



## General Estate Planning Questions

### **What is Estate Planning?**

Estate planning is the process of anticipating and arranging for the transfer of your assets (to your beneficiaries) in the event of your death. Estate planning typically attempts to avoid probate, maximize the value of the estate, and reduce taxes and other expenses. Traditional estate planning documents include wills, trusts, guardian nominations (for minor children), powers of attorney, specific final instructions, business succession instructions, and more.

### **What happens if I die without an Estate Plan?**

If you pass away without an estate plan in place, Georgia law will dictate how your property is distributed. You will have given up your right to determine how you want your assets divided, who you want to inherit them, when you want children to have control of their inheritance, and even who will receive custody of minor children. Your loved ones will have to go through this very public, very long, very expensive process at the same time they are grieving your death.

### **If I become disabled, who deals with my finances?**

If you become disabled and lose the capacity to deal with your finances yourself, someone will have to establish a conservatorship over your finances. Doing so is expensive. If you have prepared a living trust or a financial power of attorney, a conservatorship is not needed and the person you have designated will handle your finances.

### **Do I need to work with an attorney on my Estate Plan?**

Depending on the type of estate plan documents you draft, you may not have to work directly with an attorney. That said, it is highly recommended that you do so to avoid the common mistakes, pitfalls, and omissions non-attorney drafted estate plans often contain. A personal relationship with your estate attorney gives you peace of mind knowing your legal documents will work exactly as you want them to after you pass and that your attorney will be there for your family in their time of need.

### **Do my debts go away after a death?**

No. Your creditors, and even the creditors of your beneficiaries, may go after your estate's assets and property – including family heirlooms and inheritance. And a will won't protect your assets from creditors. There are specific types of trusts, however, that protect your assets from creditors, and even the creditors of your beneficiaries.

Your trust attorney will be able to explain these types of trusts and their benefits to you.

### **Graham Estate Planning**

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## **Should I make a Will?**

If you have assets and/or children, it is highly recommended that you have a will at a minimum. A will won't keep you out of probate, but it will give the judge instructions on how you want your assets distributed after your passing. Without a will, a stranger (the judge) who does not love or even know your family will be making major decisions for them.

## **Can I change an existing Will?**

Absolutely, yes. You can always modify your will. In fact, as your life situation goes through changes (births, marriages, asset growth, etc.), it is a good idea to change your will, too. You should review your will annually just as you would a physical examination.

## **How do I appoint a guardian for my children?**

All minor children should have long-term guardians appointed in a will. But there is much more that needs to be done to fully protect your kids. Not only are long-term guardians appointed, but also short-term guardians (so your children will never be in the arms of strangers, even for a moment), etc.

## **Frequently Asked Questions About Trusts**

### **What is a Trust?**

A trust is a relationship whereby assets are held by one party and managed for the benefit of another. These assets may accumulate interests and are not a matter of public record; thereby maintaining privacy regarding the assets. Trusts have been around since the Roman era and have three parties associated with them: the trustor (the person putting assets into the trust), the trustee (the person managing the assets in the trust), and the beneficiary (the person benefiting from the assets in the trust). There may be multiple trustors, trustees, and/or beneficiaries.

### **Can I change an existing Trust?**

If it's a revocable trust, absolutely, yes. You can always modify a revocable living trust. In fact, as your life situation goes through changes (births, marriages, asset growth, etc.), it is a must to change your trust, too.

### **Can anyone be appointed as a trustee?**

Yes. Most of the time, you as the trustor will serve as a trustee for the trust until the event of your passing, at which time someone else will take over. Usually, this duty is given to a family member or a spouse, friend, child, or attorney.

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## **How can I ensure that the assets get to the beneficiaries?**

After a passing, the trustee has a fiduciary duty to distribute the property from the trust to the beneficiary. Generally, the trustee has been appointed beforehand and is made aware they are responsible for this duty.

## **Do I need a Trust?**

Not necessarily. Unlike wills, which are recommended for every adult, trusts are not always necessary. A trust is generally recommended, however, if you have assets that would have to pass through probate at your death.

## **Do I need an Attorney?**

It is highly recommended that you work with an attorney to avoid the common mistakes, pitfalls, and omissions non-attorney drafted trusts often contain. A personal relationship with your trust attorney gives you peace of mind knowing your trust will work exactly as you want it to after your passing, and that your attorney will be there for your family during their time of need.

## Frequently Asked Questions About Probate

### **What is Probate?**

Probate is the process in which the probate judge formally determines whether the will offered to the court is valid and approves the named executor and/or qualifies an administrator for the estate when no will exists. Probate is mandated in Georgia if the decedent owned real estate property and requires preparing and filing the petition, notifying, and serving the heirs or obtaining signatures of all heirs of the decedent before accepted by the court. If all heirs consent, a representative can be appointed within two months. If any heir objects to the petition, the probate becomes contested and can unreasonably delay the appointment of an administrator for probate.

### **What is Probate Administration?**

Probate Administration is the process of managing the estate affairs until the estate is formally closed by the court upon Petition for Discharge by the administrator or attorney. Management includes notifying and paying creditors, reimbursing expenses, distributing assets, filing tax returns, and paying taxes.

**NOTE: The Essential Estate Plan includes the Last Will & Testament, Financial Power of Attorney with Digital Assets, Health Care Directive with HIPAA authorizations, Living Will, Appointment of Agent for Burial and Funeral Arrangements and Beneficiary Designations.**

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