

ESTATE PLANNING 101

Chris Lauer

J.D.

Manley Brautigam Bankston P.C.

Anchorage, Alaska

907-334-5600

Mbb.law

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What Is Estate Planning?



- Proactive planning by you
- An ongoing process
- Can be very simple or complex
- Depends on your goals

What is Estate Planning?

A close-up, high-angle shot of a silver fountain pen nib writing on a white document. The pen is positioned diagonally from the top right towards the bottom center. The nib is in contact with the paper, and a few loops of cursive script are visible. The background is a soft, out-of-focus light blue and white.

- Accumulation of Wealth
- Preservation of Wealth
- Distribution of Wealth

Accumulating & Preserving Wealth



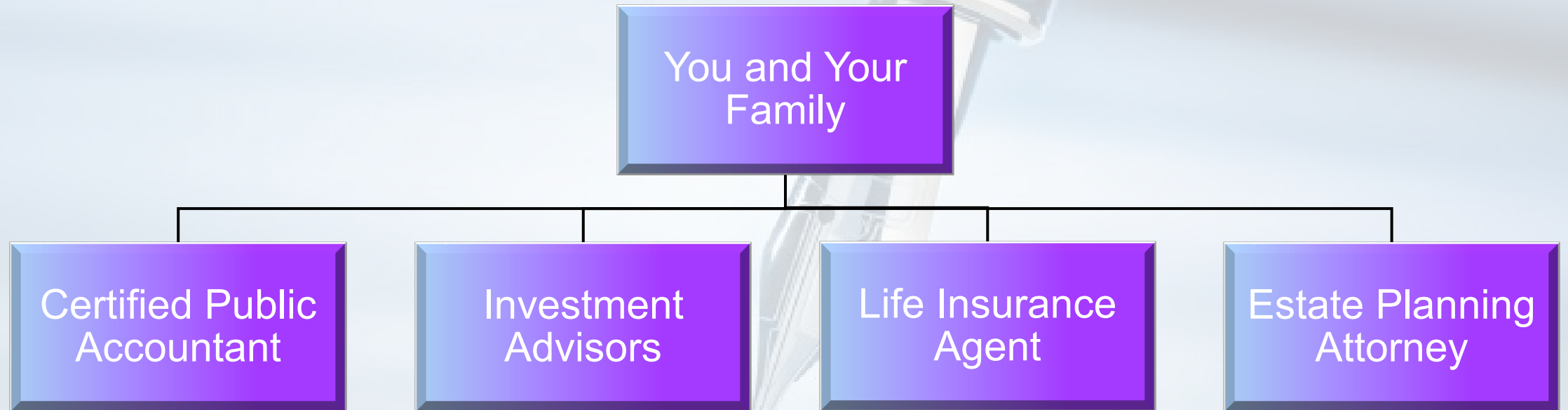
- Earnings and Income
- Savings
- Investments: Stocks, Bonds, Businesses, Real Estate, etc.
- Retirement Planning: IRA, 401(k), Profit Sharing Plan

Distribution of Wealth



- Distributions During Life
- Surviving Spouse, Children, and Family
- Minimize Costs and Expenses
- Confidentiality
- Liquidity of Assets
- Reduce Transfer Taxes

Estate Planning is a Team Effort



Where we are headed

A close-up, high-angle shot of a fountain pen's nib writing on a document. The pen is silver and black, and the nib is in the process of writing a word in cursive. The background is a soft, out-of-focus light blue.

- Probate
- Wills
- Revocable “Living” Trusts
- Estate Tax Planning Issues

- Please Ask Questions

Probate



- What is Probate?
- Why Do I Care?
- What's the big deal?

How much does Probate Cost?



- Depends on the State
 - California
 - Uniform Probate Code States (16-18 states)
- Depends on many factors

Factors Affecting Probate Cost

- Family members in conflict and disagreement
- Conflicts between co-personal representatives or co-trustees
- Lack of proper estate planning documents (wills, trusts, etc.)
- Children from current or past relationships not provided for in the estate plan
- Out of date estate planning documents
- Assets passing by designation of beneficiary (i.e., life insurance and retirement accounts) to the “wrong” person (underage children, ex-spouses, problem-children, mom, etc.)
- Specific Bequests: not correctly identifying assets to be given away, causing confusion and disputes or making bequests that conflict with the estate plan
- Co-ownership of assets with third-parties (real and personal property)
- Real property not titled correctly, or the title is unclear

Probate

How can a person avoid Probate?

- Do not own any assets when you die
- Own assets jointly with rights of survivorship (JTWROS)
- POD, TODD, Designation of Beneficiary
- Revocable Living Trust

Wills and Revocable “Living” Trusts



- Who needs a Will?
- Different Types of Wills
- What is a Revocable Living Trust
- Comparing Wills and Revocable Trusts
- Which should you have?

Who Needs a Will?

- Parents with minor children
- Parents with adult children
- Parents in second marriages
- Married Couples
- Couples in non-marital relationships
- Persons facing incapacity
- Persons with estates greater than \$1 million
- Persons wanting to minimize taxes
- Persons over the age of 18

What happens if there is no Will?

AS 13.12.101 - “Intestate Succession”

- Surviving Spouse gets 100% if:
 - All children are common with Surviving Spouse
 - No surviving other children
 - No surviving parent
- Surviving Spouse gets \$200,000 + 75% if:
 - No surviving other children
 - Surviving parent
- Surviving Spouse gets \$150,000 + 50% if:
 - There are surviving common children
 - There are surviving other children
- Surviving Spouse gets \$100,000 + 50% if:
 - No surviving common children
 - Surviving other children

Do I really need a Will?

- You control who gets what, when, and how
- Name a person to be in charge
- Name a guardian for minor children
- Provide for your spouse and children
- Provide for a blended family
- Use a Trust to protect distributions
 - Creditor protection
 - Children's divorce
 - Distributions are controlled or structured
- No Takers

Types of Wills

A close-up, high-angle shot of a fountain pen with a silver nib and a dark, possibly black or dark blue, barrel. The pen is positioned diagonally, pointing towards the bottom right. It is in the process of writing on a light-colored, slightly textured surface, likely paper. The nib is just touching the surface, and there are some faint, light blue ink smudges or the beginning of a word visible. The background is a soft, out-of-focus light blue and white, suggesting a clean, professional environment.

- Holographic Wills
- Home-Computer Wills
- Formal Wills
- Can you change a Will?

What is Revocable “Living” Trust?

- A written contract between you and your trustee
- Designed to manage your assets
 - During your life (very important)
 - After your death
- The trust is completely revocable by you
- You remain in control of the assets
- On incapacity or death, the successor trustee takes over control and management

Wills or Revocable “Living” Trusts

	Revocable Trust	Wills
Saves estate taxes	No*	No*
Revocable during life	Yes	Yes
Avoids probate	Yes	No
Provides for Confidentiality	Yes	No
Incapacity planning	Yes	No
Creditor Protection	No*	No*
Complexity	More	Less

Wills or Revocable “Living” Trusts

Which should you have?

- Do you own assets outside of Alaska?
- Do you do a lot of property transactions?
- Do you want confidentiality?
- Do you want asset management on incapacity?
- Do you want to avoid probate?
- Do you want consistent management during incapacity?

Reviewing Your Estate Plan

How often should your Estate Planning documents be reviewed and updated?

- Births and Deaths
- Marriages and Divorces
- Moving to another State
- Change in Assets or Wealth
- New Life Insurance or Retirement Accounts
- New Tax Laws

Summary

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- Estate Planning
- Probate
- Wills
- Revocable “Living” Trusts

Tax Planning

What types of taxes do we need to deal with?

- Income Tax
- Gift Tax (2024)
 - Gift Tax Rate is 40%
 - \$18,000 annual gift tax exclusion
 - Lifetime exemption \$13,610,000
- Estate Tax
- Generation Skipping Transfer Tax
 - Flat 40% for transfers over \$13,610,000

Estate Taxes Summary

- Estate tax imposed on worldwide assets:
 - Investments
 - Business interests (LLCs, corporations, partnerships, etc.)
 - Real property (home, buildings, cabins, vacation homes)
 - Life insurance and annuities
 - Retirement accounts (IRA, 401K)
 - Cars, RVs, boats, planes, etc.
 - Art, guns, gold, silver, etc.

Rule 1: The Unlimited Marital Deduction

- Tax-free transfers between married spouses
 - Applies to Income, Gift, Estate, and GST tax
- To qualify:
 - Surviving Spouse must be a U.S. citizen; and
 - Spouses must be legally married to each other
 - No common law marriage in Alaska

Rule 2: Basic Exclusion Amount

- The amount that passes free from federal estate tax
 - One-time exemption that is available during life or at death
 - Cumulative: Whatever is not used during life is available upon death
- Credit Amount has increased over time:

▪ 2001	\$675,000
▪ 2009	\$3,500,000
▪ 2018	\$11,180,000
▪ 2022	\$12,060,000
▪ 2024	\$13,610,000
▪ 2025	\$13,990,000
▪ 2026	\$7,000,000 (estimated, unless federal law changes)

Portability of Exemption Amount

- Old Law
 - “Use it or lose it”
 - Required funding a Credit Shelter - Bypass Trust
- Current Law (2011+)
 - Election to transfer the first spouse’s remaining exemption amount to the surviving spouse – called “portability”
 - IRS Form 706 must be timely filed after death of first spouse

Why fund a Credit Shelter Trust?

With “portability” some claim a Credit Shelter Trust is not needed

A Credit Shelter Trust may still be important for:

- Avoiding future estate taxes
- Creditor protection
- Medicaid protection planning
- Surviving spouse benefits
- Preserve plan of distribution to benefit others
- GST exemption preserved
- State estate tax planning (WA, OR, HI, NY, RI, etc.)

What Tax Planning Should I do?

- Update your Estate Planning documents
- If your estate is *less than* \$7M -
 - Likely no federal estate taxes
 - Need dispositive plan in place
 - Plan on filing IRS Form 706 to elect portability
- If estate is *greater than* \$7M . . .

Additional Planning



- Pay college or medical expenses
- §529 college saving plans
- Get life insurance out of your name
- Use the annual gift tax exclusion
- Split ownership interests
- Charitable planning

Charitable Planning . . .

- Gift of Appreciated Assets
- Gift of Life Insurance
- IRAs and Retirement Accounts
- Charitable Gift Annuities
- Charitable Remainder Trusts
- Gift of Remainder Interest in Residence
- Donor Advised Fund

Disability Planning

Powers of Attorney

- General vs. Limited as to time and scope
- A power of attorney terminates on incapacity unless it is “durable”
- A power of attorney always terminates on death
- More difficult to use today

Revocable Living Trusts (the best option!)

Advance Health Care Directives (living wills)

Third-Party Special Needs Trust

- Used to protect assets from disqualifying a person from needs based governmental aid programs [Medicaid programs]

Alaska's Community Property Law

AS 34.77

- A different type of asset ownership
- Elective in Alaska
 - Community Property Agreement
 - Alaska Joint Revocable Trust
- IRC §1014(b)(6) – income tax basis adjustment



Seven Common Estate Planning Mistakes

1. Designation of Beneficiaries

Coordinate your designated beneficiaries with your Estate Planning goals

- Life Insurance
- IRA
- 401(k) Plans
- Profit Sharing Plans
- Jointly Owned Accounts

2. Lack of Liquidity on Death

Where will the cash come from?

- Payment of
 - Expenses
 - Debts and business obligations
 - Taxes to the IRS
- Funds for surviving family members
- “Fire sale” of assets?
- “Other Children”

3. Out-of-Date Wills

- Do you leave everything to your spouse?
- Can your spouse/children handle the assets you leave to them?
- Do you properly provide for your spouse/children?
- Is a Trust necessary or appropriate?
- Who will be the Personal Representative? Trustee? Guardian?

4. Property Ownership

How do you own your assets?

- Tenants in Common
- Jointly owned with rights of survivorship
- Tenants by Entirety (only husband & wife)
- Community Property
- Transfer-on-Death Deeds (TODD)
- Pay-on-Death Accounts
- Partnerships

5. Adequate Insurance

Do you have adequate insurance?

- Life
- Health
- Disability
- Long-term Care
- Liability (auto, plane, toys, property, professional)
- Personal Umbrella Liability (recommend: 1.5 x Net Worth)

6. Business Succession Planning

- Is there a written ownership agreement?
 - LLC or Partnership agreement
 - Shareholder buy-out agreement
- Valuation method
- Funding the buy-out
 - Cash buy-out, term payment, insurance
- Who will buy whom out?
 - Will your spouse be at the mercy of your partner?

7. Do you have a game plan?

- What is your game plan?
- Have you shared it with anyone?
- Is your information organized and available?
- Passwords and Account information?

Meeting with an Attorney

- 4 Big Questions:
 - How do you want your assets distributed?
 - What specific circumstances will affect your estate plan?
 - How can the estate plan be tailored to meet your goals?
 - How can taxes be minimized?

How to be a Good Client

- Be organized
- Provide the information your attorney requests
- Consider important personal issues before the meeting
- Do not procrastinate
- Carefully review draft documents
- Follow directions
- Stay in contact
- Ask questions: estate planning is complex

Summary

A close-up, slightly blurred image of a fountain pen's nib writing on a document. The pen is silver and gold, and the ink is a light blue color. The background is a soft, out-of-focus light blue.

- Estate Planning has many benefits
- The worst mistake you can make is to wait until it is too late!

Who is going to get your wealth?

- Your family? Charity? The IRS?
- The choice is yours
- What are you going to do?
- When will you act?

Remember

- “[A] transaction, otherwise within an exception of the tax law, does not lose its immunity, because it is actuated by a desire to avoid, or, if one chooses, to evade taxation. Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.” *Helvering v. Gregory*, 69 F.2d 809 (2nd Cir., 1934) (Hand, J.), *aff'd* 293 U.S. 465, 55 S. Ct. 266 (1935).
- .“A good man leaves an inheritance for his children’s children.”
Proverbs 13:22



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1127 W. 7th Avenue
Anchorage, Alaska 99501

(907) 334-5600

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