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The Essence of Estate Planning: Let the Journey Begin

By Richard M. Morgan & Loraine M. DiSalvo

At its most fundamental level, estate planning is about controlling the otherwise-uncontrollable. Death is inevitable; disability is increasingly probable as we age. When death or incapacity occurs, what happens to us, to our property, and to our loved ones? Planning in advance and taking advantage of our many applicable federal and state laws allows us to control what happens and name the person(s) who will effectively step into our shoes and make sure our plans are carried out as intended.

Many people think “I need to get a Will, but estate planning is for those folks with more money than me.” However, estate planning does not involve simply getting a Will, a trust, or a power of attorney, and you don’t have to have vast wealth in order for estate planning to be both beneficial and critical. The essence of estate planning is figuring out what you want to see happen in the event of your death or incapacity, and then taking the necessary steps to ensure that your desired outcome actually happens. These steps usually include drafting and signing various legal documents, but the documents are simply tools used to carry out the plan. The plan itself should be the main focus.

When we meet with an individual or family to help them develop an estate plan, here is a sample of the issues we may discuss, regardless of the size of their estates.

1. Who will be the guardian (quasi-parent) of your children if you pass while your children are under age 18? See [Fiduciary Selection: A Critical part of Any Well-Prepared Estate Plan](#) and [Goals of Estate Planning](#).
2. Who will make sure the intent expressed in your various estate planning documents is properly carried out? See [Fiduciary Selection - A Critical Part of Any Well-Prepared Estate Plan](#) and [Corporate Fiduciaries for Estate & Trusts: Reliability, Prudence, Reasonableness, Protection and Peace of Mind](#).
3. Do you care whether costs and hassles are minimized or avoided, so that the burden on your loved ones can be kept as light as possible? See [The Benefits of Proper Estate Planning](#) and [Basic Estate Planning Topics: What is a Self-Proving Affidavit, and Why Does My Will Need One?](#)
4. Does a Will or a Revocable Living Trust best serve your goals as your primary estate planning document? See [Should I Use a Will or Revocable Living Trust? Separating Facts From Fiction](#) and [What is a Trust?](#)



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5. If you are married, would you rather keep it simple and pass your assets to your spouse outright or would you rather provide additional benefits to your spouse and family by passing assets to your spouse in trust? See [Planning For Married Couples After the 2012 Tax Act: Should You Transfer Assets to Your Spouse Outright or in Trust?](#) and [What is a Trust?](#)
6. If you have a blended family situation, do you want your children from your prior marriage to actually receive any of your assets after you and your current spouse are both deceased? See [Estate Planning for Blended Families - Let Me Count The Ways; Planning For Married Couples After the 2012 Tax Act: Should You Transfer Assets to Your Spouse Outright or in Trust?](#) and [Blended Families \(A Case Study\)](#).
7. If you have family members with disabilities, how do you want to leave that family member money or other assets? Do you want that relative to spend down all of the money they receive from you before they can qualify to receive needs-tested government benefits such as Medicaid, or would you rather leave your assets in a trust that can be used to enhance your family members' lives without disqualifying them from any government benefits they may receive? See [Common Pitfalls When Planning Estates for Families with Special Needs Children](#).
8. Do you care if the assets you pass on to your children can be seized or accessed by a child's spouse in a divorce situation, by the child's potential creditors, or by predators of all types? See [Possibly the Best Way to Pass Assets to Your Children or Other Loved Ones: GST Planning - Part One](#); [Possibly the Best Way to Pass Assets On to Your Children or Other Loved Ones: GST Planning - Part Two](#); and [Perpetual Dynasty Trusts - Maximizing The Benefits Of Trusts By Structuring Them To Last Longer](#).
9. If you own a business, how do you want your family to benefit from that business? Do you care if your loved ones benefit from the full value of the business, or do you want to see it passed on to future generations? Are you willing to risk that the business will be liquidated for less than its full value after your death or disability? See [Planning - Especially Important for Business Owners](#).
10. Do you have any concerns about what will happen if you ever become incapacitated on a short or long-term basis? Is someone able to step in, help pay your bills and manage your affairs, and make health care decisions for you if needed? If you develop a degenerative or debilitating condition, what type of long term care plan do you envision? Where would you like to live during your final days? Does your family know what you would want in a hopeless medical situation? See [Preparing for Incapacity: The documents you Need and the Traps to Avoid](#); [When Mom Isn't Quite Right: Aging and Incapacity](#); [Planning for the Protection of the Elderly or Disabled](#); and [What To Do When It All Goes Wrong: Guardianship and Conservatorship](#).



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11. Do you have any concerns as to how your assets will be used by your loved ones after you are gone? Are you worried about the effect your assets could have on your beneficiaries' work ethics and self-sufficiency? See [Concern Over Spoiling Your Children](#) and [Long-term Trust-Based Planning Makes Focusing on Intent More Important](#).
12. Do you have any loved ones who may have drug or other dependency issues, make poor financial or life decisions or cannot otherwise be trusted with receiving an outright inheritance? See [Navigating the Estate Planning Pitfalls Created by the Taxpayer Relief Act of 2012](#); [Fiduciary Selection: A Critical Part of any Well-Prepared Estate Plan](#); [Corporate Fiduciaries for Estates & Trusts: Reliability, Prudence, Reasonableness, Protection and Peace of Mind](#); [Possibly the Best Way to Pass Assets to Your Children or Other Loved Ones: GST Planning – Part One](#); [Possibly The Best Way to Pass Assets On To Your Children or Other Loved Ones: GST Planning – Part Two](#); [Long-Term Trust-Based Planning Makes Focusing on Intent More Important](#); [Estate & Trust Disputes: Common Types and How to Avoid Them](#); [IRAs and Qualified Plan Accounts: Should You Pass Them to Beneficiaries Outright or in Trust?](#); and [Ethical Wills Revisited: What you really want to communicate to your loved ones](#).
13. Do you want to have assets benefit a favorite charity, or do you want to set up your own charitable organization? Do you want to help your loved ones develop a philanthropic outlook and learn to think of the well-being of others? See [Charitable Giving and Social Capital](#).
14. Would you like to ensure that no one fights about your assets or your estate plan after your death? Do you want to avoid creating or aggravating family tensions, such as sibling rivalries? See Newsletters listed under Question 2 above; [Estate Planning for Blended Families - Let Me Count The Ways](#); [Planning For Married Couples After the 2012 Tax Act: Should You Transfer Assets to Your Spouse Outright or in Trust?](#); [Should I Use a Will or Revocable Living Trust? Separating Facts From Fiction](#) and [Estate & Trust Disputes: Common types and How to Avoid Them](#).
15. Do you have concerns about tax issues, including not only the gift, estate, and generation-skipping-transfer taxes, but also income taxes? If so, are you willing to take reasonable steps to reduce the potential impact of taxes on your assets and your beneficiaries? See [Navigating the Estate Planning Pitfalls Created by the Taxpayer Relief Act of 2012](#).
16. How should you own your various assets and designate the beneficiaries on your IRA accounts, qualified plan accounts, annuities and life insurance policies? See [Importance of Proper Asset Ownership and Beneficiary Designations](#) and [IRAs and Qualified Plan Accounts: Should You Pass Them to Beneficiaries Outright or in Trust?](#)
17. How do you want to be remembered? Do you want to leave a legacy of more than just assets? See [Ethical Wills Revisited: What you really want to communicate to your loved ones](#).



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Our firm's philosophy is that our clients should be given the opportunity to control what happens during their lifetimes and after their deaths, to the extent desired, and make the right decisions for themselves and their loved ones based on their actual goals and desires, and situations. Our purpose is to educate and help our clients understand the issues they face and their many options for dealing with those issues. Our commitment to education cannot only be seen in our client consultations, but also in our newsletters and our website which contain detailed articles about the issues facing our clients. We encourage you to use our website to learn more about estate and long term care planning so you can make the right decisions for yourself and your loved ones.

Of course, in addition to education, you need experienced, knowledgeable, and passionate estate planning and elder law attorneys to assist you with considering and structuring your desired estate plan. We are here to help you with this very important process, offering complementary estate planning consultations, which are focused on helping you come to the right decisions for yourself. To schedule an appointment, please contact Karrah Speed at (678) 720-0750 or kspeed@morgandisalvo.com.