



## 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.

### **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. With a will, your chosen Executor will gather and distribute your assets.

### **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. This is where a Designated Standby Guardianship becomes important.\*\*

## **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.

### **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. A trustee who breaches his/her fiduciary duty can be sued by the beneficiaries or any interested party for the benefit of the beneficiary.

### **Graham Estate Planning**

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## **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; i.e. real property, commercial property, etc.

## **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.

## **Essential Estate Planning Package**

The Essential Estate Planning Package is included with every Trust. For couples, the plan includes an original of each document listed, for each individual, and one joint trust if a trust package is purchased. The EEPP includes the following:

- Last Will and Testament (Executor manages your estate),
- Financial Power of Attorney (Agent or Attorney in Fact manages finances),
- Healthcare Directive and Living Will (Agent works with physicians to manage healthcare in a hospital setting),
- Beneficiary Designations (to notify executor of beneficiaries and non-beneficiaries),
- Burial Appointments for burial and funeral instructions, and
- Embossed folder (binder for Trusts) to protect your documents.

\*\*A Designated Standby Guardianship costs an additional \$500. This document is filed in court to support your chosen guardian during a court battle over the guardianship of the minor child.

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