



Four Documents that Everybody Needs

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Introduction

There are four documents essential in creating a successful estate plan: a Last Will and Testament, a Living Will, a Living Trust and a Power of Attorney. Each one operates independently of the other, yet they are interrelated. The four documents combined provide the fundamental benefits of organization, uniformity, and coherence to the administration and execution of your estate and desires.

The Last Will and Testament

Many are familiar with the form and function of a will. A will provides the mechanism for distribution of any property you own at death, based upon your intent. The most important functions of a will are to declare and transfer everything you own to the people that you want to receive the items. The best thing to do when writing your Last Will and Testament is to make a list of all items that are important to you and identify the people you want to receive them. Then, be sure to include a clause to cover items that you may forget to give someone or items you may receive after you write the will.

The Living Will

Some people may think if you have a Living Will then you have a will. WRONG! A Living Will is known as a "Healthcare Directive." A Living Will states your wishes on medical treatment if you cannot make decisions for yourself. Not only does it protect you if you want to DENY all available medical treatment, but it also protects you if you want to make sure you RECEIVE all possible medical treatment. In the absence of a Living Will, the doctors who treat you will try to determine what your best options are, with possible consent required from a family member. The Living Will removes this responsibility from the doctors and any surviving family members and states what you want and who you want to make decisions on your behalf.

Most Living Wills provide for a "proxy," which is basically the same thing as a power of attorney except it is limited only to the Living Will. A "proxy" is a person who will make sure that your intentions are carried out.

Continued on page 2



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A CASE STUDY

FLP Not Includible

The Tax Court has ruled that the value of a Family Limited Partnership FLP will not be included in the estate of the decedent. The decedent owned various tracts of wooded property. Held together as one company, her thoughts were that the properties were more valuable as opposed to being split apart. As such, she and her attorney formed an LLC and transferred the properties into it. Subsequent to the formation of the LLC, the decedent transferred all of the LLC shares to their descendants until she owned only 1% of the interest.

The Court found the transaction was bona fide as there was a legitimate non-tax reason for the transfer. The Court also found and favored the taxpayer because 1) the property was actually transferred, 2) the interests in the LLC were not discounted, 3) distributions were not made, 4) personal funds were not commingled and 5) the decedent was in good health. This was not an attempt by the decedent to merely change the form of her estate and thus full and adequate consideration was exchanged. **The fair market value of the decedent's interest was included in her estate, not the assets that she contributed to the LLC.**

Continued on page 3



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The Living Trust

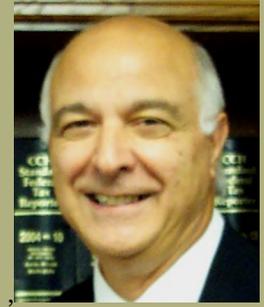
The Living Trust can be the most complicated of any of your estate documents. Basically, a Living Trust is a document that is created and takes effect while you are alive, compared to a Testamentary Trust created while you are alive but effective upon your death. The benefits to the Living Trust are that you can avoid Probate Court and all related costs. However, you can change your mind after you write a Living Trust and you can void out the trust before your death. A Living Trust allows you to transfer ownership of your property to your intended beneficiaries while retaining benefits for yourself until your death. Therefore, you DO NOT lose control of your property while you are alive, and upon your death, a successor Trustee will take over to distribute the property to the beneficiaries in accordance with your wishes. While the Living Trust may avoid probate, it doesn't avoid creditors or taxes, but it does provide for a quick and efficient method of distributing your property, which may discourage creditors. Remember, you do not save any estate taxes with a living trust over a Last Will and Testament, since you maintain "control" of all aspects of the trust until you die. The two key benefits involve avoiding probate court and its related expenses and keeping your estate private since the public does not have access to the trust documents.

Power of Attorney

The fourth and final document that is needed in an estate plan is a Power of Attorney. It is important that you plan for the unfortunate situation when you are not able to make sound financial decisions. A Power of Attorney is necessary in the event you are unable to make sound financial decisions regarding your assets during your lifetime. The Power of Attorney does not become effective until it is executed by the individual you state in the written document. Remember, you can always change the named individual or the terms, as long as you are of sound mind.

Conclusion

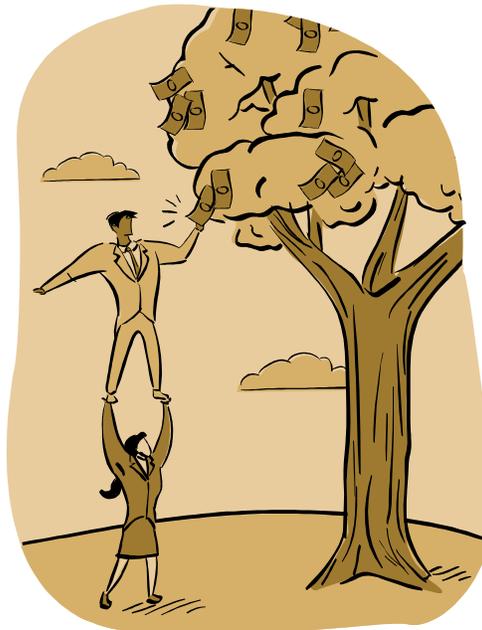
The four documents we have presented in this explanation are important elements of any successful estate planning. While this is just a short introduction to the topics, it is imperative to realize the importance of each document. The Last Will and Testament acts like a road map with the Living Will and Living Trust helping to direct the heirs where to look for the needed information. The Living Will is crucial in conveying your intent regarding any medical wishes you may have, while the Living Trust is the document that will transfer your property to your intended beneficiaries with the benefit of saving time and money at your death. Finally, the Power of Attorney protects you in the event of an unsound mind while you are alive.



Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- **There are four documents essential in creating a successful estate plan**
- **The four documents combined provide the fundamental benefits of organization, uniformity, and coherence to the administration and execution of your estate and desires.**
- **The best thing to do when writing your Last Will and Testament is to make a list of all items that are important to you and identify the people you want to receive them.**



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A CASE STUDY CONTINUED:

Editor's Comment: This is a logical model of what an FLP and transfer should look like in an ideal world. The decedent fairly plans the transfer for non-tax reasons and removes value from her estate in order to reduce tax liability, and it worked. No unreasonable discounts were taken, no penalties were applied, the transaction worked as it was intended and designed to work.

Unfortunately, many utilizing FLPs see the FLP as a way to "stick it to the Government" and it rarely works. Setting up FLPs can work; and does work as long as the FLP is operated in the right manner with the right purpose.



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Buying and Selling a Business Is a Significant Transaction for Both Parties

Buying and selling a business is a significant transaction for both the buyer and seller. For many, it's a once in a lifetime event. The process can be exciting and financially rewarding, or frustrating and an economic failure. Success or failure largely depends on how well prepared, informed, and committed the parties are about the process.

Issues that surround the transfer of business ownership include valuing the business, preparing a business for sale, strategies to maximize business value, timing the acquisition or sale, targeting the right type of buyers, buyer due diligence, financing and tax structuring strategies, negotiating the transaction, post transaction integration, and so on.

By understanding these issues and anticipating the complexities that may be encountered, buyers and sellers will have more realistic objectives, ultimately leading to a more successful transaction.

Business owners decide to sell their business for many reasons ranging from impending retirement, health issues, lack of a clear successor, or simply a desire to pursue other interests. The Small Business Administration estimates that at any given time, 40% of U.S. businesses face the issue of how to transfer ownership.

The periodical *M&A Today* has reported that "65% of business owners do not know what their company is worth; 85% have no exit strategy." Even more worrisome, it's estimated that business owners have approximately "75% of their net worth tied up in their business."

Unfortunately, a desire to sell does not always lead to an actual sale. Many times it's because of one of the following reasons:

- The business was not adequately prepared for a sale
- The buyer and seller could not agree on price and terms
- The seller did not realize that the selling process is time consuming and complex, and did not allow sufficient time for a successful outcome
- The buyer often lacked (or failed to commit) the necessary time and financial resources to make the acquisition

If you know of someone who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation, have them contact me directly at 813.299.7862, or mertel@lmaallc.com

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Frequently Asked Questions...



Q: Where is the best place to store estate plan documents?

A: The best place to store estate plan documents is in a secure location that others know of and that is easily accessible. Storing the documents in a safe deposit box that a friend knows of can be a good place as long as that friend knows where to get the keys. Hiding documents in a book or in a safe that no one has the combination for renders the documents useless to both you and those that are trying to help you.

Q: My wife and I run a business together, how must we file our taxes?

A: If only one spouse owns the business and the other works as an employee, then you may file as a sole proprietorship under Schedule C on your Form 1040. If the both of you materially participate in the company and you divide income according to ownership status, then a Form 1065, Partnership Return would be appropriate.

Q: How do you determine whether a worker is an employee or independent contractor?

A: Primarily, you look to the control that you have over the employee. If you generally control the worker and methods the worker uses to perform their task, they tend to be classified as an employee. If the worker has a fair degree of autonomy on the job, autonomy with finances, and less relationship with the principal, generally these workers can be classified as independent contractors.

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