

Five Things to Know Before You Meet with Your Estate Planning Attorney

1. What is the difference between “probate” and “non-probate” assets?

Probate is the court-supervised process to settle your estate. A **probate asset** is an asset that does not pass by joint ownership, beneficiary designation, or trust. Examples of probate assets include:

- *Assets owned solely by you, such as real estate, personal effects, and bank account.*
- *Assets, such as life insurance, that do not have effective beneficiary designations.*
- *Assets that you co-own as tenants in common, such as real estate.*

A **non-probate asset** is an asset that is transferred by a method without the need for court administration. Examples of non-probate assets include:

- *Assets for which you have completed a beneficiary designation, with one or more beneficiaries who survive you.*
- *Assets that are owned by a trust or governed by a marital property agreement for disposition upon death.*
- *Assets that are titled with one or more surviving joint tenants.*

When you meet with an attorney, you’ll want to discuss the types of assets you own, how you want them to pass at your death, and how best to accomplish your goals. For example, if privacy and flexibility are your goals, there are several common estate planning techniques to avoid the cost, court involvement, and public nature of probate. On the other hand, the probate process in Wisconsin is usually quite simple, and the probate fees may be less than the cost of creating a more complex estate plan.

2. What information should I gather before the first meeting with the attorney?

Many attorneys provide a planning worksheet for you to compile the relevant information for your estate planning. Here’s an overview of what to bring to the initial meeting with your attorney:

- *A complete list of your assets, including documents showing how your assets are titled.*
- *The names of the people you wish to appoint in various roles, such as personal representative or trustee, financial agent, and health care agent. If you plan to leave assets to minor children, you’ll want to name a trustee for the children’s trust. Also, besides naming your first choice for each role, it is a good idea to have one or two alternates.*
- *A list of concerns that you want to discuss. If your family situation involves complex matters such as providing for someone with a disability or disinheriting a family member, be sure to raise those issues early with your attorney, so your planning can address those issues appropriately.*

3. What are most commonly used estate planning documents?

The following are the most commonly used estate planning documents:

- **Will.** A Will allows you to direct who receives your assets after your death and to name a person you want to administer your estate. If you have children who are minors or disabled, you can name a guardian for them. Having a Will does not avoid probate, but it does make the probate process more efficient.
- **Durable Power of Attorney for Finances.** A durable power of attorney for finances authorizes another person to act on your behalf, even if you become incapacitated.
- **Health Care Directives.** These documents give doctors and loved ones directions regarding your wishes and designate your substitute decision makers. A health care power of attorney names someone to speak for you when you cannot; a living will addresses certain end-of-life decisions; and HIPAA releases allow those you name to access your medical information.
- **Revocable Living Trust.** A trust can provide for management of your financial affairs during your lifetime, upon your death, and for future generations. A trust can help avoid probate, assuming that you have re-titled your assets in the name of your trust prior to your death.
- **Beneficiary Designations.** For retirement accounts, life insurance, and annuities, it is important to designate beneficiaries, so that those assets pass to your intended beneficiaries without probate and to receive applicable tax benefits.

4. When should I consider adding other documents to my basic estate plan?

The following situations may warrant additional documents to your estate plan:

- When a beneficiary is disabled and receives government benefits. (Special Needs Trust)
- When spouses wish to depart from the default provisions of Wisconsin marital property law. (Marital Property Agreement)
- When an estate is large enough that estate taxes are possible. (Additional tax or gifting planning)
- When unmarried individuals want to enter into an agreement about co-owned property and shared expenses. (Partnership Agreement or Tenants in Common Agreement)

5. In addition to drafting my individualized estate planning documents, what other services can an estate planning attorney offer?

An estate planning attorney can offer a variety of services, including one or more of the following:

- **Long-term Care Planning.** Some estate planning attorneys also focus in the area of Elder Law and can advise you regarding the costs and options for types of care, along with the sources for paying for care. In many cases, planning or applying for Medicaid benefits is involved, including preserving assets for you, your spouse, and possibly other family members.
- **Succession Planning.** The planning that you do as an individual will often overlap with any planning you have done related to your business interests or jointly owned recreational property. An estate planning attorney will be able to review your operating agreements to determine how they fit into your overall plan.
- **Estate and Trust Settlement.** Whether your estate plan will involve probate administration or avoid probate entirely, an estate planning attorney could provide assistance to assure that your plan is followed upon your death.

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