The Decision-Making Process

Many times, the hardest part about estate planning is coming to a final conclusion about what you want for the people you love. Very often, it can be helpful to hear what other people have done in similar circumstances. What follows is a summary of some of the kinds of choices you might make for your family. Remember, you can do anything you wish to do. Making planning decisions is a bit like painting a picture; one starts with a blank canvas, and can use as many colors as you wish. The directions you give me will replace you, financially, for your family once you are gone. With that in mind, I hope the following illustrations help.

☞ **The first choice you have to make is decide how much power, control, and ownership you want the surviving spouse to have, after the first one of you has died.**

☞ Do you want your spouse to be able to change the plan? Can he or she disinherit any of the beneficaries? Can they leave all assets to a new spouse? Charity? Or, do you want to know that your half of the assets will definitely make it to the beneficiaries you have chosen, should there be assets left when your spouse dies?

☞ Do you want to insulate any of your assets, providing protection for your spouse, so that your half of your estate cannot be involuntarily lost to creditors of any kind?

Your choice:

Let surviving spouse control all ☐

Protect the half of the first spouse to die ☐

☞ **The second choice you have to make is to whether you wish to plan with a Will, or whether you prefer to use a Living Trust.**

- The question is one of process and procedure. If you use a Will to give your instructions, you leave the process of transferring assets until after your death, relying on the probate court, with its attendant time and cost.

- If you use a Living Trust, you transfer title to your assets today, so as to avoid the need to involve the court when you die or if you become incapacitated. If you have chosen to protect the first half when the first of you dies, a living trust is the better choice.

Your choice:

Will ☐

Living Trust ☐

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☞ **The next choice is to decide who you want to receive your assets after both of you have passed away. Remember that anything you leave to charity will qualify for an estate tax deduction.**

Your Choice:

☞ **Once you know who is to receive your assets, you must decide how you want them to receive it. Should they receive the gift outright, free of trust? Or, do you want to use a trust for their benefit?**

- Leaving a gift outright is simple, and that simplicity is its advantage.
- Leaving a gift in trust provides you more benefits, though.
- It can provide management of money if a beneficiary is young; a child under 18 cannot hold assets, legally, and avoidance of an expensive and public guardianship is a must.
- It also provides the wisdom and experience of a trustee in managing money, when a beneficiary has not yet attained that kind of experience; so many people live month-to-month and paycheck-to-paycheck, so managing a large inheritance is beyond the knowledge of many people.
- It is protected from the claims of creditors, so a beneficiary can encounter rough times, financially, get through them (such as the filing of bankruptcy) and come out the other end, with their inheritance intact.
- It enables you to control where the money goes if a beneficiary should die before all of the money has been distributed.

Your choice:

Outright ☐

If you choose outright, you are finished with this process!

In Trust ☐

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☞ **The next choice is to decide *how long* the trust will last; or, stated another way, how long do you want the benefits of protecting the inheritance in trust?**

Your choice:

- Some people choose to have the trust last for the lifetime fo that beneficiary, with any remaining assets to then be distributed to others, whether individuals or charities. In that way, they know the beneficiary is always safely provided for, and they know that they retain control over what happens to the assets if a beneficiary should die or be subject to negative financial stress. The trust provides creditor protection, because the assets in the trust remain safe and protected and available for the family, according to your wishes, and no one else can affect what you have drafted in your trust agreement.

- Some want to give the beneficiary outright ownership and control over their inheritance, with all the pluses (and minuses) of that ownership, but they do not wish to give them a large sum of money all at once. So, those folks choose to distribute assets in stages, so that if a beneficiary makes poor decisions, they have something to fall back on later on when a later installment is distributed. The number of installments, and the age of distribution is purely personal.

- A common choice is two installments, the first at 25, the second at 30.

- Some choose more installments, say over a longer period of time.

- Others choose to distribute assets as if the trust were an IRA, with a distribution every year, measured by the beneficiary's projected life expectancy, so the beneficiary doesn't outlive the trust.

Retain in trust for life

☐

Or

Distribute in stages?

☐

If the choice is to distribute in stages, then how many installments, and over what period of time?

Installments:	**Periods:**

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☞ **The next decision that must be made is to decide the rules for what the Trustee is to distribute during the lifetime of the trust.** The Trustee must know how to make distributions, if at all, while the trust continues.

Your choice:

- ☞ Some people are very liberal, encouraging the Trustee to make any distribution believed to be in the beneficiary's best interest.

Discretionary: ☐

- Others are more conservative, seeking to preserve principal, with distributions to be made only for genuine and severe need. (This rule is often coupled with the installment distributions discussed above, so that a beneficiary might not get automatic distributions from the trust, but every few years, the beneficiary receives a large chunk of the inheritance, free of trust.)

Liberal? ☐

- Some folks may choose to distribute income, but not principal, regularly, with no discretion involved.

- Others will direct a monthly allowance to be made, tied to the Consumer Price Index, say $3,000 every month, adjusted annually to keep pace with inflation.

Conserva-tive? ☐

- To motivate a beneficiary, some might choose a "matching plan" where the Trustee distributes one dollar (or more) for every dollar earned by the beneficiary each year, generally proven by the beneficiary's income tax return.

- Other times, there are certain specific concerns to be planned for, such as a medical concerns, drug or alcohol addictions, etc.

Other? ☐

Remember, you can choose different rules for different beneficiaries. In addition, these rules may change as the beneficiary grows older.

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☞ **Once you know what you want the trustee to do, then you must select the trustee.** This person will be in charge of handling your affairs when you cannot, paying bills, managing assets, and filing any necessary estate or income tax returns. It should be someone you trust and someone who is capable of handling financial matters.

Your choice:

Individual

☐

Professional

☐

Co-Trustees

☐

- Should you select an individual?
- Of course, any human being is subject to frailties, such as illness, change of heart, death, etc.
- An individual should be up to the job, meaning they should be able to manage and invest money, handle details, be able to prepare and file tax returns, etc. A person who hates those kinds of financial matters would not make a good trustee.
- They should have the time to do the job. This is not a gift, after all. That person will be taking on another job, in addition to all of their other life responsibilities.
- The alternative choice is to name a corporate fiduciary, such as a bank.
- The professional trustee knows what they are doing.
- It will likely always be there, act according to your wishes, and invest prudently and conservatively.
- The professional will certainly be paid a fee, usually a percentage of the trust estate, say 1.25% of the first million dollars, reducing from there; but, remember, the individual is also entitled to collect the same fee.
- A compromise between these two is to name an individual as a co-trustee with a bank, giving the individual who knows your family the power to make discretionary distribution decisions, and giving the bank the responsibility to invest and manage the money and keep all records and file all tax returns.

You should also be sure to name not only a first choice, but also backup.

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☞ **Is there anything else that you would like me to know or to do in your plan?**
For example, how should the animals be handled?

Special Instructions:

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