

# **HAVE YOU DONE PROPER ESTATE PLANNING?**

## **Introducing the Guidebook Planning Process.**

By Bob Pittman

Proper estate planning involves more than simply planning for your death. Certainly it is important to say who gets what when you die. But what about you? What happens if you are ever out of commission and unable to properly manage your affairs or care for yourself. What would you want done? Who should take care of your affairs? Who should take care of you?

Most estate plans are upside down, driven simply by tax planning. Tax planning is the last piece of the puzzle. Your planning should be first about you, then about your family, causes and concerns, next about asset protection and wealth preservation, and finally about taxes when appropriate. Do not be frightened into some “one size fits all” living trust trying to avoid a probate process that is typically not difficult and not terribly expensive. It is ok to avoid probate, but have a good reason. Discuss the reasons with your attorney.

Most estate plans simply don't work. Proper planning is not simply a transaction, but rather a process. Because life constantly changes, your planning needs to be reviewed on a regular basis and changed to reflect real life. You have to take responsibility for the updating of your planning when your life changes. Your attorney and other advisors will not know of changes unless you tell them. Your attorney can help you, but you must take charge.

What if you could create a Guidebook that would contain all of your legal documents (wills, trusts, powers of attorney, living wills, etc.), organized to be accessible when you need them, and containing lots of good instructions for you and your back-up crew so that you and your concerns are truly taken care of in proper fashion. You need to create your own personal instructions.

Imagine for a moment that you are incapacitated due to an injury or illness and you are unable to communicate with those around you. What do you want done? What do you like to eat? What do you like to read (someone could read to you)? What do you like to watch on TV? What kind of movies do you like? Maybe you want to be driven around the golf course once a week! What don't you want? Maybe you want to be surrounded by the people you love and the things that matter most to you. What if no one knew what you really wanted? Why not leave some instructions? *Why not prepare your Guidebook?*

*Planning should be a collaboration among your professional advisors and you, involving your financial and insurance advisors, your accountant, your estate planning attorney and others as appropriate. Your professional advisors may suggest a number of planning tools to help you achieve your goals and address your concerns. Your Guidebook can serve as the centerpiece of your planning.*

## **Introduction to Your Guidebook**

Your documents are designed to give what you have to whom you want, the way you want, and when you want.

This is your Guidebook, designed especially for you and your family. When disaster strikes, you and your family will find the instructions necessary to carry on in your best interests and in the best interests of your family.

In the event of your incapacity, the person you have named as successor trustee will want to review Article Four of your Living Trust immediately.

You should review the Key Information section of this Guidebook.

Keep your Portfolio documents current and keep accurate trust records so that your loved ones will be spared considerable time, effort, and expense following your disability or death.

We encourage you to call us if you have any questions with regard to your Guidebook documents. We care about you and your family and wish to be as helpful as we possibly can in meeting your living trust expectations and instructions.

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## **Contents of Your Guidebook**

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### **Introduction**

An overview of your Portfolio.

### **Key Information**

Essential information you should find helpful while maintaining your Guidebook and your documents. You will also find a discussion of what to do upon your disability or death.

### **Your Living Trust**

Your living trust agreement. A brief explanation of each Article of your living trust is included.

### **Pour-Over Will**

Your pour-over will, which leaves property to your trust after your death. You decide whether or not to have a “probate” upon your death by transferring assets to your trust during life or at death.

### **Powers of Attorney**

Durable Power of Attorney which allows loved ones and trusted advisors to help you should you become incapacitated.

**Funding  
Instructions**

General instructions about transferring your assets into your trust.

**Trust Transfer  
Documents**

Copies of all deeds, assignments, and other transfer documents which place property into your trust may be included here.

**Location  
Lists**

This is a “document finder” to help your back-up crew find your important papers.

**Health Care  
Powers**

Durable Special Power of Attorney for Health Care authorizing the holder or holders of the power to make health care decisions for you if you are unable to do so.

**Living Will**

If you are terminally ill, this document directs your physician to discontinue life support procedures.

**Memorial  
Instructions**

Your wishes and instructions with regard to burial or cremation and memorial service arrangements may be placed here.

**Property  
Agreement**

A property agreement may be used to cover property outside your trust.

**Personal  
Effects**

You may use a list or memo to say who gets your personal “stuff” like watches, rings, pictures, old newspapers, magazines and left-over junk mail.

**Other  
Documents**

Additional documents will be included based on your concerns.

## **Key Information**

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*Working together, we will create a key information section tailored to you.*

Instructions will be given to your back-up crew to allow them to help you if you are incapacitated or upon your death.

For example, if you are incapacitated, we might be telling your back-up crew to:

Check to see if any disability insurance is available and make immediate application for benefits (generally a monthly income benefit after some specified waiting period). Check on the availability of health insurance and long term care insurance.

Make copies of the durable general power of attorney, the health care power of attorney, and (if appropriate) the living will.

Check to see if dependent children or pets need to be cared for.

If a business or professional practice is involved, you will need to get involved immediately to preserve and protect the business or practice.

If a financial advisor has been engaged, the successor trustee should contact the advisor immediately for assistance.

*The Key Information Section is also where we will write instructions about what to do upon your death.*

## **What About Me?**

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If I am ever incapacitated and unable to communicate effectively, this information will introduce you to ME.

*This will be a homework assignment for you! Have a little fun with this.*

Imagine for a moment that you are incapacitated due to an injury or illness and you are unable to communicate with those around you.

- What are your hobbies?
- What do you like to do in your spare time?
- What do you like to eat?
- What do you like to read?
- What do you like to watch on TV?
- What kind of movies do you like?
- What kind of music do you like?
- What are some things you do not like or do not want?

## **Your Living Trust**

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If you use a Living Trust, this section will contain a copy of your living trust. Your living trust:

- Provides one planning document full of instructions for your care and the care of your loved ones.
- Provides continuity in the handling of your affairs by efficiently transferring your property to your loved ones.
- Avoids court involvement on your disability or death with respect to assets which have been transferred to your living trust.
- Easily moves with you from state to state.
- Creates protective trusts for your loved ones that are free from the supervision of the probate court.
- Can be easily changed should you desire to do so.
- Enables you to rely on your Trustees should you wish to travel or otherwise delegate the day-to-day management of your financial affairs.
- Is difficult for disgruntled heirs to attack.
- Ensures your family's privacy following your disability or death.
- Achieves your death tax objectives.

Please remember that your living trust has control over only that property which is actually transferred to it. Unless you or your loved ones can produce a document which vests ownership of a particular asset in the name of your living trust, that property may have to go through probate.

A plain language discussion of each of the articles contained in your living trust follows.

# **Your Living Trust**

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*A brief explanation of each of the Articles in your living trust.*

## **Article One**

This Article creates your trust. You wear three "hats" in your trust: one as a Trustmaker (the maker of the trust); one as the Trustee (the person making the trust decisions); and one as the Beneficiary (the person receiving the benefits from the trust and trust assets). We sometimes give Article One, along with the signature page, to banks, credit unions, brokers, etc. to show that the trust is in existence.

## **Article Two**

This Article tells about your family members.

## **Article Three**

This Article says that you are going to transfer your property into your trust.

## **Article Four**

This Article reminds you that you are in total control. You direct payments from your trust; you make all of the investment decisions; you may add or remove property; and you may amend or even revoke your trust. This Article also addresses the issue of disability, establishing a disability panel and providing instructions for your care.

## **Article Five**

This Article reviews your rights regarding insurance and retirement plans. It preserves all of your rights and elections.

## **Article Six**

This Article discusses what happens when the first spouse dies. For example, you need to pay the bills, make certain that all of the proper tax elections are made, and make the separation of assets into separate trusts in accordance with your trust instructions. You will want to have some help from your favorite attorney and CPA at this point.

## **Article Seven**

This Article spells out any specific distributions you want and allows for the distribution of your so-called tangible personal property, such as Aunt Martha's Clock, the picture on the wall in the dining room, your wedding ring, etc. You are able to use the personal property memorandums to dispose of personal property if you so desire.

## **Article Eight**

If you are married, this Article will have you sitting down with your favorite attorney and CPA after the death of the first spouse and allocating your assets between the Marital Trust and the Family Trust. This will save estate taxes.

## **Article Nine**

If you are married, this Article provides the "rules of the road" for the Marital Trust share.

## **Article Ten**

If you are married, this Article provides the "rules of the road" for the Family Trust share.

## **Article Eleven**

We may create some special trust provisions for survivors in this Article.

## **Article Twelve**

After you have died, this Article provides the instructions for distribution to your beneficiaries.

<p><b>NOTE: YOU MAY WANT TO ESTABLISH SPECIAL ARRANGEMENTS TO PROTECT YOUR BENEFICIARIES FROM LOSS OF THEIR INHERITANCE TO LAWSUITS AND DIVORCES.</b></p>
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## **Article Thirteen**

If all of your beneficiaries die before you, or with you, this Article tells us who will receive your assets – maybe a favorite charity.

#### **Article Fourteen**

A “what if” Article: if beneficiaries are too young, disabled, or abusing drugs or alcohol, this Article will provide guidance and protection for distributions.

#### **Article Fifteen**

This Article tells us who will serve as Trustees.

#### **Article Sixteen**

Some instructions for the Trustees are contained in this Article.

#### **Article Seventeen**

Since a trust is an artificial entity, we have to give it the powers to operate. This Article is a rather exhaustive listing of all of the powers of the Trustee.

#### **Article Eighteen**

This Article provides certain necessary definitions and a few general provisions.

This discussion of each of the Articles is only meant to be a helpful guide, to help you get your bearings while navigating through your trust. You need to refer to the actual Articles to gain a full understanding of your trust.

***While a lot of work goes into the production of your Guidebook, the peace of mind that comes from knowing that you have really done proper planning can be priceless.***