



7 WAYS TO PREPARE FOR YOUR FIRST ESTATE PLANNING MEETING



BY JULIA SATTI COSENTINO
JCOSENTINO@NUTTER.COM

An estate plan is more than just a will. Instead, a typical estate plan contains four documents: a will, revocable trust, health care proxy and power of attorney. The health care proxy and power of attorney are designed to operate during your lifetime, while the will and revocable trust control how your property is dealt with after your death. The will tends to be a relatively simple document by which you give away your personal belongings and name the personal representatives who are to administer your estate. The trust, on the other hand, distributes the balance of your assets among the people (and charities) you care about and names the trustees who will administer the trust property according to your wishes. The trust is necessarily more complex than the will, because it is where the tax planning provisions are found.

When you meet with your estate planning attorney, he or she will guide you through the various choices you will be called upon to make, so that you end up with a set of documents that reflects your intentions. To make this time with your attorney most productive, what follows are 7 things you can do to prepare.

1. Assemble a list of your assets and significant liabilities

This includes your house (and mortgage), bank accounts, investment accounts, business interests, personal belongings with value (e.g., artwork or jewelry), insurance policies on your life and retirement accounts. For each asset on the list, include an estimate of its value or current balance, as well as whether you own the asset in your individual name or in joint name with another person, such as your spouse. Your attorney will want to take a look at this list at the outset of the meeting, if not before, because it is a good starting point for determining which tax strategies could offer you and your family the biggest savings.

7 WAYS TO PREPARE FOR YOUR FIRST ESTATE PLANNING MEETING

2. Consider if there are any personal belongings you want to leave to a particular person

Think about how you would like to dispose of your things, even if you are convinced they are not worth much money. Oftentimes, a couple will provide that all household furnishings, jewelry, collections, etc., will pass to the surviving spouse when the first spouse dies, and then everything will be divided equally among their children when both of them are gone. Because the sentimental attachment to certain items can be high, consider whether you should be more specific about who should receive those items. Keep in mind that the deepest rifts among adult children can begin with a tug of war over items that have value only to them. If you cannot decide at the time or want to remain flexible to change things over time, you can have a request put in your will that your spouse and/or children deal with your belongings according to any side letter you leave with your will. For this approach to work, though, you will need to actually write that side letter.

3. Start to think about who has the skill and willingness to be the personal representative(s)

The persons you name in your will as the personal representatives will be charged with settling the estate following your death. His, her or their duties will include collecting your assets, paying debts, expenses and any taxes that are due and then distributing the assets as directed by the rest of your estate plan. People usually name their spouse to serve as the personal representative in the first instance. If you decide to do the same, you need to consider who should act in this capacity if and when both spouses are deceased. You can name more than one person if you like. Whoever you choose, you should also think about a successor in case the first person(s) named cannot act for any reason.

4. Get comfortable with the idea of trusts for your children and grandchildren as an alternative

You could decide to pay out all of the trust property equally among your children when you (or both you and your spouse) have died. However, many individuals and couples choose another approach—to divide the trust property into equal shares, with one share being held in trust for each child until the child needs or wants funds. Your estate planning attorney will explain the advantages of this. One compelling advantage is that property held in trust for a beneficiary tends to be insulated from the claims of that beneficiary's creditors, including a divorcing spouse. If you choose this alternative, the trusts could last throughout your children's lifetimes. Or, you could provide that specific portions of the trust property be distributed outright to your children at certain points in time (e.g., 1/3 at age 30, 1/3 at 35, and the balance at 40). You must also consider how you want your property handled if one of your children predeceases you, leaving young children of his or her own.

7 WAYS TO PREPARE FOR YOUR FIRST ESTATE PLANNING MEETING

5. Start to think about who has the skill and judgment to be the trustees

As with the appointment of personal representatives, the person or persons you name as trustees of your revocable trusts following your death can be family members, friends and/or professionals. If your children are relatively young and/or you decide to provide for grandchildren, the trusts could last many, many years. You may want to consider naming an institutional trustee (such as a law firm or bank) so you will be sure there will be continuity of management. The trustee is responsible for managing the assets and making sound distribution decisions, so there will be adequate resources to meet your spouse's and/or your children's needs after you are gone.

6. Decide who should make medical decisions for you if you are incapacitated

The health care proxy, along with the power of attorney, is an important component in planning for incapacity. In the health care proxy, you name an agent to make health care decisions for you if you are unable to do so. Give some thought to the person who should have that responsibility, along with a successor to him or her. Only one health care agent can have authority at a time, so if you would like to choose more than one of your children, you will need to decide the order in which they will serve.

7. Decide who should take care of your financial affairs if you cannot

The power of attorney is similar to the health care proxy, except you are appointing a person or persons to act as your agent with regard to your financial matters during your lifetime. Unlike the health care proxy, you can choose two or three persons to act together. The power of attorney can take effect either when you are incapacitated or it can become effective immediately after you sign it (for instance, the power of attorney may be useful if your spouse is away and you need to sign on his or her behalf).

The purpose of this list is not to overwhelm you with decisions or to delay your first estate planning meeting. If you get stuck on any of them, know that your attorney will explain all these things and the different options available when you sit down with him or her. Instead, this list is meant to get your thinking started while you have the luxury of time—in the days and weeks before the meeting—to reflect on these issues, so the ultimate result is exactly what you set out to achieve.

This update is for information purposes only and should not be construed as legal advice on any specific facts or circumstances. Under the rules of the Supreme Judicial Court of Massachusetts, this material may be considered as advertising. Copyright © 2021 Nutter McClennen & Fish LLP. All rights reserved.



ACC 2021 Trusts & Estates Series

Planning Ahead for You and Your Family

Why You Need an Estate Plan and Steps to Getting the Right One In Place

Julia Satti Cosentino and Sara Goldman Curley

March 31, 2021

Why You Need an Estate Plan and Steps to Getting the Right One In Place

First of Three Webinars



Julia Satti Cosentino
Partner, Private Client
Co-Chair, Nonprofit and Social Impact
JCosentino@nutter.com



Sara Goldman Curley
Partner and Deputy Chair, Private Client
SCurley@nutter.com

- 150 lawyers; headquartered in Boston and an office in Hyannis
- 26 Private Client attorneys, one of the largest groups in Massachusetts
- Our private clients are individuals and families, entrepreneurs, private business owners, and executives
- Our Nonprofit and Social Impact group advises individuals, private foundations, charitable trusts, other nonprofit organizations, and businesses
- Nutter Investment Advisors (NIA) is a registered investment adviser that is wholly-owned by the firm and may provide investment advisory services to trustees, foundations and other clients

1. What do we mean by an “estate plan” and why is it important to have one
2. What documents are part of a “core estate plan” and the role each one plays
3. Advice for people who are in different situations
4. Recommended actions for you to take

An Estate Plan is Important to . . .

1. Plan for incapacity/disability
2. Control who receives your property and how they receive it
3. Choose who administers your estate and nominate guardians for your children
4. Minimize estate taxes
5. Provide some creditor protection for your family after your death

1. Owned in your individual name
2. Held jointly with someone else
3. With a beneficiary designation (life insurance, retirement accounts, account with a “transfer-on-death” provision)
4. Held in a trust

1. WILL
2. REVOCABLE TRUST
3. HEALTH CARE PROXY
4. DURABLE POWER OF ATTORNEY

1. Disposes of your “probate property”
 - Not your joint property
 - Not your assets with beneficiary designations
 - Often, only your personal belongings and the “residue” are disposed of by the will
2. Names the personal representative (and successors) to administer your estate
3. Nominates the guardians (and successors) of children who do not have legal capacity
 - No will? Here’s what that means...

Simple example of a will's provisions

- I leave my personal belongings to my spouse, otherwise my children equally; I ask my family to turn to my side letter for guidance on distributing my books;
- I leave the residue of my estate to my REVOCABLE TRUST;
- I name my spouse to act as the PR of my estate, to be succeeded by Sara Curley; and
- I nominate my spouse as guardian of my minor children, but if my spouse cannot act, I name my sister-in-law.

- What is a trust?
- What does it mean to “fund” a trust?
- What benefit does my trust provide to me?
- What benefit does my trust provide to my children/family?

- 100% Marital Deduction (if spouse is US citizen)
- Federal Estate Tax: \$11.7 million exemption
 - Portability
- Massachusetts Estate Tax: essentially a \$1 million exemption
 - Use it or lose it

How a trust can save Massachusetts estate tax for a married couple

Scenario 1 - “I Love You Plan” (everything outright to surviving spouse)

- Each spouse has \$1 million of assets
- Massachusetts estate tax of \$99,600 on second spouse’s death

How a trust can save Massachusetts estate tax for a married couple

Scenario 2 – Use a trust

- Provide for surviving spouse on death of first to die – but do so in a trust to shelter trust assets from tax in survivor's estate
 - Each spouse has \$1 million of assets
 - No Massachusetts estate tax on second spouse's death

1. HEALTH CARE PROXY

- a. Names a health care agent
- b. May be accompanied by a medical directive

2. DURABLE POWER OF ATTORNEY

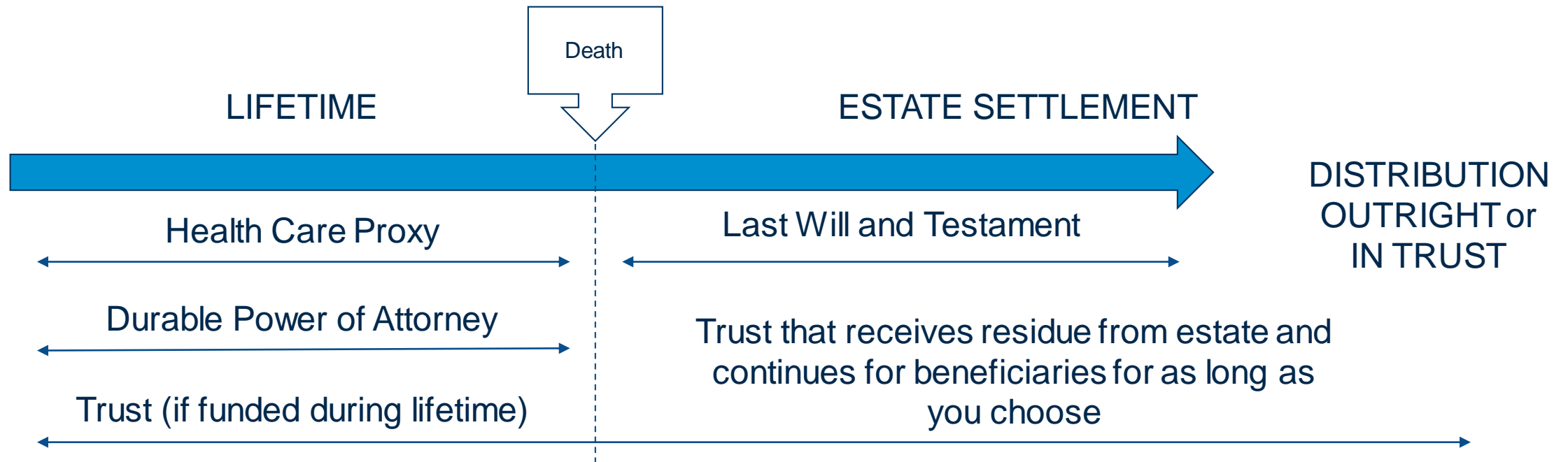
- a. Names an attorney-in-fact
- b. Should be updated periodically
- c. Newer versions, e.g., cover “digital assets”

3. HIPAA AUTHORIZATION

4. Medical Orders for Life-Sustaining Treatment (MOLST) Form

- a. Bright pink!
- b. Must be signed by physician, nurse practitioner or physician assistant

Course of Estate Settlement and Distribution



1. An unmarried adult with no children
2. A married couple with children ages 15 and 18
3. A retired couple in their late 70s

- Unless you want wealth to pass to heirs at law under state statute, with your estate to be administered by a personal representative possibly not of your choosing, ***you must execute an estate plan***
- Review selections for your health care agent (Health Care Proxy), your attorney-in-fact (Durable Power of Attorney), your personal representative (Will) and your trustee (Trust) to be sure the chosen individuals and/or professionals are still suitable for your current family and/or financial circumstances
- Make sure your records are easily identified and accessed, especially records stored in digital form

- Be sure the guardianship provisions in your will are up-to-date
- Consider having child who is 18+ execute a Health Care Proxy, HIPAA Authorization, Durable Power of Attorney and FERPA Waiver (and/or whatever forms are particular to their school)
- Review trust provisions to ensure they reflect your current thinking on when and how each of the children should receive their inheritance and whether the division between them should be equalized

- Be sure your beneficiary designations are up to date
- Consider whether it makes sense to “fund” your estate planning trust
- Take a second look at your Health Care Proxies and Durable Powers of Attorney and consider whether it has become time to talk to your children about your intentions and/or involve them more in your planning

- Review current documents and beneficiary designations
- Generally, estate planners want to know information about the types of assets and nature of assets that you own
- Think about who you are naming as fiduciary
- Think about who gets what

Upcoming Webinars



Management, Alignment and Stewardship of Your Assets through Trusts

Wednesday, June 9, 12-1 PM

Tax Planning to Preserve and Enhance Long-Term Wealth

Wednesday, September 22, 12-1 PM

**THANK
YOU**

Nutter
uncommon law