

Trusts for the Average Person:
The Optimum Estate Plan

I. Introduction

The goal of estate planning is to structure your legal affairs to assure that your assets get passed down to the next generation in the most efficient and economical way. For most people this involves avoiding the probate process and, for higher-asset people, minimizing or avoiding estate taxes. In addition, estate planning seeks to protect assets from a long-term nursing home stay and to keep the legal system out of your family's affairs in the event you become physically or mentally incapacitated.

Obviously, everyone's financial and family situation is different. When we prepare an Optimum Estate Plan, we take these factors, and other factors that are significant to the client, into account, and devise a strategy that is custom made for the client's situation. Given that all people have different circumstances, the Optimum Estate Plan for one person will not be the same as the Optimum Estate Plan for the next person. In general, however, these are the issues that the Optimum Estate Plan will address:

1. Passing Assets to the Next Generation

The Optimum Estate Plan will arrange for passage of assets to the next generation in the most efficient, smooth and economical way. Usually, this involves preparation of a **Revocable Trust**, also known as a **Living Trust**. Unlike a will, which is subject to the probate process, a trust is not. Since a trust avoids probate after death, it is handled privately. Unlike a will, no notice is published in the paper. Your assets, and who is inheriting them, stay confidential. In these days of rampant identity theft, the more you can keep confidential, the better. Usually, an attorney is not needed to help settle the trust after death, so settling the estate is much less expensive than with a will. Since probate is avoided, so are the probate timetables. Therefore, in most cases the trust is settled quickly, privately and efficiently.

2. Nursing Home Protection

These days, a nursing home stay costs between \$90,000 and \$100,000 a year. Obviously, very few people can afford this astronomical cost. An unmarried person needs to spend his or her assets down to \$2,500 before becoming Medicaid eligible. With regard to a married couple, the healthy spouse is allowed to keep the home, plus half of the other assets or \$109,560, whichever is less. This means that the healthy spouse might not have the secure future that most people save for their entire lives. Imagine your spouse having only \$109,560 (at most) and then having to pay \$15,000 for a new roof and \$30,000 for a car. Your spouse might be forced to live in near poverty.

In order to protect the assets from these potentially catastrophic costs, the Optimum Estate Plan will put in place an irrevocable **Medicaid Trust**. This trust operates as a "shield" around the assets, to protect them from nursing home costs. Most people use the trust to protect their real estate, whether it is a primary home, summer home on the lake, and/or winter home down south. Many people also use the Medicaid Trust to protect financial assets that form their "nest egg" for their spouse or children.

3. Planning for Incapacity

It would be wonderful if we could all reach the end of our lives in good health, but frequently this is not the case. Therefore, it is crucial that you plan for the possibility that you will become physically or mentally incapacitated. If you become incapacitated and have not planned, then your spouse or children will need to seek out a probate court guardianship. Guardianship is a court process. Legal fees can be high, and, where money/property is involved, there are annual costs for a bond and for preparation of accounts (reports to the court). Additionally, the guardian operates under the court's control. In order to avoid guardianship, the Optimum Estate Plan will usually involve a **durable power of attorney**. In a durable power of attorney, you name a trusted person, usually a spouse or child, or both, to handle your business affairs in the event you can no longer do so.

4. End of Life Planning

We all remember the tragic case a few years ago of Terri Schiavo. This unfortunate young woman was in a vegetative state

for years, and a dispute over her care ripped her family apart. No one wants their family to argue about these end of life issues. In order to avoid this, the Optimum Estate Plan will include a set of **Advance Directives**. The Advance Directive forms give a trusted person authority over both routine medical issues and end of life decisions if you are unable to make such decisions on your own.

II. Conclusion

The Optimum Estate Plan takes into account the issues raised above, and will contain a set of documents that deals with these issues in a way that is best suited to your circumstances. You can be comforted that with the Optimum Estate Plan, you have done the very best possible to make sure that your family is protected from interference from the legal system and from nursing home costs.