

Rivkin & Rivkin

ESTATE PLANNING

ESTATE PLANNING DECISIONS

In order to make the most out of your initial consultation, we recommend that you spend a little time prior to the consultation considering some of the primary estate planning decision points.

Selecting Fiduciaries to Serve in the Event of Your Incapacity or Death

Often the most difficult aspect of estate planning is choosing your desired guardians, executors, trustees, and agents for your financial and medical affairs. The following describes these various roles, and we can discuss the duties associated with each of them in more detail when we meet:

Health Care Agent: The person who will make health care decisions for you in the event of your incapacity.

Guardians: The person or persons who will care for your minor children or adult disabled children if you are deceased or incapacitated.

Executors, Trustees, and Property Agents: The person, bank or trust company, or combination of the two that will handle your financial affairs in the event of your death or incapacity. Although married couples may have different financial decision-makers, it is often advantageous for them to coordinate those choices.

There are different schools of thought regarding the relationship between guardians and trustees. One school favors naming the same choices for each to simplify trust administration. Another school favors purposely naming different choices for each in order to have checks and balances.

We generally recommend an alternative approach: select your best choices for each role, without consciously trying to make them the same or different.

Distributions at Death

In addition to determining who will manage your affairs in the event of your death or incapacity, you will, of course, need to determine how you want your assets to be distributed at your death.

The following are some of the primary questions for you to answer in determining the distribution of your assets:

- At your death, do you want to make any gifts of cash or other assets “off the top” to any individuals outside of your immediate family or charities?
- If you are married:
 - Do you want all of your remaining assets to pass to or for the primary benefit of your spouse, or would you prefer to divide the remaining assets between your spouse and your children?
 - Would you prefer that assets pass to your spouse outright (so that your spouse can simply add those assets to his or her own) or in trust? Leaving them in trust, while adding complexity, might help minimize estate tax at the second death, provide some creditor protection to your spouse, and increase the likelihood that the remaining assets will pass to your children at your spouse’s later death.
 - At your spouse’s death do you want to make any gifts of cash or other assets “off the top” to any individuals outside of your immediate family or charities?
- If you have children:
 - Would you want a trustee to hold the assets in a single fund for all of your children until the oldest or youngest reach a certain age or instead to immediately divide those assets into separate shares for your children?
 - When assets are divided among separate shares for your children, would you want those shares to be equal or in some other proportion?
 - Have your children reached an age at which you would want them to receive their inheritance outright or would you prefer that their inheritance be retained in trust?
 - At what age or ages would you want your children to gain control of their inheritance either by having withdrawal rights or becoming their own trustee? When we meet, we can discuss the relative advantages and disadvantages of granting each of your children withdrawal rights versus allowing them to become their own trustee.

Contingent Beneficiaries

Even though it might be intended that your property ultimately will pass to your spouse or descendants (if you are married and/or have children), you should determine whom you wish to name as contingent beneficiaries. Contingent beneficiaries are those individuals or charities that will receive any remaining trust property if, at some point in the future, you are not alive and you have no living spouse or descendants.

Some common choices are as follows:

- Assets divided among a list of individuals and/or charities, either equally or with different percentages among them.
- Assets divided among family members (or, for married couples, with one-half going to each side's family), and then further divided between parents, siblings, and/or nieces and nephews.

Get Started

Visit <https://rivkinlaw.com/getting-started-estate-planning/> to begin the estate planning process. We look forward to working with you.

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