

# TIMELY INFORMATION

## Agriculture & Natural Resources

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### Basic Steps of Estate Planning

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#### **If my spouse and I should die today:**

- Who would care for our minor children, aging parents or other dependants?
- Would our heirs be provided for in a fair and equitable manner?
- What would happen to the farm business (land, crops, machinery, livestock, etc.)?
- Would the estate settlement be conducted by someone with my family's welfare, interests, and needs in mind?
- Would estate taxes, probate fees, and other legal costs be held to a reasonable level?
- Would our church, school, foundation, and/or charities receive what we want them to receive from our estate?

Estate planning tends to be one of those tasks that we put off for as long as possible. However, it is probably one of the most important tasks an individual does during their lifetime. This article covers some of the basic steps of estate planning.

#### **What Are The Objectives of An Estate Plan?**

The basic objectives of an estate plan for most people are to “distribute” the estate per your wishes and to keep the costs of doing so to a minimum. Given these objectives, the estate plan should indicate to whom you want to leave your estate, how much they are to receive, and when they will acquire it. If an estate plan does not answer the basic questions of “who,” “how much,” and “when,” then it is not doing what it is intended to do. Additionally, an estate plan can help to minimize taxes, while also reducing administrative and legal costs.

There are two types of estate plans. One is “your estate plan” that you personally develop which is referred to as testate. The other is the “State of Alabama’s estate plan,” which is referred to as intestate. If you die without a will or have not otherwise disposed of your property through contracts, trusts, gifts, spending it all, etc., your estate is distributed as prescribed by the State of Alabama. This intestate distribution, prescribed by law, determines the “who,” “how much,” and “when” your estate will be divided. For more information on the intestate distribution of an Alabama estate, please visit: <http://research.lawyers.com/Alabama/Estate-Planning-in-Alabama.html>.

## **Basic Steps To Prepare “Your Estate Plan”**

Estate planning begins with an assessment of your personal situation. Individual family and personal situations will determine the plan that emerges. A basic planning tool and one that you should consider building your estate plan around is the “will.” The will is a legal expression of your desired disposition of property. In addition to the will other legal instruments available for your use in estate planning are deeds, trusts, gifts, contracts, and insurance. These tools are available and may be useful depending on your individual situation. Please note that developing a good estate plan is not an easy task. It requires an investment of your time and effort to accomplish the objectives of transferring your estate per your wishes. The professional assistance you enlist will also cost you something to develop an estate plan. However, the estate plan will provide you with the satisfaction that your estate will be distributed per your wishes and your heirs will benefit more from a properly executed estate plan. Getting the professional help you need is usually well worth the cost in the long run.

Here are some basic steps that will be helpful to get you through the estate planning process:

1. Communication – Openly discuss the need for an estate plan with your heirs.

An estate plan is really about giving something to your heirs. The only thing the giver receives is the satisfaction that he/she knows the intended heirs will receive the items specified in the estate plan at the indicated time. It is usually helpful to discuss this with your heirs so you can determine if he/she is willing to accept the responsibility of these items. If they are not willing, this will permit you to find someone who is willing to accept these responsibilities.

Communication is usually the most common stumbling block that prevents families from preparing their estate plan. The estate plan topic addresses the future without you. Most people have a hard time dealing with the topic of death and the transitioning of property and responsibility to someone else. A good way to get started is to attend an estate planning meeting with others who will ask some of the difficult and/or dumb questions you would like to be answered. These type meetings may be requested through your business or industry organizations, civic organizations, churches, etc. After attending a general meeting on estate planning you should have a basic understanding of what’s involved. You will be ready to further review your situation and determine if you need an estate plan.

2. Determine your financial situation (assets, liabilities, net worth, etc.).

This step involves taking a snapshot (inventory) of your present financial situation as well as fully describing details of documents you possess, how ownership is held, names and contact information of people you do business with, etc. Often an accountant, banker, insurance representative and/or certified financial planner are sources for this information. This should be done before meeting with an attorney or professional adviser in order to keep expenses to a minimum, and allows you to expedite the estate planning process. Remember this includes both personal information and information on your business entities. Also remember that if your personal representative (executor of your estate) cannot find these papers, they are worthless.

Let your personal representative and others as appropriate know where important papers on your estate are located.

### 3. Develop objectives for your estate plan.

Think about what you want to accomplish with an estate plan. The basic objectives of most estate plans are to distribute your estate per your wishes and to minimize/eliminate estate taxes and administrative and legal costs. However, estate taxes may or may not be a consideration depending on the size of your estate. Estates of up to \$2 million in size are exempt from the federal estate tax in 2007 and 2008. In 2009 this exemption goes up to \$3.5 million and in 2010 there is no estate tax. Unless new legislation is passed, the estate tax comes back to exempting a \$1 million estate from the federal estate tax after 2010. There is currently no Alabama estate tax. In 2007, gifts of up to \$12,000 can be made to as many persons as you want without incurring a gift tax. This option allows an individual to reduce the size of their estate if needed.

Aside from estate taxes, there are other financial and non-financial objectives you will want to achieve with your estate plan. A financial objective may involve the transfer of the assets of your estate (real estate, crops, livestock, machinery and equipment, savings, etc.) to your heirs. This is commonly a major financial objective that needs to be accomplished. Some non-financial objectives might include who will take care of you should you become incapacitated, who will take care of your dependants, your wishes concerning the disposition of your remains (traditional burial, cremation, funeral home, type of service, etc.). Other considerations might include such factors as assigning a personal representative for your estate (an executor of the estate), potential nursing home needs, long term disability assistance leading up to death, potential claims against the estate and other such impacts on the estate.

In short, the estate plan begins with you identifying your objectives. Based on those objectives, you determine who you want to leave your estate to, how much you wish them to receive, and when you want them to acquire it. This should be discussed with your heirs so that everyone involved understands your plan, and to answer any questions or concerns they might have. Informing and getting input from your heirs will improve your estate plan and smooth the transition of the estate. Remember, your heirs are the ones that are going to be affected the most by your death.

### 4. Identify and choose professional advisers

Estate planning is not an easy task nor is it simple. Professional advisers, in addition to an attorney, often include an accountant, insurance representative, banker, certified financial planner, and others. Attorneys who specialize in estate planning keep up with the changes in state and federal laws related to estate plans. They are experienced with how to develop an estate plan to accomplish your objectives. They can also provide some guidance on whether you need other professional advisers. If you do not know of an attorney that does estate planning, ask people in your area who they used, and if they would recommend him/her. Industry and civic organizations can also make recommendations and provide programs on this topic.

5. Discuss your estate plan objectives with professional advisers.

Once you have determined who your professional adviser(s) will be, you should set up a time to meet with him/her and discuss the objectives of your estate plan. Before you meet with him/her you should collect all of your important papers and attempt to describe your estate. A little time spent doing your homework will reduce the number of trips, time spent, and professional fees. You should bring with you your list of assets, liabilities, and other documents indicating ownership, and any other documents that you think you may need for your estate plan. Consider the “special use-valuation” for agricultural land to reduce the estate value if your heirs are going to continue farming. Most attorneys will provide a checklist of information needed to prepare an estate plan.

6. Finalize and implement the estate plan.

Once your attorney has finished your estate plan you should meet with him/her again to review your plan. Make any changes necessary to make sure it accomplishes the goals you set forth. After you finalize your estate plan, don't hesitate or wait to implement it. Whether it is changing ownership of a piece of land or adding a name to a bank account, there is no better time to get started than today. An estate plan will give you a rewarding sense of satisfaction that you have provided for your heirs and your estate will be distributed per your wishes.

7. Review and modify the estate plan over time as needed.

Lastly, everyone's financial situation changes over time. So it is a good idea to set a side time at least once a year to review your estate plan and make any necessary changes. It would be a good idea to put this date on your calendar and don't put it off. Also after major life changing events occur (marriage, divorce, births, deaths, adverse health, business decisions, etc.), you should review your estate plan to make sure it is still relevant and accomplishes your goals and objectives. For example, your estate plan states that you will leave your granddaughter a particular parcel of land, but you sold that parcel of land in 2006. Thus, your granddaughter will not receive that parcel of land when you die. So make these revisions in your estate plan to keep it up to date. It will certainly make the estate plan easier to execute and reduce confusion.

This article was written to provide you with some basic information on estate planning and some basic steps to get it done. Estate plans are not one size fits all and everyone has different needs and desires for their estate. Given that estate plans need to be tailored to your individual needs, you should consult those with expertise (attorney, accountant, banker, insurance representative, certified financial planner, etc.) and experience about the specifics of your estate.

Remember, you do not have to make an estate plan. The State of Alabama has a standard estate plan for those who do not choose to make their own estate plan. If you die intestate (without a will or estate plan) in the State of Alabama, your solely owned property and your share of property owned as tenants in common will pass as prescribed by Alabama law. This may or may not be the way you would prefer to distribute your estate.