



The Four Essential Documents

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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. All four documents provide you with the maximum amount of benefit when dealing with your estate. This article will introduce you to all four documents, and the advantages of having them in your estate plan.

may receive after you write the will. Finally, remember to include a clause stipulating how taxes will be paid. If you forget this clause, the government will charge each beneficiary for the taxes due, on a pro-rata share. Remember, your Last Will and Testament is the first and most important document in your estate.

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

The Last Will and Testament

Many of you are familiar with a will. A will provides the mechanism for distribution of any property you own at death, based upon your intent. If you do not have a will at your death, the state will determine who gets your property! The most important aspect of a will is to 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 the items. Then, be sure to include a clause to cover items that you may forget to give someone or items you

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A CASE STUDY

In a Revenue Ruling, the IRS has found that an S Corporation's accumulated adjustments account (AAA) is not increased by insurance proceeds received by the corporation for the death of an employee if such proceeds are not taxable. Conversely, the Court also ruled that such accounts are not reduced by premiums paid on a life insurance policy by the company. In the set of facts considered by the

IRS, an S Corp bought life insurance on one of its highly paid executives. The company is the beneficiary and pays the premiums. In this situation, the IRS has ruled that the payment of the premiums does not reduce the company's AAA and that any of the proceeds received by the company will be excludable from income and, thus, not increase the AAA.

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responsibility from the doctors and any surviving family members and states what you want and who you want to make decisions on your behalf.

There are three conditions upon which most Living Wills become effective: (1) if you are diagnosed to be close to death from a terminal condition or to be permanently comatose, (2) if you cannot communicate your own wishes for your medical care, orally, in writing, or by other gestures, and (3) if the medical personnel attending you are not notified of any written directions for your medical care.

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. Remember, a Living Will does not operate as a Last Will and Testament, it only assists you in medical decisions, you still need your Last Will and Testament.

The Living Trust

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

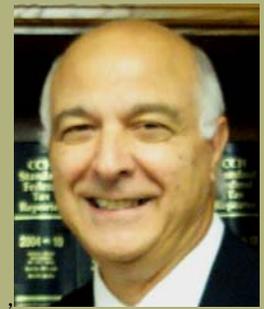
accordance with your wishes. While the Living Trust may avoid probate, it doesn’t avoid creditors or taxes, but it does provide for a quick and efficient method of distributing your property, which may discourage creditors. Remember, you do not save any estate taxes with a living trust over a Last Will 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. 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. It is important that you plan for the unfortunate situation when you are not able to make sound financial decisions. The Power of Attorney assists in a smooth transaction and can provide you with sound financial decisions that will enable you to have a steady stream of income for the rest of your life. Remember, you can always change the named individual or the terms, as long as you are of sound financial mind.

Conclusion

While this is just a short introduction to the topics, it is imperative to realize the importance of each document. If you would like more information on any of these four documents, please contact The Center or visit our website at www.taxplanning.com.



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.

A CASE STUDY CONTINUED:

Editor’s Comment: This ruling is helpful in that it provides companies with some guidance regarding their accumulated adjustments accounts. Such life insurance policies purchased by a company on one of its integral employees is not uncommon and commonly referred to as a “key-man policy.” This Revenue Ruling may help some executives determine whether such a policy is appropriate for their company.



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Points of Interest

- All four documents provide you with the maximum amount of benefit when dealing with your estate.
- If you do not have a will at your death, the state will determine who gets your property!
- Benefits include avoiding probate court and its related expenses and keeping your estate private.



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Annuities May Help Sellers Close the Gap in Funding Their Retirement

Mike Ertel, CBI/ M&AMI/ CM&AA

I am indebted to Michael Dreyer, Financial Representative with Northwestern Mutual for contributing the following article on the advantages and benefits of annuities.

Many business owners have had plans for years to sell their business and use the proceeds to fund their retirement. However with the decrease in values in today's market, sellers are either postponing the sale or are accepting a lower price and feel they are compromising their lifestyle in retirement.

Possible solution. A study by the University of Pennsylvania's Wharton Financial Institutions Center found you could create lifetime income by buying an immediate annuity for 25% to 40% less money than it would take to generate the same income from a diversified portfolio using the 4% withdrawal rule.

The 4% withdrawal rule is a widely accepted rule of thumb which suggests that if you hold your withdrawal to 4% of your nest egg during the first year of retirement and increase the dollar amount by 3% in each of the following years to keep up with inflation, you won't run out of money over a 30 year retirement, (with the drop in the markets this rule is being questioned).

How an annuity can help. Assume the seller wanted \$1,000,000 for the business, using the 4% withdrawal rule they would withdrawal \$40,000+ a year in retirement. Now their business is only worth \$750,000, the 4% withdrawal is \$30,000+, a loss of \$10,000 annually.

However, an annuity could increase their annual income, while guaranteeing they won't outlive their money. Suppose the seller is a male, age 65, with the business that has shrunk in value to \$750,000. If he were to take \$300,000 and purchase an immediate annuity he would receive about \$22,500 (assuming single life payout with payments ceasing at annuitant's death) a year in payouts, for life. The balance, \$450,000, could be invested in a diversified portfolio and a withdrawal of 4% would produce another \$18,000 per year. His retirement income would total about \$40,500 annually. This puts him in the same income position as if he had sold the business for \$1,000,000. The combination of the annuity and the \$450,000 diversified portfolio allows him to continue to participate in the upside potential of the markets with considerably less volatility than if his entire nest egg were in the market.

This strategy is certainly not for everyone but does provide a means for the seller to accomplish their original income objective. If you or any of your clients would like to discuss this further please don't hesitate to contact me, I would welcome the opportunity to work together.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at mertel@legacyadvisorsgroup.com.

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Frequently Asked Questions...



Q: If I own a business, what should I have to preserve my business for future generations?

A: In order to keep a business running after the death of an owner, a complete business succession plan must be in place. An estate plan alone is usually sufficient for a person's passing. However, if a business is involved, the business needs its own plan to survive.

Q: Because the estate tax amounts change so radically in the near future, how should we plan for the contingencies ahead?

A: The future is somewhat uncertain for those in business. The estate tax exemption may stay at \$1,000,000 or it may go up to \$3,500,000. Any business owner can benefit from having an active estate and business succession plan in place that actively deals with the contingencies ahead.

Q: I am applying for a mortgage. However, since I am a small business, my tax documents indicate insufficient income to support the debt. Is there anyway I can legitimately show an income that can support the debt?

A: There is a way that small business owners can show a more suitable income for debt maintenance. Restating your income to a bank is a legitimate way to show that not only is your business healthy, it is able to support a debt obligation as well.

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