

Financial & Estate Literacy

It's Your Estate
Estate Planning Workbook[©]
Fall 2023 Series

Your name or initials: _____

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Week 1 - Overview

This Workbook is designed to be a companion to the It's Your Estate (IYE) series presented by Financial and Estate Literacy. During the IYE sessions, we will discuss areas covered in this workbook and we encourage you to put as much information into the workbook as practical to assist you in working with your attorney.

This workbook is intended for you to begin collecting information needed to work with your attorney to complete your estate planning document.

This workbook is not intended to generate a completed estate plan, just to begin the collection of information needed to work with your attorney.

Your attorney will need far more detailed information than we suggest you put into this workbook. For security reasons, we do not recommend that you put detailed account information in this workbook, just basic information.

Titling will be a very important issue. This impacts what happens to assets after you die and how your representative will assist you if you are incapacitated. You will be asked how all your assets are titled or whose name are on the accounts.

Cost basis is another factor. To make informed estate planning decisions, your attorney will want to have this information. You may not always remember what you paid for things but try to find out. As an example, many times, a brokerage account statement will often list the cost basis.

This workbook will follow the weekly sessions of IYE. It is not a replacement for the weekly handout material provided for each session. As such, it is not meant to be a standalone document, but rather a collection point for materials referred to in the weekly sessions.

At the end of each weekly session, we will give you homework to help you with the following week's activities. As always, this workbook and related session handouts are provided for your benefit. How you choose to use the material is entirely your choice. There is no requirement that you use the workbook at all. It is just given as a tool to use as you wish.

Estate Plan Overview

An Estate Plan is not just a plan for what happens after you die. It is equally important while you are alive. If you become incapacitated, who will be your advocate for medical issues. If you are incapacitated, who will be your advocate for managing your financial matters.

If you do not appoint someone to be your advocate for medical or financial matters, the state will do that for you. HOWEVER, this will take a lot of time and a lot of money. And while you wait for the courts to decide, your care and finances are in flux. You don't want that to happen. The courts can take many months to decide.

And understand that even if you are married, your spouse can not control your medical care without your authorization. Legally, without your approval, they can't even get information on your condition.

And they can only control your finances IF their name is on the account, or you give them authorization.

It is not the intent of It's Your Estate to scare you, but these types of issues exist and may become more important for you as you age. So, think of your estate while you are alive and capable, not just for after you die.

The core documents we will discuss are:

- Advanced Health Care Directive with HIPPA authorization for your medical care decisions
- Durable Power of Attorney for your financial decisions
- Wills
- Trusts

Know that none of these documents are "required". But if they don't exist, then the State of California (if you live here) will take control of either your health care decisions or your finances while you are alive and of your estate after you die. That is probably not the best idea.

Who will be responsible?

One of the issues you will be asked to decide on is who will be the responsible person. And who will be next in line if that person is not available. This can be a troubling decision to make, so let's start thinking about it now.

For each of the four documents listed above, think about who you would want listed as in charge. And for yourself, you might consider listing why you feel that way. Note that the same people may not be used on all these documents nor in the same order of position. There may be good reason why you want specific people in specific situations. We highly recommend that you identify more than one person for each. If your first choice can not or will not serve, then who will step in.

Advanced Health Care Directive

Durable Power of Attorney for Finance Matters

Wills (often a Pour Over Will if you have a Trust)

Trusts (for example a Living Trust)

What do I want these people to know?

These will be discussed in more detail in later sessions, but here we want to begin collecting your thoughts. Remember the name of this series is It's **Your** Estate. We believe that, when possible, these types of decisions are up to you. No right or wrong.

Health care – Write down some initial thoughts about what you want your health care advocate to know about your care.

Financial – Write down some initial thoughts about what you want your financial advocate to know about your finances. This may tie into your health care direction since health care is a major factor for many people due to these expenses.

Wills and Trusts– Write down some initial thoughts about what you want your executor/trustee to know about your wishes before and after you die. Perhaps your desires for your beneficiaries or to charities you want to support.

Estate Law Changes

There have been recent Estate Law Changes over the past few years. Most changes relate to the exemption limits. The current exemption limits will automatically expire in 2026, if Congress does not change it before that time.

Review your net worth and if it is over \$5 million today, you will need to be aware of future changes. What actions could you take while you are alive to help alleviate these issues?

Other notes on Estate Planning Overview

Week 2 - Advanced Health Care Directive and Power of Attorney

The purpose of this session is to give a more detailed discussion of an Advanced Health Care Directive (AHCD) and a Power of Attorney (POA).

Each of these documents will be discussed separately, however, it is important to remember that they may well become connected if you are incapacitated.

Advanced Health Care Directive (AHCD)

It is important to remember that as long as you're fully capable to make medical decisions for yourself, an AHCD does not override your choices. Its primary function is to help you when you are no longer capable of making these decisions.

You do not lose control over your medical decisions unless you become incapacitated. But IF that happens, there is a plan in place to protect your wishes. Without this plan, then the court will assign a conservator to make the decisions for you. And that may not be what you wanted to happen.

The person you designate to make medical decisions on your behalf is called your Agent.

This document is critical to your health care if you are incapacitated. Today, many hospitals and other medical facilities will require that you have an AHCD before a procedure is performed or that you be admitted. They know how important these documents are for your care.

When do you want your AHCD to become effective? It can be Immediate, which means it is in force now. But remember, you can still make decisions for yourself while you are not incapacitated. This is true in part because you can rescind the AHCD at any time, while you are competent to make decisions for yourself.

The other option is to have a Springing effectiveness date. In this case, your Agent would need to get one or more doctors to declare you incompetent and therefore the AHCD is in effect. This can be a challenge to get this

done in a timely manner and decisions may need to be made quickly. However, the decision on the timing is your choice.

It is important to think about what you want to happen and equally important, what you don't want to happen and why. Under what situations do you want these things to happen. For example, do you want to be resuscitated or do you want to have a Do Not Resuscitate (DNR) on file?

In our times of Covid, are you willing to be put on a ventilator? Do you want a feeding tube if you can not feed yourself? These may be difficult things to think about, but they are very important if you want your wishes to be followed.

What are your wishes about long-term care? Do you want to remain in your home or go to a care facility if you had a choice? What other choices do you want known to the person managing your health care?

When you die your AHCD basically concludes, since there are no more medical decisions to make. The exception to this is your burial. This is often a part of an ACHD. This again allows you to make decisions, and in this case affecting you even after you die.

Do you have any questions specific to your AHCD?

Power of Attorney (POA)

As with the ACHD, it is important to remember that as long as you're fully capable of making financial decisions for yourself, a POA does not override your choices. Its primary function is to help you when you are no longer capable of making these decisions.

The person you designate to make financial decisions on your behalf is called your Attorney in Fact.

When does a POA take effect? That depends on if it is Immediate or "Springing". An Immediate POA, means that even while you are fully capable, the POA is in effect. While fully capable, you have the right to override the POA, but the safety net is there if you become incapacitated. Make certain that if your POA is Immediate, then it should be Durable. This means that it will remain in effect if you become incapacitated. This is important, since that is really when you need the POA.

A Springing POA only becomes effective after you become incapacitated. That means your "Attorney in Fact" will need to get one or more doctors to declare you incapacitated. This can be time consuming, and no financial actions can be taken until the springing authorization is completed.

While you remain fully capable to make your own financial decisions, you retain the right to cancel or amend your POA. Make sure your financial institutions have a copy and do not require that you use their specific form.

When you die your POA is terminated at your date of death. Your financials now come under the control of the Executor or Successor Trustee of your estate. This person will be designated by your Will or Trust.

Do you have any questions specific to your POA?

Other notes on your AHCD or POA

Week 3 - Wills & Trusts

The purpose of this session is to give a more detailed discussion of Wills and Trusts. Each of these documents will be discussed separately, however, it is important to remember that they often become connected when you die.

Wills

At the minimum you need a Will. If you will have a small estate (under \$166,000 gross, adjusted for inflation), then a Will would probably be all that you “need”. Remember that if you do not at least have a Will, then the state will decide what happens to your estate under Intestate rules administered by the court.

Know that the dollar amount noted above are gross, not net. For example, if your home is currently valued at \$200,000 but has a mortgage of \$75,000, then the \$200,000 value is used, not the net of \$125,000. Also, the value of the house is “as of” your date of death, not your cost.

If your estate exceeds the dollar limit, your estate will go to Probate. Probate is a court ordered process that is very time consuming, expensive, and public. Administration will take at least one year and often more. Until probate is completed, there is no distribution to beneficiaries.

The person who will handle your Will is called the Executor. Who would you name as the executor of your will? It is best to name at least two people in case the first person can't or won't perform the duties. And often it is suggested that a third person be named.

What do you want your executor to do? This includes how your estate will be distributed and if you have underage children, who will be responsible for their care.

Do you have any questions specific to your Will?

Trusts

Trusts come in many forms and can cover many situations. Here we are going to deal with the general situations.

A trust created for normal estate planning purpose is a revocable trust. During your lifetime you can amend, change, or cancel the terms of a revocable trust. These trusts are often called Living Trusts because you are still alive.

Frequently you will be named at the Trustee of the trust when it is established. This way, you control the assets you put into the trust, and it even uses your Social Security number as a tax number. There is no special reporting or even the need to file tax returns, since the trust is effectively you. You need to file your tax return, but not the trust.

After you die, the trust in part becomes irrevocable and needs to be administered based on the rules you put into the trust. If you are married, the trust will continue to operate, but portions related to you would become irrevocable.

If you have a Trust, do you also have a Pour Over Will? This would make sure any items you did not include in your Trust are moved into the Trust after you die.

To assure that a Trust is “properly” prepared, it is best to have an Estate Planning Attorney create the document. This is to assure the Trust can be executed under the conditions you established without significant legal issues.

As with a will, a trust that does not clearly state your wishes could lead to litigation as to what others think you meant. Was that a loan from mom or a gift? If not clear, then the courts may need to become involved.

A major item to consider about a Trust is what should be included within the Trust. This involves retitling the property or accounts into the name of the Trust. What assets would you title into the Trust?

And as important, what assets would you leave outside of the Trust and why?

Who would you name as the successor trustee for your Trust? And consider naming at least one additional successor trustee in case the first successor is unable or unwilling to perform the duties. When you think of these people, consider their competence, distance from you, communications skills, and willingness to serve.

How do you want your estate distributed? Who are the beneficiaries and how will their portion be decided?

What special conditions are important to you about this Trust? Are there any Special Needs beneficiaries that may require a separate Trust after you pass?

Do you have any questions specific a Trust?

Other notes on your Will or Trust

Week 4 - Retirement Accounts

Retirement accounts are often the largest or second largest asset group you own. Your home may be larger if you own it and have no mortgage or at least a low balance owed.

You often contribute to your retirements account(s) using pre-tax funds. This means no tax was paid when you put the money in. So, the IRS wants their tax money when it comes out.

Today, many of the assets in your estate get a step-up value increase to its value as of the date of your death. However, this is not true of pre-tax retirement accounts.

Any money coming out of these accounts is treated as ordinary income. No capital gains are recognized and no tax free income reported. All money coming out are reported as ordinary income to you or to your heirs. A Roth IRA account is not taxed, because you paid taxes on the money put into that account.

An exception to this is if the monies are given to a valid charity. By definition, a Not for Profit (501c3) is exempt from paying taxes.

Do you have one or more retirement accounts? If so, who is listed as the beneficiary after you die?

Are you 73 years old or older? If so, how much is your current year Required Minimum Distribution (RMD) amount? And if you have more than one account, how much is each?

While you need to calculate the amount for each account, you can pay it out of one account if you want. Are you in this situation and can you collapse your number of accounts down by paying your RMD from one account?

If you need to take an RMD, have you considered using a Qualified Charitable Distribution (QCD) in its place?

Do you have a Roth Account or plan to fund a Roth Account?

Who will get your retirement accounts when you die?

Other notes on Retirement accounts

Week 5 - Charitable Opportunities

Charitable giving is clearly a good thing for the Not for Profit you contribute to, but it is often a good thing for you. Charitable giving can include the giving portion, but also a return for you. Perhaps it is a current income tax deduction or generating tax advantaged income for you for your lifetime or giving benefits to your heirs.

Often a portion of people's estate plan is to give money to one or more charities after they die. Do you plan to do this?

And if yes, have you considered options to give money during your lifetime to charities, receive a current income tax deduction and possible income during your life? If so, what kind of gift?

Beneficiary designations are a very important tool in estate planning. Have you specified any of your accounts to be distributed by a beneficiary designation? If so who and have you reviewed any designations over the years?

Week 6 - Estate Administration

The administration of an estate can be time consuming and tedious. There are many rules and regulations involved in estate administration.

Your estate may be very simple, and you anticipate no disputes between your heirs. Even in this case, there are rules to follow to assure no one can challenge your estate later.

Who have you named as the executor of your will and the successor trustee of your trust, if you have one?

If this person or people decide not to serve in these roles, who is your second and then third choice?

What would you want your executor or successor trustee to know about your wishes?

Other thoughts on the administration of your estate?

What goes where after you die

The title of this series is It's **Your** Estate. The best way to control your estate is to document your desires in the form of a Will and/or Trust. If you don't do this, then the state will decide for you using intestate rules and that may not even be close to what you want.

Remember, no one needs to see your will or trust until you die, except your attorney. The important thing is to document your wishes. Do you want to give certain items to specific individuals? Do you want to give money to charities?

Summary

We have talked about Advance Health Care Directives and Powers of Attorney over these sessions. These deal with you while you are alive. We also talked about Wills and Trusts, which relate more to after you die.

Have you done an Advanced Health Care Directive? Have you had a conversation with your Agent on what you want done medically if you are incapacitated? If yes, good. If not, why not?

Have you done a Power of Attorney? Have you had a conversation with your Attorney in Fact on what you want done financially if you are incapacitated? If yes, good. If not, why not?

Have you done a Will? Have you had a conversation with an estate attorney about whether a Will would be appropriate in your case? If yes, good. If not, why not?

Have you done a Trust? Have you had a conversation with an estate attorney about whether a Trust would be appropriate in your case? If yes, good. If not, why? Have you retitled the appropriate assets into your trust?

Other notes on Estate Planning overall
