

The Legal Strategist

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FOURTH QUARTER 2011

With the New Year, one of the best resolutions you can make is to ensure that your family is taken care of in case of your untimely death. Peace of mind can be achieved by taking the time to create a basic estate plan.

Basic estate planning is neither all that time consuming or costly. What can be time consuming and costly for your spouse or heirs is dying without the proper documentation of your final wishes. Taking the time to carefully develop an estate plan should be on the top of your resolution list.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office to set up a consultation.

Scott Barrett

TEXAS ESOTERIC FACTS

- ◆ Texas is home to the most Fortune 500 company headquarters in the US.
- ◆ A shipwrecked Spanish explorer, Alvar Nunez Cabeza de Vaca, was the first European to set foot in Texas in 1519.

FEATURE TOPIC:

BASIC ESTATE PLANNING

Wills And Trusts:

A Will and Trust should be one of the main aspects of every estate plan, even if you don't have substantial assets. Wills help to ensure that property is passed according to an individual's wishes and should be written in a manner that is consistent with the way you've bequeathed the assets that pass outside of the Will. For example, if you've already named your sister as a beneficiary on a retirement account or insurance policy (assets that typically pass outside of a Will to a named beneficiary), you don't want to bequeath the same asset to a second cousin in the Will.

One of the most common trust is a Testamentary Trust. A Testamentary Trust is a trust established under the provisions of a person's Will. Unlike trusts created during the lifetime of the Grantor, a testamentary trust does not become effective until the Grantor has died and his Will has been through probate. Likewise, because the trust is not effective until the Grantor's death, none of the assets intended to be placed in the trust will be transferred to the trust until after the Grantor's death. As a result, the Grantor does not lose the use or benefit of the assets during his lifetime, but after his death, he has the assurance that the assets are going to be controlled and used the way that he intended.

Testamentary trusts are used very widely when leaving gifts under a Will to minor children. Because minors are not capable of owning large sums of money or other property, the creation of a trust enables you to provide a trust for the children if one or both of the parents or grandparents die while the children are still too young to manage the money for themselves. The trust for the children not only alleviates any problems created by minor children receiving property, but it also allows you to designate a trusted friend or family member to make decisions regarding the proper distribution of the trust assets for your children.

Durable Power Of Attorney:

It's important to draft a durable power of attorney (POA) so that an agent or a person you assign will act on your behalf in the event of your disability. Absent a power of attorney, a court may be left to decide what happens to your assets (if you are found to be mentally incompetent). The court's decision may not be what you wanted. This document can give your agent the power to transact real estate, enter into financial transactions and make other legal decisions literally as if he or she was you. This type of POA is revocable by the principal at a time of his or her choosing, typically a time when the principal is deemed to be physically able, deemed mentally competent or upon death. In many families, it makes sense for spouses to set up reciprocal powers of attorney. However, in some cases it might make more sense to have another family member, friend or trusted adviser who is more financially savvy act as the agent.

Health Care (Medical) Power of Attorney :

By drafting a health care power of attorney, you can designate another individual (typically a spouse or family member) to make important health care decisions on your behalf in the event of incapacity. If you are considering executing such a document, you should pick someone whom you trust, who shares your views and who would likely recommend a course of action that you would agree with. After all, this person could literally have your life in his or her hands. Finally, a backup agent should also be identified, in case your initial pick is unavailable or unable to act at the time needed.

Guardianship Designations:

If you have kids or are considering having children, picking a guardian is very important and sometimes overlooked. Make sure the individual or couple you choose shares your views, is financially sound and is genuinely willing to raise children. As with all designations, a backup or contingent individual/family should be named as well. Absent these designations, a court could become involved and could rule that your children live with a family member that you wouldn't have approved of. In extreme cases, the court could mandate that your children become wards of the state.

Additional guardianships should be drafted for you and your spouse in the case of your later incapacity. Just as with the kids, this document smoothes out difficult times and makes decisions much easier without the need for court intervention.

If you would like more information on developing your Estate Plan, please contact [Scott Barrett](#) to set up a consultation.