

TRUST

INVESTMENT PERSPECTIVES

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NEW YEAR'S RESOLUTION: REVISIT YOUR ESTATE PLAN

Now that the holidays are officially behind us, many of you are revisiting that final vestige of the season: the resolution list. Before you lace up your running shoes and dedicate the next 365 days to celery and lean protein, let me suggest a new resolution this year: tackle your estate plan.



A complete and updated estate plan gives you and your family guidance in a crisis. Your family, loved ones and care takers will have clear instructions on how to deal with both your assets and your healthcare in the event of your incapacity or your death.

A complete estate plan contains a key document: a durable power of attorney, which assigns a person to act for you, during your life, if you become incapacitated. This person is called your attorney-in-fact. It is not uncommon that attorneys create two separate powers of attorney; one to manage your finances and one to manage your healthcare decisions. Absent such a document, someone may have to petition a court for a guardianship over you.

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Guardianship is monitored by the court and requires accountings annually. As you can imagine, guardianship is costly and time-intensive.

Your estate plan should contain an advance directive for healthcare, often shortened to “advanced directives.” This is a document created by the State of Oklahoma that allows you to make decisions about your care in an end-of-life situation. This document deals with life sustaining treatment and the decision to receive artificially administered food and water if you cannot eat and drink on your own.

And of course, your estate plan should include a will and possibly a trust. A will is a document that becomes effective upon your death, after it is admitted into probate court. As an aside, the word probate comes from the latin probare, meaning “to prove.” A will must be “proved” to be your will and must be administered in court. Some states have shortened probate administration procedures, colloquially called simplified probate. Oklahoma is not one of these states, and probate matters can take months to conclude. A trust is administered outside of the purview of the court, making a trust both private and not constrained by the timelines dictated by the courtroom.

Both a will and a trust can clearly outline who you want to inherit, and what you want the individuals or non-profits to receive. If you want to disinherit someone, you need to clearly spell that out in your will or in your trust.

Likewise, if you would like to leave something to a charity or to someone who is not a relative, you need to clearly spell that out in your will or in your trust. If you have minor children, your will should nominate a guardian to care for them. Absent your nomination, a court will make that decision for you.

Remember to review your beneficiary designations. Proper beneficiary designations are an essential, but often overlooked, element in estate planning. An asset that has a beneficiary designation will transfer to that beneficiary outside of your will or trust. A flurry of accounts, including retirement accounts, banking accounts, vehicles, and even real estate can pass to a beneficiary through designations in Oklahoma. Designating a beneficiary can be deceptively complicated, as spouses often have certain rights and benefits with respect to certain retirement accounts and real estate.

NEW YEAR, FRESH START

Whether you are reviewing already established estate plans or meeting with an estate planning attorney for the very first time, resolving to get affairs in order is one resolution we should all make and keep. Our professionals at Trust Company of Oklahoma are here to help you make this the year that you keep your resolutions! 🍷