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# Estate Planning Insights

A Quarterly Publication of

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## What's in your Binder?

**Make Things Easier for your Executor and your Family.** Most people who do estate planning are trying to arrange their affairs to make things easier for their loved ones when they die. When a person dies, his assets (or his interest in the assets if he owns less than 100%) will be transferred to a new owner or owners. That is because a deceased person cannot own anything. Of course, in addition to the transfer of assets at death, there are legal and tax matters that must be handled when a person dies.

If the deceased person's "primary estate planning vehicle" is a Will, then the Executor named in the Will, after being appointed by the court, will be responsible for handling the post-death legal and tax matters for the deceased person and his estate. If the deceased person's "primary estate planning vehicle" is a revocable trust (also known as a "living trust") AND if *all* of the deceased person's assets were already titled in the name of the trust before he died, then the successor Trustee of the revocable trust will be responsible for handling the post-death legal and tax matters. (Sometimes a person dies owning both probate assets and trust assets, resulting in both the Executor and Trustee having responsibilities after his death.) To simplify the discussion in this newsletter, the term "Executor" will be used to refer to both an Executor under a Will and a successor Trustee of a revocable trust.

We have written many prior newsletters discussing the post-death matters that must be handled by the Executor when a person dies. We are not going to focus on those matters in this newsletter. Instead, we are going to focus on one particular thing you should do before you die to make things easier for your Executor and your family members when you die.

**A Three-Ring Binder.** It is a good idea for most people to have at least one three-ring binder with relevant information in it to help the Executor and their family members when they die. In some cases, people

may need multiple three-ring binders. We are going to discuss all of the documents and other items that should be placed in your binder, whether all of those items will fit in one binder or whether you will need several binders or even a filing cabinet.

**Organ Donation.** Before we discuss what to include in your binder, there is one matter that must be handled at the time of your death: donation of all or any part of your body. If you desire to donate your entire body, or any of your organs, tissues, or eyes, you should let your loved ones know of that desire before you die. If that information is in your binder but no one knows about it before you die, your wishes may not be carried out. Your desire in regard to bodily donations can be indicated by registering with an appropriate organization that handles such matters or even by registering as an organ donor when you renew your driver's license. Again, however, the most important thing is for your family members to be aware before you die of your desire to make a bodily donation.

**Funeral and Burial Instructions.** Another matter that must be handled quickly upon your death is the disposition of your body. In general, your wishes in regard to these particular matters can be referred to as "funeral and burial instructions." While you might put these types of instructions in your binder, and you might even have a legal document appointing an agent to handle these matters, the most important thing is for your loved ones to know what you want. Do you want to be buried or cremated? What type of service, if any, do you want? You can be very specific regarding the service you want, such as requesting particular music or readings. Where do you want your body to be buried? Provide the name of the cemetery, contact information for the cemetery, and the particular cemetery plot. Do you want your cremated remains to be buried or sprinkled somewhere? Do you have a prepaid funeral contract with a particular funeral home? All of these details may be written out and placed in an envelope

marked, "to be opened immediately on my death." Having written funeral and burial instructions is a good idea, although you should also review these details with your loved ones ahead of time.

**What to Include in your Binder.** In no particular order, here are the documents and other items you should include in your binder:

1. Family Information. You should prepare a list of all family members and other persons who are beneficiaries of your estate. Show each person's legal name and "also known as" names, if applicable. Include each person's current address, phone number(s), email address, birth date, marital status and other relevant information (such as, perhaps, what the person does for a living). If you are confident that your binder will not be stolen by "identity thieves," you can list each person's Social Security Number in your Family Information list, too. Be sure to review and update this list on a regular basis.

2. Professional Advisors. You should create a list of all professionals with whom you work ("professional advisors"). This list would include your attorney(s), accountant(s), banker(s), financial advisor(s), insurance agent(s), trust officer(s), doctor(s), and all other people who may be involved in the post-death matters for your estate. If you have more than one attorney, list each attorney's specialty. If you have more than one accountant, indicate which accountant handles which particular matters, such as your business matters and your personal tax matters. For each professional on your list, include their address, phone number, email address and other relevant information (such as, perhaps, the name of their administrative assistant).

3. A Comprehensive, Current Financial Statement. Everyone needs to prepare a comprehensive financial statement and update it at least annually. Your financial statement should include both assets and liabilities. There are many examples of financial statements on the internet. We even have a simple form of financial statement on our website: *see* "Getting Started with your Estate Planning." In addition, many financial advisors, insurance agents and accountants prepare financial statements for their clients.

Every asset in which you own an interest should be listed in the asset section of your financial statement, with the most comprehensive description possible. Of course, each asset should be valued at its current *fair market value*. For real estate, include at least the legal description from the tax statement, as well as the

address of the property, including city, county and state. For accounts of every type, include the name of the financial institution where the account is held, the account number, the type of account, an indication of your ownership interest in the account if not 100%, and *exactly* how the account is titled. For vehicles, include the year, make and model and, if possible, the Vehicle Identification Number (VIN).

Typical assets that people own include the following:

A. Real property. List real property of every kind in which you own an interest. This would include, for example, your primary residence, your vacation home(s), your rental real estate not owned by a business entity (*see* below), your interest in undeveloped tracts or in a farm or timber land, etc.

B. Burial Plots. List the name and address of the cemetery, contact information for the cemetery, the number of plots you own and the plot numbers.

C. Mineral interests. Indicate whether your mineral interests are leased or not, and, if leased, to whom leased and whether producing or not. A simple rule of thumb for valuing royalties is three times average annual production over the past three years.

D. Time Shares. List all time shares you own and indicate (if you know) whether they are treated as real property interests or security interests.

E. Marketable Securities. List your stocks, bonds, mutual funds, REITs, ETFs and other marketable securities *not held inside a retirement plan, insurance policy or annuity*. These are often referred to as "after-tax" investments. Very few people hold stock and bond certificates these days. Most marketable securities are held in brokerage accounts or accounts with investment companies or in direct registration.

F. Closely held Business Interests. If you own an interest in any type of "closely held business," such as a Limited Liability Company (LLC), S Corporation, Limited Partnership (LP), General Partnership and/or Joint Venture, list each business entity and indicate what your ownership interest is in each entity. You should also have a recent, comprehensive financial statement for each business entity.

G. Cash Accounts. List all of your cash accounts. Examples of types of cash accounts include checking accounts, savings accounts, money market accounts and certificates of deposit. For each account, list the particular financial institution, the account number, and the *exact* title of the account (as we have discussed before, this is more than the names—it also includes account designations such as JTWR0S, POD and TOD).

H. Vehicles. List each vehicle that you own, including cars, boats, airplanes, trailers, motor homes

and farm vehicles. Indicate exactly how the vehicle is titled, plus the year, make, model, and VIN.

I. Tangible Personal Property. Everyone owns "typical" household furnishings and personal effects. Include at least one entry in your list of assets for these items and value them as a group (imagining a garage sale) using a round number for the total value. In addition, if you own any items or collections having a more significant value, such as a coin collection, classic car, Steinway grand piano, diamond ring, Rolex watch or Tiffany lamp, list each of those items or collections, separately from the general household furnishings entry, and place a value on that item or collection. Consider, especially, any tangible property that is separately scheduled in your homeowner's insurance policy.

J. Retirement Plans. List all of your retirement plans, including IRAs of every type (e.g., traditional IRA, SEP-IRA, Roth IRA, IRA rollover from a qualified plan and inherited IRA) and all employee benefit plans of every type (e.g., 401(k) plan, profit-sharing plan, and ESOP), indicating who the custodian or administrator of the plan is, and the account number, if any.

K. Life Insurance Policies. List all insurance policies in which you own an interest, whether it's a policy insuring your own life or someone else's life. Both the cash surrender value and the death benefit should be indicated in the spreadsheet.

L. Annuities. If you own any annuities of any type, include those in your asset list as well. Include the name of the company sponsoring the annuity, the annuity contract number, the listed owner and the annuitant, plus the current value.

M. Deferred Compensation Contracts. If you have a deferred compensation arrangement, list that as an asset in your financial statement, too.

N. Trusts. List all trusts that you have created in which you own an interest and all trusts created for your benefit by someone else. Include a note regarding whether you have created any trusts for other persons. The assets of trusts are sometimes included in your estate for federal estate tax purposes and sometimes not included. However, it is important for your Executor to know about all trusts "connected to" you.

O. Loans. If you made a loan to someone and any part of that loan remains unpaid, list that loan as an asset. Indicate the specific terms of the loan, such as the original principal amount, interest rate, payment dates, and maturity date, and show as the current value of each loan the outstanding principal balance and accrued interest.

P. Patents, Trademarks, Copyrights. If you own any "intellectual property," list those assets in your financial statement, along with pertinent information.

In the debts/liabilities section of your financial statement, list your mortgages and other notes payable, your credit card debt, and other amounts you currently owe, such as income taxes.

4. Document Location List. Important original documents, such as your original estate planning documents (e.g., Wills, trust instruments, powers of attorney), deeds, leases, business entity documents, life insurance policies, annuity contracts, appraisals, vehicle titles, birth certificates, marriage licenses, etc., should be kept in a secure place of safekeeping that is *both* fireproof and waterproof (many of our clients lost important documents that were held either in a home safe or a safe deposit box due to flooding from Hurricane Harvey). However, you should prepare a "Document Location List" for your Executor and family members that indicates where each original document is located. If held in your safe deposit box, all pertinent information, such as the name of the bank and its location, the box number, the location of the key, and who is a signer on the box, should be indicated. If held in your home safe, the combination of the safe should be indicated. If any important original documents are held elsewhere, indicate that. You should also indicate where you keep copies of all tax returns you have filed, your monthly account statements for your various accounts, and other important financial documents.

5. Copies of All of your Estate Planning Documents. Most people keep *copies* of their estate planning documents in their binder. As noted, the original documents should be kept in a fireproof, waterproof place (*see* above). However, it is helpful to family members and persons named in "fiduciary" positions (e.g., the Executor in your Will and the agent(s) in your Powers of Attorney) to have easy access to *copies* of your estate planning documents. These should be photocopies of original documents that show all signatures, dates, etc. Also keep in your binder copies of your most recent beneficiary designation forms for all of your "beneficiary designation assets." There are four "true" beneficiary designation assets: (i) life insurance, (ii) employee benefit plans, (iii) IRAs, and (iv) annuities. The legal transfer document for these assets is the *beneficiary designation form* and not your Will or trust. Thus, keep copies of those forms in your binder.

6. Copies of All of your Closely Held Business Documents. We recommend keeping *copies* of all "business related documents" in your binder, too. This would include copies of the legal document that created each business entity, plus other relevant documents, such as Bylaws, Buy-Sell Agreements, employment contracts, etc.

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7. Marital Property Agreements and Divorce Documents. If you signed a Marital Property Agreement, either before or during your marriage, keep a copy of it in your binder. In addition, if you have documents from a divorce, keep copies of those documents in your binder, too.

8. Digital Information. Most people have various "accounts" of various types that they access electronically. Some of these are financial accounts and some are "social" accounts. To gain access to an account, one must usually enter a "user name" or "log in name" and password. Make a comprehensive list of all of your digital information and keep it in a secure place, but make sure your Executor and/or a trusted family member has access to it.

9. Ethical Will. When I was a partner with a prior law firm, one of the firm's newsletters that I wrote was titled, "Leaving a Legacy Beyond Wealth." That newsletter, which was dated August 15, 2001, is on my current firm's website. The primary focus of that newsletter was the idea of writing an "Ethical Will" to leave to your loved ones. As noted in that

newsletter, an ethical will has nothing to do with the disposition of your assets at death. Instead, it is a document in which you can pass on your values, beliefs, life lessons, family history, hopes for the future, pearls of wisdom, etc. There is no right or wrong way to write an Ethical Will except that negative or hurtful items should not be included in an Ethical Will. Some examples of Ethical Will provisions are contained in that August 15, 2001 newsletter that is on the firm's website, so check it out.

Bottom Line: Keeping an updated binder, as described above, will really help your Executor and loved ones.

**Contact us:**

If you have any questions about the material in this publication, or if we can be of assistance to you or someone you know regarding estate planning or probate matters, feel free to contact us by phone, fax or traditional mail at the address and phone number shown above, or by email sent to:

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