CHAPTER 5

# ESTATE PLANNING

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Estate planning, much like getting an annual physical or doing your taxes, is an essential activity that most people would rather avoid. While it's easy to put it off indefinitely, having a concrete estate plan will not only give you greater peace of mind, but will save your family and loved ones considerable work and stress later.

Many people think of estate planning as something only for the affluent, but everyone can benefit from estate planning to some degree. If you have a spouse, dependents or children young enough to need guardians, it is important to make sure your loved ones are provided for as you would like. If you wish to leave specific items to particular beneficiaries, or if you have charitable objectives, proper planning can ensure your wishes are honored in an efficient, tax-effective and straightforward manner.

This chapter will cover the basics of estate planning and assist you in compiling your important documents. For those with an estate

plan in place, it will be a good reminder to review your current plans and ensure they are still up to date.

## GET ORGANIZED

The first step in creating a useful estate plan is to give careful consideration to your objectives. You should think about what you would like your estate plan to accomplish. Your primary focus may be ensuring the transfer of your assets is efficient, costs are minimized, and that certain assets pass to specific beneficiaries. Or your goals may be to reduce or eliminate estate taxes on your assets, to secure an efficient succession in a family business, to avoid or simplify probate, or to arrange for charitable gifts. Any and all of these are excellent goals, and it is not uncommon for an individual to have multiple objectives in mind. Once you have your goals set and have considered their relative priority, you will use them to shape your estate planning decisions.

Also, you likely want to take the concerns and wishes of your family and beneficiaries into account. While you have the final say in the disposition of your assets, open communication with your spouse, adult children or other beneficiaries can help avoid surprises or disagreements in the future. Presumably, you don't wish to leave assets to those who don't want or can't use them. In addition, clear communication will give you a better sense of your beneficiaries' capability and responsibility, which may also shape your choices. (See Chapter 2 for more information on financial discussions with your adult children.)

After establishing your goals, the next step is to compile important personal documents and information. While you don't have to put all of the documents in the same place, you should have a master list, or table of contents, with the current location of everything. To be safe, you should provide at least two trusted people (such as your spouse, financial adviser or adult child) with the master list.

- **Estate Planning Documents:** First you'll want to collect your original estate planning documents. Your will is the primary one. If you don't yet have a will, see the section on wills later in this chapter. These documents may also include trusts you have created, an advance medical directive or durable power of attorney for health care (see Chapter 3), a living will, a durable power of attorney and a personal property memorandum. You will want to keep documents related to your estate plan in a safe but accessible place. It is also wise to create digital copies of any documents that carry physical, rather than digital, signatures. Once everything exists in digital form, send copies to any individuals who may need them in the future. These could include your spouse, your executor, your attorney, or your financial adviser, among others.

- **Memorial Instructions:** Consider drafting explicit instructions for your memorial. These won't go in your will, but having them recorded in writing can be very helpful to whichever loved one will organize such arrangements. It may be useful to compile a list of people who should be notified, especially if you have family or friends who live far away or with whom you do not speak regularly.

  Other questions to consider: Do you want a funeral or ceremony of any kind? If so, what religious tradition (if any) should preside, and where should it be held? Who should be invited? Would you prefer a donation to a cause or charity in lieu of flowers? You should also specify your wishes for your remains, if any, such as burial, cremation or donation. Some people find these details unpleasant to think about, but the more choices you can make in advance, the fewer will be left for those mourning you in the midst of a time when the number of decisions they face can seem overwhelming.

- **Personal Records:** You should assemble or note the location of your birth certificate, marriage certificate, divorce or separation documents, pertinent death certificates, adoption papers, citizenship documents and military records. It is also wise to make copies of your driver's license or state-issued ID, Social Security card, health insurance and Medicare cards, and any organ donor cards or information.

- **Other Personal Items:** If there are any important family items, such as heirlooms or photograph albums, that would not be readily evident, you can leave a list of the location of such items.

- **Legal And Financial Documents:** Legal and financial documents should be readily available. Legal documents can include prenuptial or postnuptial agreements, employment agreements, LLC or corporate documents, leases and partnership agreements. Financial documents should include copies of your recent bank, credit card and investment account statements; your original life insurance policy; original stock and bond certificates; real estate documents, including deeds, mortgages and title insurance policies; retirement accounts such as 401(k)s and IRAs; titles to cars, boats or planes and corresponding insurance policies; liabilities, such as mortgages and student loans; tax returns; and copies of any recent inventories or assessments.

- **User IDs And Passwords:** It is wise to take a moment to create an updated list of usernames and passwords or PINs for important websites and apps, such as your primary email account. If you store passwords in your browser, most will allow you to export a saved list that can be opened as a spreadsheet. If you have wishes as to who should be responsible for shutting down your various online profiles, you should consider including these wishes in your estate plan.

Once you have assembled all the relevant documents, you should create an accompanying contact list of any key individuals. This list should include the person's full name, their relationship to you, and a current address, phone number and email. This list can include personal contacts, such as your current and former spouses, parents and stepparents, children and grandchildren, siblings, and close friends in the area (especially if family members are far away). It can also cover professional contacts, such as your attorney, accountant, investment adviser, stockbroker, insurance agent or trust officer.

Your contact list and documents should be stored in a secure place, such as a personal fire- and waterproof safe. If you choose to store any or all of them in a safe deposit box, make sure the key is accessible and that someone has a durable power of attorney or is on the list of those who can access the box. Should the need arise, you will want someone to have immediate access. You may also want to save this file digitally. A password-protected PDF can serve this purpose, as long as someone knows where to find it and has the password (including the computer's password, if it is stored locally rather than in the cloud). Some secure password management systems also permit you to set up access for a trusted individual in emergencies.

You may want to consider arranging for an inventory of your assets. A property inventory catalogs what you own so nothing is forgotten, by you in your estate plans or by your beneficiaries later. An inventory can also assist you in tax planning; help you keep track of fluctuating values for pieces, such as art or antiques; and allow you to create very specific wills or trusts. However, if you have minimal physical property, or if you intend to bestow your estate in its entirety to only a few individuals, an inventory may not be necessary.

When proceeding with an inventory, group your assets by type. Categories could include:

- Bank accounts/money market accounts/certificates of deposit
- Personal belongings, such as jewelry, artwork and furnishings
- Real estate, including your primary residence

- Retirement accounts
- Stocks and brokerage accounts
- Business interests, including digital assets such as websites and domains
- Patents, royalties and copyrights

All of this preparation is important, but perhaps the most important step—and often the hardest—is initiating a discussion with your family or loved ones. While some may resist making such plans, it's important that they be able to discuss your wishes with you while you're still in a position to communicate clearly. The more normal such discussions become, the easier they will be in the future should things change or need to be revised. Don't wait for your loved ones to ask; the burden is on you to begin these conversations.

## MELINDA'S ADVICE

**How much should you disclose in discussing your estate plans with family?**

It is important to discuss your estate plan, but the amount and type of information you divulge may depend on your relationships. If you have reservations about sharing details, consider simply providing an overview so your heirs understand your goals. You can offer more details to a select few with whom you are more comfortable sharing information. At least two people, preferably including your executor or other fiduciaries, should know the location of important documents and should have access to logins and passwords.

—MK

## TYPES OF PROPERTY TRANSFER

Once you have prepared your lists of property, you can begin to consider how you would like to go about transferring the assets to your heirs. Generally, your assets will pass through probate, a process in which the court validates and then oversees the operation of your will or, if no valid will is found, applies the law to distribute your assets. However, certain non-probate events can bypass this process.

Being able to transfer property or assets without going through probate has several advantages. It will generally save time and expense. It will also keep your affairs private—probate proceedings expose assets to public scrutiny.

### AVOIDING PROBATE

What, then, are some common ways to avoid probate?

#### *Joint Tenancy With Right Of Survivorship*

One of the most common is joint tenancy with right of survivorship (sometimes just called "joint tenancy" or JTWROS). In this form of property ownership, all tenants have an equal right to the asset. At the death of one of the tenants, the property passes directly to the other tenant(s) without being subject to probate. While many spouses use this form of property ownership, it's important to realize the potential downsides. Your co-tenants can block your wishes for the property, whether by obstructing a sale or ignoring your wishes after your death, without legal ramifications. Your fellow tenants should be not only people you wish to benefit, but people who are also responsible and with whom you communicate well.

#### *Tenancy By The Entirety*

In some states, property may be owned as tenants by entirety. This type of titling is specifically for married couples and allows them to own the property as a single legal unit. When property is owned under such titling, creditors of an individual spouse may not go after an interest in the property unless they are creditors of both spouses.

As with joint tenancy with right of survivorship, the property passes directly to the surviving spouse without being subject to probate at time of death. Note that only 25 states, and the District of Columbia, currently allow for this type of titling. Of these locations, some allow for tenants by entirety ownership only for real estate, not bank or investment accounts.

### *Revocable And Irrevocable Trusts*

Another common method of avoiding probate is the use of trusts. While trusts have a colloquial association with only the wealthiest tier of society, they can be a useful tool for any individual who might choose to exercise greater control over the way assets are transferred. A revocable living trust allows you to avoid probate, while giving you, the grantor, significant control and flexibility. This is because transferring property into a revocable trust puts the assets under the trust provisions, but still allows you to reclaim the property and change the beneficiaries at any time while you are alive. When you die, the trust provisions will determine the beneficiaries of the trust property without involving probate. However, for tax purposes, the property is still included in your estate as though it were owned by you personally, potentially creating an estate tax liability. An irrevocable trust provides a greater tax shelter, but at the cost of a revocable trust's flexibility. Once you create an irrevocable trust and transfer assets into it, you may not retrieve those assets. By transferring property into an irrevocable trust, the assets are no longer considered to be owned by you personally, and are therefore usually not part of your estate for tax purposes (although you may have to pay gift tax, or use your lifetime gift tax exemption, when you contribute assets to an irrevocable trust).

### *Other Trusts*

There are many different types of trusts, and they can be written to meet your specific needs depending on precisely what you want to achieve. Certain types may be relatively expensive to draft or

administer, so you should consult a professional when deciding what trust is most appropriate for your situation, as well as during the organization process. Trusts are useful, but they can also be complicated. In some circumstances, other probate-avoiding vehicles may be more suitable.

It's also good to bear in mind that not all trusts result in non-probate transfers. For example, testamentary trusts are trusts created by a person's will. They take effect at the time of death. With testamentary trusts, assets are subject to probate; hence, a testamentary trust would not be appropriate if your goal is to avoid probate.

### *Direct Beneficiary Designation*

Another way to avoid probate is through property that allows you to designate a beneficiary directly. A life insurance policy generally allows you to appoint specific individuals. Similarly, you can designate beneficiaries for retirement accounts, shielding the assets in the account from probate. A medical savings account (MSA) or health savings account (HSA) will also allow you to name a beneficiary, should you die with money still in your account. If this beneficiary is your spouse, the money is transferred not only out of probate, but also tax-free.

You can also set up a payable-on-death (POD) account or transfer-on-death (TOD) account in order to avoid probate. These are more or less the same; POD accounts are usually bank accounts, while TOD accounts are usually investment or brokerage accounts. With these accounts, you are given the option to name a beneficiary who receives the balance of your account upon your death without having to go through probate. Until that time, the beneficiary has no rights to the account. You can name multiple beneficiaries, provided you include percentages for how the assets should be divided. The beneficiary can be changed at your discretion but it must be done directly; it can't be accomplished in your will. For POD and TOD accounts, rules vary by state, so be sure to research thoroughly before proceeding.

Whenever you name a beneficiary for your account, you should be mindful of common errors to avoid. Though this may seem simplistic, don't name a beneficiary who is impossible to identify or contact. Specify the beneficiary's full, legal name, and make sure that the contact information for that person stays current. You should also avoid simply listing a beneficiary "as per my will." Though this may seem a handy way to make sure your beneficiary designations stay up to date, many custodians are reluctant to accept it, and it can create confusion should your will be unavailable or otherwise unusable. This practice can also force your assets into probate, which is what you presumably hoped to avoid in the first place. In cases where you have more than one beneficiary on the same account or property, specify percentages, not amounts. If the asset's value changes, the specified amounts may not add up to 100 percent of the asset, which can lead to lopsided distributions or conflicts between beneficiaries. You should also be sure you understand all legal requirements, especially on the state level. For example, children under the age of majority cannot be retirement plan beneficiaries (although trustees and guardians can receive funds on their behalf), but the age of majority varies from state to state. Don't forget to consider the tax consequences for yourself and your beneficiaries, especially if you select a beneficiary who is not your spouse. Finally, remember to review your choices periodically to be sure the listed beneficiaries are who you wish them to be, and that their contact information is still current.

### *Life Estate*

If you wish to transfer real property without going through probate, you also have the option to establish a life estate. A life estate is a kind of joint ownership, where you retain the right to live in or control the property during your lifetime and the property passes to your intended heir (called "the remainderman") at your death.

### *What Else To Know About Avoiding Probate*

With all of these strategies for avoiding probate, you should remember that assets not included in probate can still be included in your gross estate for determining tax liability. There are some exceptions. For example, only 50 percent of JTWROS accounts are included in your estate if the only other tenant is your spouse, and there is ordinarily no estate tax on the included portion if your spouse is a U.S. citizen. However, if the joint tenants have a relationship other than marriage, the surviving tenant must prove he or she made contributions to the account or contributed to the purchase of the property. If he or she cannot, the entire value counts toward the deceased tenant's total estate. It is important to keep these types of rules in mind for each account when formulating estate tax strategies. (For more information on estate tax and other transfer taxes, see Chapter 6.)

As previously mentioned, state regulations play a large role in the treatment of property. For example, community property states are states in which assets acquired during marriage are automatically considered joint, unless the owner can prove separate ownership (such as a car purchased in one individual's name prior to the marriage). As a general rule, any income earned by one spouse is considered to be half earned by the other spouse. Oddly, unless right of survivorship is specified by law by using the titling "community property with right of survivorship," community property is typically subject to probate, even if the property is bequeathed to the decedent's spouse. Currently, the following are considered community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. In Alaska, couples may opt-in for community property law, or may follow common law as used in other states.

In addition, states including Alaska, Florida, Kentucky, South Dakota and Tennessee permit their residents to create "community property trusts." Married couples who wish to treat assets as community property can transfer those assets to a trust designed for that purpose. This system can create useful planning opportunities.

Under federal law, 100 percent of community property receives a "step-up in basis," meaning its cost basis is adjusted to its fair market value as of the date of the first spouse's death. This can result in substantial capital gains tax savings for the surviving spouse, compared to the 50 percent step-up for joint property shared by spouses. Using community property trusts does come with some risk, however, as it potentially exposes assets to both spouses' creditors when those assets would have otherwise been protected if they were held by the non-creditor spouse.

## WILLS

Why are wills so important? As discussed earlier, your will is the primary document that directs how your assets will be distributed via the probate process. A person with no valid will is "intestate," which means that since you have no will, it is the probate court's responsibility to distribute your assets according to law. This is generally an undesirable scenario, as the intestate laws that dictate how your assets will be distributed can often be very different from your actual desires.

The specifics of the probate process vary from state to state, but all states have intestacy laws. Many states base their statutes on the 1990 Uniform Probate Code, which specifies that close relatives are recognized prior to distant relatives, in roughly the following order:

1. A surviving spouse
2. Children or direct descendants
3. Parents
4. Descendants of parents (siblings, nieces or nephews)
5. Grandparents
6. Descendants of grandparents (aunts or uncles, first cousins)

Adopted descendants are usually treated as equal to biological descendants for probate purposes. If none of these relations exist or can be found, the deceased's property goes to the state; none will

go to unrelated beneficiaries or to charity. Even if your loved ones know your wishes, intestate succession applies unless a valid will can be produced.

If there is a living spouse, he or she is usually entitled to all or most of the net estate—the amount left after the estate pays all debts, taxes and administrative expenses. However, even if you intend to leave your entire estate to your spouse and have relatively simple financial affairs, it is still recommended that you leave a will to avoid complications in the probate process and reduce expenses.

The first major choice to make when creating a will is whether you will write the will yourself or hire a lawyer to draft it for you. If your estate is very simple, or if you plan to leave everything to only a few beneficiaries, you can probably write your own. Books, software and websites are widely available to help you create a legally sound document. For a complex estate, or if you have very specific objectives to accomplish, consulting a professional can be worthwhile to ensure your wishes are honored legally and without contest.

Whether you write your own or hire a professional, you will want to know what is usually included in a will. For starters, remember clarity and specificity are usually best.

### YOUR WILL SHOULD:

- Establish your identity and domicile (see Chapter 14 for more information on domicile)
- Revoke any former wills
- Name an executor
- Name guardians for any children who are minors
- State your preference for how to pay any debts or taxes owed by the estate
- Provide for any pets*
- Confirm your wishes for any established living trusts

**YOUR WILL SHOULD NOT:**

- Include conditions for your gifts (e.g., "I leave my primary residence to my son provided he is employed at the time of my death")**
- Include detailed instructions for your memorial service or final arrangements
- Express wishes regarding non-probate assets, such as a POD account or an IRA
- Arrange directly for the care of a beneficiary with special needs***

** You cannot leave assets or property directly to a pet. However, you can name a new caregiver, and then name that person a beneficiary for assets used to take care of the pet.*

*** Placing conditions on your bequests is legally complicated, and usually leads to problems. Certain conditions, including marriage, divorce or a change of religion, are legally prohibited. If you want bequests to be subject to such conditions, you may want to consider an incentive trust.*

**** If you have a beneficiary with special needs, it is generally safer to set up a special needs trust.*

There are also a few steps you can take to make sure your will stands up in court. In some states, certain steps are mandatory, but doing more than required makes the document even more legally sound. For example, you should type your will. In some states, handwritten wills are invalid, but even if they are permissible, they can be hard to read and easy to misconstrue. Once your will is complete, sign and date it. Have two witnesses sign as well. The witnesses do not need to know the will's contents unless you wish them to, and they can be any competent adults (although usually they cannot be beneficiaries named in the will). Though having your will notarized is optional in most states, including a self-proving affidavit signed by a notary public will help your will's legal standing. For your will to

be valid, it should also be clear you are of sound mind and acting of your own volition, without undue influence or fraud.

Once you have a valid will, it is important to keep it up to date. If there has been a major change in your personal life, such as a marriage, a divorce, the death of a loved one, a move to a new state or abroad, or a major change in financial circumstances involving you or one of your beneficiaries, you should make sure your wishes reflect these changes. You should also review your will if there has been a change in tax law, estate law, or the laws governing probate or trusts. And, of course, if you simply change your mind about the distribution of your assets, you should change your will promptly to reflect your new decisions.

## DAVID'S ADVICE

**How should my will address my digital estate?**

As part of your estate planning documents, you should include a list of all online accounts and passwords for your executor. Your will can stipulate what should be done with email and other online accounts at your death. As with your other assets, in the absence of instructions from you, state law controls what happens next. In nearly every state, the law permits executors, trustees or other fiduciaries appointed by the court to obtain access to a deceased individual's digital accounts and assets. Particular websites may also have specific rules under their terms of service for who may access an account on someone else's behalf and under what circumstances. But obtaining this access can be time-consuming and difficult if the deceased has not identified all relevant accounts and granted access in advance.

—DW

## FIDUCIARIES

A fiduciary is a person or institution granted the power to act on your behalf, or to administer your affairs according to your wishes. Fiduciary duty is a fiduciary's legal obligation to act on your behalf in good faith. In your estate plan, several people or institutions will likely fall under the category of fiduciary.

### EXECUTOR

Perhaps the most important fiduciary is your executor. This individual, sometimes also called a personal representative or an administrator, is the person responsible for administering your estate in accordance with your will. Assuming you name an executor in your will, a probate judge will honor your wishes unless there is a reason the person cannot legally serve or is disqualified through legal contest. If you die without a valid will, the probate judge will designate an executor according to the state's statutes.

**An executor has many responsibilities, which may include:**

- Locating and proving the validity of your will
- Finding and contacting beneficiaries
- Filing all required documents with the probate court
- Locating and protecting probate assets
- Obtaining appraisals for probate assets
- Determining and overseeing the payment of debts
- Assessing tax liability for income and estate taxes
- Filing related tax returns
- Gathering date of death values for non-probate assets (if your estate is subject to tax)
- Paying estate expenses until the estate is closed
- Investing the estate's assets until they can be distributed to beneficiaries
- Overseeing the distribution of the net estate to beneficiaries

As you can see, serving as executor entails a great deal of responsibility and work, so choosing an executor is a decision to which you should give serious consideration. You should choose someone who you know to be trustworthy, fair, honest and capable of fulfilling the entire fiduciary duty. Your executor should also be practical and organized. The executor's tasks will involve a great deal of paperwork and important deadlines, and you don't want to select someone who will find the job completely overwhelming. The executor need not be a financial or business expert, however. Executors are entitled, and usually are well served, to obtain advice from legal and financial counsel and other experts. A good executor is someone who knows how and when to seek such advice, and to follow it.

If possible, you may also want to choose someone who lives nearby, or at least in the same state. Some states require your executor be a resident, but even for those that do not, your executor will probably need to remain available to conduct estate business for quite some time. Selecting someone who lives near you can save your executor both stress and travel.

It is best to think of the position of executor not as an honor you bestow, but rather a request you make of someone close to you. You are handing the person you select a large and complicated task. As such, you shouldn't simply designate a spouse or a favorite adult child without thought, and you should certainly discuss your choice with whomever you ultimately select. If you pick a family member or a friend, it is also wise to make sure you put your future executor in contact with your adviser or attorney. Give your adviser or attorney the name and contact information of your selected executor as well. If the executor decides to hire legal help, he or she will then have the option of approaching someone you trust, who already understands your affairs.

You also have the option to name more than one executor. This has some advantages. The executors can serve as checks and balances against one another's potential errors or inclination to secrecy, or can offer complementary skills or knowledge. Having more than one executor also relieves each individual of some of the burdens they

would otherwise face. However, be cautious with this decision. If the executors disagree, you risk deadlock or, in a worst case, litigation. This is particularly the case when the executors are potentially adverse parties, such as a surviving spouse and a child from a prior marriage. Disagreements can lead to added time, and poor communication can lead to mistakes. Having more than one executor can also result in added expense in the form of fees.

It is also possible to name an institution, such as a bank with a trust department, as your executor. Some people choose this route because institutions offer expert management that an individual executor may not be able to provide. Since they must be licensed, they are held to a high fiduciary standard. Also, an institution is more likely to be neutral and unaffected by the emotions of various beneficiaries. The downside to an institution as executor, however, is that they can be inflexible and generally have no historical knowledge of family dynamics. They will be rigid in their interpretation of your will, and are likely to be expensive. In certain cases, it can also lead to long delays due to a committee approach to decision-making or because of legal requirements that would not bind an individual executor.

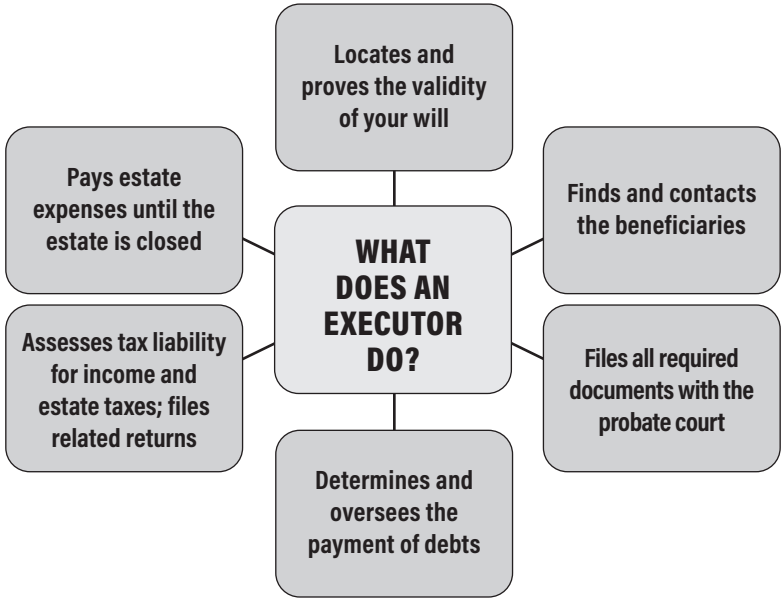
Ultimately, the selection of an executor rests on your particular situation and priorities. Once you've selected an executor, it is wise to discuss your choice not only with the future executor and your attorney, but also with family members and loved ones. It is better to eliminate the element of surprise for those close to you, so that when the time comes, emotions can stay in check and no one contests your wishes during probate.

Besides an executor, you may need to select other fiduciaries in your estate planning process. Perhaps the most important for parents of young children is selecting an alternative legal guardian. Guardians will have the legal authority to care for your children after your death. If you do not select a guardian and one is necessary, the probate court will assign a guardian for you (usually a close family member if one is able to serve). However, this is not a decision you will want to leave

to chance. Your children's guardians should be willing to take on the role; you should also be sure that they are physically, financially and emotionally able to properly care for your children. You may also want to consider geographical factors, such as how far your children would need to relocate.

## QUICK TIP

**Key Responsibilities Of An Executor**




If you choose to set up one or more trusts, you will need to select trustees. For a minor child's trust, this is often the same person you select to be the child's guardian. Regardless, a trustee should be reliable, and you should know he or she is willing and able to carry out the trust's terms. The trustee should also be financially responsible. Depending on a trust's size, an institution or an individual with professional financial experience may be the best choice. However, as with selecting an executor, trusted family members or friends are

often better choices than institutions, as they can be more flexible and cognizant of family dynamics.

Others who have a fiduciary duty in your estate plan may include legal or financial advisers, and your health care proxy or attorney in fact (see Chapter 3). These individuals may be people you appoint, or they may be people you choose to hire, but you must select them in one way or another. You should make your choices carefully.

There are several requirements a person must meet before he or she can serve as an individual fiduciary. He or she must be an adult; depending on the state, this can mean over the age of 18 or over 21. Your family members are almost always allowed to act as fiduciaries, but friends may or may not be, depending on state law. Executors may need to be U.S. citizens, depending on the requirements of their position and your location. Also, in some jurisdictions an executor may not be a convicted felon.

Professional advisers, such as an attorney, accountant or financial planner, can generally serve as executors, though they sometimes choose not to because of increased costs (increased liability insurance, for example), or due to real or perceived conflicts of interest. Institutional executors can generally serve in any state in which they are licensed. Some trusts may have further specific fiduciary requirements, so you should make sure your fiduciary choices fulfill them to avoid having your selections barred from serving on legal grounds.

Fiduciary compensation will depend upon the fiduciary's role, among other factors. For an executor, you may specify or restrict compensation in your will. For intestate estates, the probate court will determine the appropriate executor's fee. Some states provide specific rules about compensating an executor, while others simply provide guidelines. If the fee is set by state law, an executor may be entitled to an extraordinary fee for services above and beyond what is generally expected. The fee may also be affected by whether there is more than one executor, or if the executor is an institution. If your executor is also your attorney, he or she might only charge one lump sum, though whether this is allowed varies by state. Generally, executors are also

entitled to reimbursement if they pay fees or expenses out of pocket while administering the estate. Note however, that one should give careful consideration if you plan to restrict fiduciaries' compensation for their services in your estate planning documents, as this could limit the parties who are willing to accept such responsibilities when it comes time for them to serve.

## CONCLUSION

While this chapter cannot exhaustively cover a subject as complex as estate planning, it should provide a solid foundation on the issues you should consider and the initial steps you should take. Further information is available to the layperson through books and online. For complex affairs or large estates, trustworthy attorneys and financial planners are invaluable. Whatever your estate plan, once you have recorded your wishes and set up the appropriate vehicles, be vigilant about keeping them up to date. You should revisit your plans often, if only to make sure that they still reflect what you want.

A good estate plan is both comprehensive and flexible. Not only will it protect and provide for the people and causes most important to you, it will give you peace of mind.