you or someone you love has experienced any of these life changes, or it's been at least three years since they have had their Will, Trust or other planning documents reviewed, it's time to take them into our office for a review.

1. *Marriage or Remarriage.*

While a spouse does often inherit by default, there are a lot of other considerations to make to an estate plan when a marital status changes. This is especially true in the case of subsequent marriages and blended family situations.

HOW OFTEN DO I NEED TO UPDATE MY ESTATE PLAN?

2. *Divorce.*
   If you don't want your ex-spouse to receive your property upon your death, it's important to meet with your lawyer to ensure the ex's name is removed as a beneficiary of accounts and policies, taken out of the will, removed from trusts, etc.

3. *You've been widowed.*
   When one spouse passes away, the surviving spouse will need to update his or her estate plan to reflect that change. Not only will your beneficiaries likely change, but you may also have an inheritance from your spouse that now needs to be incorporated into your own estate plan. And, if you and your spouse used a joint trust as part of the plan, its instructions now need to be carried out correctly and promptly.

4. *You have a new child or grandchild.*
   The birth or adoption of a new family member means that aspects of your estate plan may need to be changed to accommodate new needs. For example, you may want to create a college fund or set up a trust. Consideration may also need to be made regarding the distribution of assets to children or grandchildren. Creating a trust may also be necessary to hold funds for the children/grandchildren until an age when you feel the beneficiary is mature enough to handle the responsibilities of having an inheritance.

5. *Your financial situation has changed.*
   Whether you've received some sort of windfall, gotten a significant increase in pay, or have lost your job, it is important to review your estate plan to determine if it provides for these changes. If not, you'll need your lawyer to adjust it appropriately.

6. *You've purchased real estate.*
   A home often represents an individual's biggest life investment, and you want to be sure to cover it in your estate plan. From how to pay it off to whom you want to leave it to and plenty in between, an estate planning lawyer will help incorporate this big change into your existing plan.

7. *You started (or are selling) a business.*
   Starting or selling a business warrants a trip to the estate planning lawyer's office for plenty of reasons, not the least of which is that it will certainly have some sort of effect on your financial situation. Succession planning is another big aspect of running a business, as you'll want to clearly outline what is to happen to the business if you die or become otherwise incapacitated. A little legal planning now will save big headaches later.

8. There are, of course, other events that should likely trigger a call or visit to your lawyer, but these are some of the biggest. Fortunately, with the major estate planning done, these types of updates will typically be fairly easy while benefiting you and your beneficiaries greatly.

How to choose an Estate Planning Attorney?

Would you have your regular doctor do your heart surgery? Sounds like a stupid question right? However, the same could be said for choosing the right attorney for your estate planning. Unfortunately, the legal profession does not have specialties, like the medical profession. You have to guess whether your attorney is qualified to guide you on your estate planning options.

It seems every brochure or letter you receive from your bank, financial advisor, or brokerage firm asks if you have done your "estate plan." Fact is your bank, financial advisor or brokerage firm can only help you with the financial planning aspects of your estate. You need a qualified estate planning attorney to draft the legal documents that create an estate plan for you. A qualified estate planning attorney will work with your financial advisor and accountant to create the best plan for you.

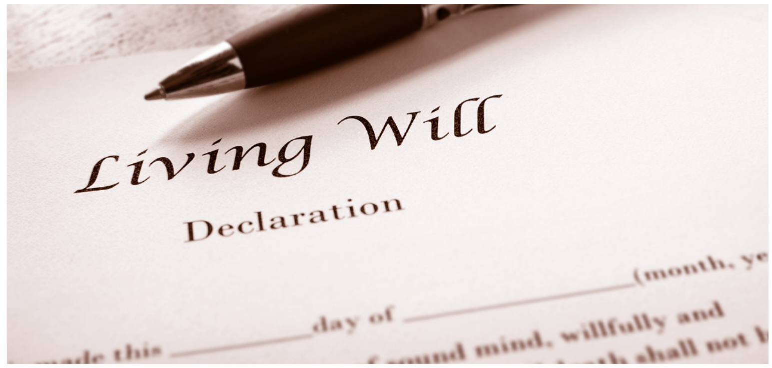
Many attorneys attend a short seminar to learn a certain area of law and then immediately add it to their existing law practice. The intricacies around estate, Medicaid and tax planning are extensive. Not only does the attorney need a thorough knowledge of probate law, estate administration, trusts, asset protection and Medicaid laws, they must also have an extensive knowledge of income tax, estate tax, gift tax, generation-skipping tax and excise tax laws. All of these areas intertwine and have a significant impact on your estate plan.

While general attorneys may have some knowledge of the law and be able to guide you through certain parts of the estate or Medicaid planning processes, they will not be aware of the many exceptions and details an attorney who limits his practice to only estate planning will know.

An attorney, who does traffic court one day, divorce on another, business law on the third day and sues for personal injury on the fourth, will not have the experience and knowledge of the loopholes as an attorney who practices exclusively in estate planning. If you're looking for a divorce, find an attorney that focuses on divorce. If you want estate planning, utilize an attorney that focuses on estate planning. At the Estate Planning Law Center that is all we do and all we have been doing for 25 years.

If you want estate planning,
utilize an attorney that focuses on estate planning.

HEALTH CARE PROXY & LIVING WILL

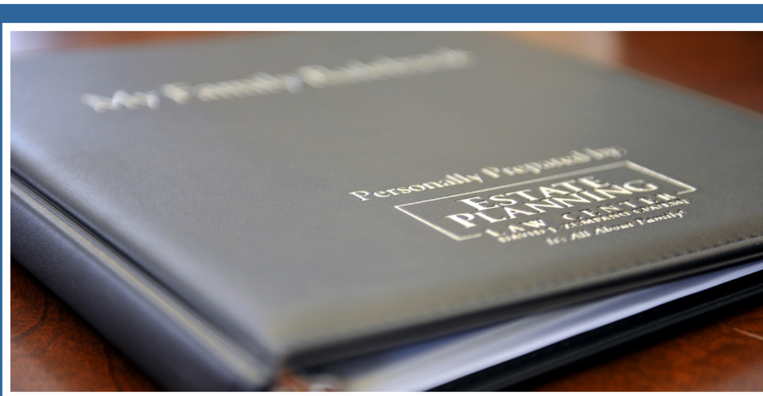


Many people confuse a Health Care Proxy and Living Will. A Health Care Proxy is a legal document that authorizes someone to make your health care decisions for you in the event you are unable to. These decisions usually relate to life and death. A Living Will, on the other hand, is a legal document you create that states what your wishes are with regard to whether you want to be kept alive by heroic measures in a life and death situation.

Typically, Living Wills indicate whether or not you want to receive cardiac pulmonary resuscitation (CPR), artificial respiration, intravenous or tube-type feeding, dialysis, or other more extreme medical support.

Unfortunately, most standard Health Care Proxies and Living Wills fail to deal with the everyday issues of your health care needs in the event of your incompetency. We recommend you work with us to ensure the proper instructions are included in your health care documents.

PERSONAL CARE PLAN



A personal care plan is a detailed set of instructions for your loved ones that identifies the specific request you have with regard to your care if you become mentally incapacitated. Most of us think of incapacity as being slouched over in a wheelchair drooling on ourselves. In fact, many people are healthy physically; they walk, talk, laugh and enjoy life, but just may not know who they are.

In these circumstances, you can present instructions as to what type of care you want provided for you should you need assisted living or nursing home care. This includes describing your personal hygiene needs, provide you access to outdoors, your willingness and guidelines for visiting family, going to public places, the theater, what you like to eat, what you like to watch on TV, hobbies, books, other reading material and even if you want to attend religious services.

This is a very important guide to help your family members care for you in the way you would want them to; but don't assume your family members know.

POWER OF ATTORNEY

If you become sick or disabled, either temporarily or permanently, who will make decisions for you?

A Power of Attorney allows you to appoint someone you trust to handle your affairs if you cannot do so.

If you cannot pay bills, get records or make other decisions, your family will be prevented from helping you get treatment, pay doctors or apply for Medicare or Medicaid.

Without a Power of Attorney, your family may have to file what is known as an Article 81 proceeding, seeking guardianship of the disabled person. This process involves the Court, several lawyers and usually at least $4,000 to $50,000. A Power of Attorney might cost $200.

It is important that you give your family the tools to help you if you cannot help yourself.

LAST WILL & TESTAMENT

If you own assets in your name alone, they may pass from you to the people you love, as long as you leave a Will. Without a Will, your assets pass according to the State's rules, also known as intestacy. The State may not pass your assets to the people you care about. You should be sure.

Also, you should know that...

Assets will pass through your Will to your loved ones if the Will is written properly.

You can reduce your estate tax liability by using a trust in a Will.

You can protect the ones you love by creating a trust in your Will which can protect that person from creditors.

It is important that you give your family the tools to help you if you cannot help yourself or children from divorce, or, you may protect your children who are not good with money, or those who have other problems, such as addiction or mental illness.

You can protect disabled beneficiaries by creating a Supplemental Needs Trust for them, which preserves assets for the family, while keeping their eligibility for public benefits.

Your Will must go through probate - using the courts to divide your property.

WHAT IS PROBATE?

Do you need to avoid probate?

It is the legal process of presenting your Will to the Court, after your death to authenticate it, and appoint your Executor. Your Executor must be appointed by the Court in order to collect and distribute your assets as stated in your Will. However, because it is a legal process, there are many steps that must be followed before your Executor can be appointed.

- The attorneys must obtain signatures from your heirs signifying they agree the Will is yours, and they will not contest it. Your heirs are typically your spouse and children and all must consent to your Will before your Executor can be appointed. If you don't have a spouse or child, probate becomes even more complicated. Even if your heir is not a beneficiary, his/her waiver is still required. This can be very different in second-marriage situations, if you have minor children or if you have a child you lost contact with from a previous marriage. If a child dies before you, then all of your deceased child's children will have to agree not to contest your Will, but if they are under 18, the Court will need to appoint a separate attorney to represent them. The same is true if any of your heirs are legally incapacitated, such as a disabled child or a spouse with Alzheimer's.

- The Executor will have to submit a family tree, filing fees, a petition, a death certificate and affidavits from the individuals who witnessed your Will. Upon receipt of all of the appropriate information (if no heirs contest it), the Court will appoint the Executor.

- After your Executor is appointed, estate administration begins. It is a period of time the law permits the Executor to accumulate the assets and report to the Court how he/she intends to distribute them. This period is a minimum of seven months after the Executor is appointed. However, in most cases, it takes a year or more. If you die without a Will, the process is similar, but the State decides who gets your assets, not you.

Unfortunately, probate is unpredictable. That's why many people choose to avoid it, but if all of your heirs agree and your assets are centralized, it can go smoothly.

The State decides who gets your assets, not you.

Difference between Medicare & Medicaid

MEDICARE

Eligibility

Medicare is a health-care benefit provided by the federal government to individuals over age 65, or under age 65 and disabled. Medicare covers doctor visits, tests and care provided in a hospital and limited benefits in a nursing home (see below).

Qualification

To qualify for **Medicare**, you must be over 65, and eligible for Social Security benefits. You may also qualify if you are under age 65 and disabled for two years. An application at the Social Security office will get your benefits started.

Nursing Home Costs

Medicare will only pay for 20 days in a nursing home, and only if you meet some prequalification conditions (in limited circumstances, it can pay partial cost of 80 additional days) while Medicaid will pay the entire cost of a nursing home.

MEDICAID

Eligibility

Medicaid is health insurance for the poor. To qualify, you must meet certain income and asset limits. If your income or assets exceed the qualifying limits, you will not be eligible. There is no age restriction to qualify.

Qualification

To qualify for **Medicaid**, you must submit a multiple-page application and provide detailed proof of all your financial transactions (banking, CDs, stocks, bonds, income, expenses, annuities, etc.) for the previous 60 months.

Nursing Home Costs

The laws around **Medicaid** qualification are extensive, and there are many exceptions. Often, hospitals and nursing homes will offer to do this for you at no cost. Be careful, they do not represent you, but rather, the institution for which they work. Even with the best intentions, they often do not have the knowledge necessary to determine whether or not your qualification is accurate. In fact, the law prohibits nursing homes, the staff at your local medical office or any non-lawyer to provide any guidance on how to qualify. This is where a legal professional can really be of value and often times, be able to get you benefits much sooner.

MEDICAID QUALIFICATION

Unlike Medicaid planning, Medicaid qualification is the actual process of applying for the benefit to ensure Medicaid will actually begin paying for your care. The qualification process for Medicaid requires a multiple page application and the necessity to supply a number of years of specific detail of all of your financial records and transactions. The completion of the application is extensive and the process for approval, in the best case scenario, takes several months.

Any glitch along the way will most likely make you ineligible for benefits. We have seen people denied Medicaid benefits improperly but we were unable to get it overturned because they failed to preserve their legal rights along the way. As a result, the individual had to have us file a new application and lost months of benefit. Often, hospitals and nursing homes will offer to apply for Medicaid for you at no cost. Be careful, they do not represent you, they represent the best interest for the institution they work for. Even with the best intentions, they often do not have the legal knowledge necessary to determine whether or not your qualification is accurate. In many instances, we have Medicaid benefits awarded when institutions could not.

This is where we, as lawyers, can really be of value and often times are able to get you benefits sooner and protect more of your assets. Don’t do it alone. Let us handle your Medicaid qualification for you and protect your legal rights, so you can attend to your family member in need. In most cases, the fee you pay us is with assets slated to go to the nursing home anyway.

COMMUNITY MEDICAID HOME ADVANTAGES

Medicaid care at home can be as little as 2 to 4 hours a day and as much as 24 hours a day. The advantage of Community Medicaid Home is you can actually choose your own caregivers, including family members! Those who agree to take care of you are eligible to become an employee of the county, specifically for your care, and receive full county benefits including paid vacation and 401(k) benefits. If you don’t have anyone, the county will provide a caregiver.

In addition, the care provided is not limited to your healthcare; it could include household chores, lawn mowing, and even doing your grocery shopping, laundry, and other tasks. To learn how to become eligible for Community Medicaid and keep you in your own home, contact us today.

How do I pay for senior care?

Nursing Home Costs

Medicare will only pay for 20 days in a nursing home (in limited circumstances, it can pay partial cost of 80 additional days) while Medicaid will pay all nursing home costs.

The laws around Medicaid qualification are extensive, and there are many exceptions. This is where a legal professional can really be of value and often times, be able to get you benefits much sooner.

Care at Home

Check your Benefits: There are many benefit programs available in our community from Medicaid Home Care Programs designed to suit your individual needs to transportation assistance and VA benefits.

The Veterans Administration will pay a monthly benefit to any active-duty veteran or their spouse who needs care. Any vet who has served even one day during a period of war can apply for this Aid and Attendance Special Pension; beneficiaries need not have served overseas, retired from the military, or seen combat. Surprisingly, however, only a few of those eligible are aware of this benefit.

Make the Most of Social Security: The age at which you claim your retirement will affect the monthly benefit amount. With a married couple it may make sense for each to claim their retirement at a different age. You have to consider your age, health and other income when making the decision to claim SS retirement.

Leveraging Your Life Insurance: Many of us don't think of our life insurance as a method of payment for our long term care but there are many options, not just liquidating your policy or taking a loan. Some policy benefits can be sold or partially transferred, many times access to accelerated death benefits is available, and life or viatical settlements are another option. Choosing a method of accessing these funds requires careful consideration of a senior's life circumstances as well as the tax consequences.

Bridge Over a Troubled Housing Market/Options for Equity from Your Home: Reverse mortgage is one option, but there are others like bridge loans and home equity options we often prefer.

VETERAN BENEFITS

If you or your spouse are a veteran who served at least 90 days active service, of which one day was during wartime (World War II, Korea, Vietnam, or Gulf War), you may be eligible for veteran benefits of up to $2,169.00 per month (2018) to help pay medical expenses. If you are a surviving spouse of a veteran you may be eligible for benefits of up to $1,176.00 per month (2018).

These benefits do not require you be in a nursing home. In fact, they not only help pay for care in your home or assisted living facility, but also pay for medical supplies including Q-Tips, rubbing alcohol, and even prescriptions. Only an accredited attorney can apply for benefits for you.

REVOCABLE LIVING TRUST

A trust is a contract between the Grantor (the person who creates the trust), the Trustee (one who controls the trust) and the beneficiaries (those entitled to benefit from the trust). You, as Grantor, determine how the trust will be operated by the Trustee and who benefits, how and when. You can create a trust that permits you to be Trustee and gives you the right to receive full benefits from it. This type of trust is typically referred to as a Revocable Living Trust and is often used as a substitute to your Will. It permits you to keep total control and access to all your assets during your life, and provides for the distribution of your assets to your beneficiaries at your death. We often refer to a Revocable Living Trust as your book of instructions. A well established advantage to Revocable Living Trusts is the avoidance of probate, which is required if you use a will to distribute your assets after death. Other advantages of Revocable Trusts, when properly drafted, can include:

- Asset protection for your spouse after your death.
- Special needs planning for disabled beneficiaries.
- Asset management and protection for beneficiaries who are not proficient with handling money.
- Protection of assets from a spouse's subsequent marriage after your death.
- Disability planning in case you become disabled prior to death.
- Asset protection for your children if they are in bad marriages or to ensure your assets don't go to the in–laws.
- Keeping your affairs private (as opposed to open for public review in probate).
- No court intervention required (handled entirely by Trustee you name in accordance with your detailed instructions).
- Plan for proper management of your business in your absence.

Very few Revocable Living Trusts provide these benefits. Only a qualified estate planning attorney will know how to incorporate these protections into your plan. While a Revocable Living Trust has many advantages, it does not protect your assets from a nursing home, lawsuits, divorce, bankruptcy or other creditors.

Only a qualified estate planning attorney will know how to incorporate these protections into your plan.

IRREVOCABLE TRUST

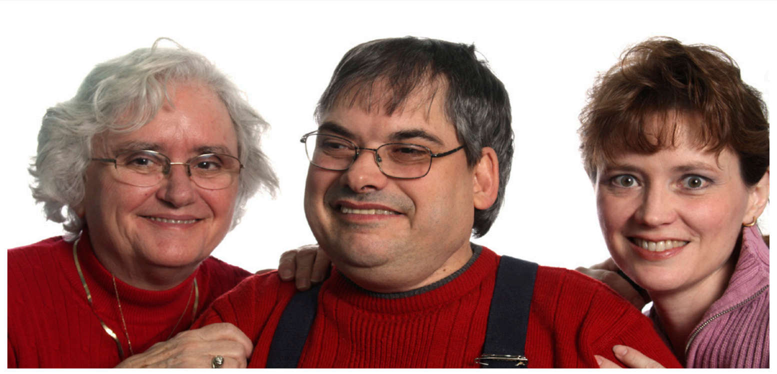
While a Revocable Trust permits you to maintain full control (as Trustee) and have access to all your assets (as beneficiary), an Irrevocable Trust, once created, may prohibit your right to control the trust (as Trustee) or have access to your assets, but you get to decide to what extent. It is a common misconception that irrevocable trusts, once created, cannot be changed. While that is true of many irrevocable trusts created to avoid estate taxes, it is not true of irrevocable trusts used for asset protection from lawsuits, nursing homes or other predators.

An Irrevocable Trust is a trust you create for the benefit of yourself or others and once created, you, as Grantor, must give up your right to something. Debtor/Creditor law provides that whatever you can get, your creditors can get. You can have known creditors (i.e., bank/credit card debt) or unknown potential creditors (unforeseen lawsuits, nursing home, divorce). A typical "income only" irrevocable trust permits you to receive the income on your assets, but you must give up your right to your principal. In some irrevocable trusts, you can retain the right to change who gets your assets during your life and after your death, and maintain 100% control of your assets until your mental disability or death (asset protection trusts).

Tax reduction/avoidance trusts are much more restrictive than asset protection trusts. Typically, you cannot retain any right to control or access any of the assets in an irrevocable tax reduction/avoidance trust.

There are many irrevocable trusts available that are quite flexible and grantor-friendly.

PLANNING FOR THOSE WITH DISABILITIES OR SPECIAL NEEDS



In the past, families would disinherit disabled family members and leave assets to someone else who agreed to "take care" of them. If assets are left to a disabled beneficiary, it could disqualify them from the state or federal benefits they are receiving. In 1993, Congress enacted new laws that entitled disabled individuals to derive the same estate planning benefits as non-disabled individuals without affecting their eligibility for state or federal benefits. The law created Supplemental Needs Trusts, which enable you to leave any amount of money to a loved one who has special needs without affecting their eligibility for the state or federal benefits they receive.

The law further provides the trust proceeds can be used to provide luxuries for the disabled individual he or she would not otherwise receive under the state and federal programs. Luxuries can include trips, computers, power wheelchairs, prosthetics, or other comforts not generally provided by the government.

A Supplemental Needs Trusts can be created by an individual with his/her own funds or be created by someone other than a disabled individual, typically a parent or relative.

There are different rights and restrictions to each of these trusts, but both ensure immediate qualification for federal and state benefits (i.e., Medicaid) and provide luxuries to the disabled beneficiary he/she otherwise, most likely, would be unable to have.

WHEN DO I NEED GUARDIANSHIP FOR MY SPECIAL NEEDS CHILD?

As a parent of a special needs child, you are the child's "natural guardian" and can make all decisions regarding the child. However, your rights as guardian do not allow you to have access or control of your child's assets (i.e., proceeds from a lawsuit or gifts from a family member). In addition, when your child turns 18, you lose your rights as natural guardian to make healthcare and other life decisions for them. To maintain these rights, you must commence a guardianship proceeding in Surrogate's Court or the State will assume legal authority over your disabled loved one. To avoid losing your authority, you should contact the Estate Planning Law Center to begin a guardianship proceeding at least six months prior to your child's 18th birthday.

Charitable Planning

Charitable giving techniques are typically used for those who have accumulated wealth that is subject to estate tax at death. The estate tax rate is 40% and may go up as high as 65% in future years. Federal estate tax does not apply to estates in 2018 that are valued at less than $11.2 million, but that threshold exemption could be reduced or limited by future legislation. Those who have worked hard to create and accumulate assets often opt to utilize charitable giving techniques to minimize taxation while creating a lasting legacy without necessarily depriving family from benefiting from your assets. Charitable planning is also utilized to minimize income taxes (which can exceed 40%), and you can retain full control of your assets.

Charitable planning can also be effective when selling your business. When properly utilized, you can avoid paying income taxes on the sale of your business when sold.

Utilizing a charitable giving plan enables the donor to direct the use of his or her assets that would otherwise go to the IRS. Your assets can pass to your family, charities, or the IRS, but you must choose two out of the three. If you don't, the IRS wins by default.

There are many ways to do charitable planning, including Charitable Remainder Trusts and Charitable Lead Trusts.

Charitable Remainder Trusts enable you to:

- Transfer highly appreciated assets
- Liquidate them with no tax consequence
- Receive a charitable tax deduction against your current income, and still receive the benefits from your assets for the balance of your life
- At death, have the remainder go to the charity of your choice

Charitable Lead Trusts:

- Provide income to a charity for a term of years, and at the end of the term, the remainder is paid to your family
- A Charitable Lead Trust is primarily a gift-discounting technique that permits you to gift $1 of assets to your family members, and the IRS will view it as less than $1 (typically 30% – 60% less). This enables you to gift more than you otherwise would be able to

Other charitable strategies include:

- Private Family Foundations
- Donor Advised Funds
- Special Funds as part of a Local Community Foundation
- All will work to minimize taxation and create a lasting legacy

DIFFERENCES BETWEEN ASSET & TAX PROTECTION

ASSET PROTECTION

A trust is a contract between the Grantor (the person who creates the trust), the Trustee (one who controls the trust) and the beneficiaries (those entitled to benefit from the trust). You, as Grantor, determine how the trust will be operated by the Trustee and who benefits, how and when.

While a Revocable Trust permits you to maintain full control (as Trustee) and have access to all your assets (as beneficiary), an Irrevocable Trust, once created, may prohibit your right to control the trust (as Trustee) or have access to your assets, but you get to decide to what extent.

It is a common misconception that irrevocable trusts, once created, cannot be changed. While that is true of many irrevocable trusts created to avoid taxes (tax reduction or avoidance trusts), it is not true of all irrevocable trusts. An Irrevocable Trust is a trust you create for the benefit of yourself or others and once created, you, as Grantor, must give up your right to something.

TAX PROTECTION

Debtor/Creditor law dictates that whatever you can get, your creditors can get. You can have known creditors (i.e., bank/credit card debt) or unknown potential creditors (unforeseen lawsuits, nursing home, and divorce). In a typical income-only irrevocable trust, you are permitted to receive the income on your assets, but you must give up your right to your principal. In some irrevocable trusts, you can retain the right to change who gets your assets during your life and after your death, and maintain 100% control of your assets until your mental disability or death (asset protection trusts).

Tax reduction/avoidance trusts are much more restrictive than asset protection trusts. Typically, you cannot retain any right to control or access any of the assets in an irrevocable tax reduction/avoidance trust. There are many irrevocable trusts available that are quite flexible and grantor-friendly.

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