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Estate Planning in Montana: Getting Started

by Marsha A. Goetting, PhD, CFP®, CFCS, Extension Family Economics Specialist and Professor, Montana State University-Bozeman

Estate planning is the process of arranging your affairs regarding the use and distribution of your property. This publication covers six steps in estate planning as well as twenty common objectives.

Estate planning is a topic that is often avoided by individuals because it deals with attitudes and feelings about death, property ownership, business arrangements, marriage and family relationships that they or other family members may not be ready to contemplate. Some individuals have been overheard to say, "Estate planning is only for the old and rich." Nothing could be further from the truth. In today's complicated society all families, regardless of their resources and ages, can benefit from overall financial planning—one aspect of which is estate planning.

People who have experienced the death of a family member agree that it is worth investing some time and money to avoid the confusion, delay, expense and quarreling that sometimes occurs in families when an individual dies without an estate plan. Most people, when they stop and think about it, would like to have a say about what happens to property that they have worked so hard to accumulate. An estate plan is a tool that provides some aspect of control. If you don't bother to make a plan, state and federal laws will determine what happens to your real and personal property upon your death.

Accept the fact that you are going to die someday. Ask yourself: If I should die before tomorrow:

- What would happen to the property I've worked so hard to accumulate?
- Who would care for my minor children or aging parents?
- Would my spouse and children be provided for in a fair and equitable manner?
- Would the family business continue?
- Would the estate settlement be conducted by someone with my family's interests and needs in mind?
- Would estate taxes, probate fees and other administrative and legal costs be held to a minimum?

If you have not considered these and other related questions, now is the time to get started on your estate plan. This MontGuide is designed to provide you with the basic steps in the estate planning process.

What is Estate Planning?

Estate planning is the process of arranging your affairs to meet your objectives regarding the use, conservation and distribution of your property. Basically, estate planning is a part of your overall financial plan because it involves the coordination of all your properties (stocks, bonds, cash, real estate, business interests, life insurance, retirement benefits and other assets) into a total program.

You can't take these "riches" with you. Since someone is going to inherit your real and personal property, it seems only sensible to have the results of your hard-earned efforts distributed according to your wishes. And, by planning you can conserve as much of your assets as possible from estate taxes and the other costs of estate settlement.

Steps in Estate Planning

There are six basic steps in the estate planning process:

1. Initiate the discussion.
2. Take stock of the present.
3. Develop objectives.
4. Choose professional advisers and discuss objectives.
5. Consider alternatives and implement the plan.
6. Review and modify.

Step 1: Initiate the Discussion

Perhaps the greatest hurdle to overcome in most families is lack of communication. All too often, family members are hesitant to discuss estate planning. Parents considering retirement may wish to delay any discussion because of the unpleasant overtones connected with growing old and dying. Adult children may hesitate to mention estate planning because they want to avoid placing additional stress on their parents and grandparents, and because they don't want to appear greedy or as trying to take over.

How do family members initiate a discussion about the need for an estate plan without causing misunderstandings? One way may be to use this MontGuide as a conversation piece. Share what you learn with other family members. Encourage them to read other MontGuides in the estate planning area; these are available from the MSU Extension Service (see list on next page.)

Other ways to stimulate conversation could include reading books, magazine articles and publications from banks, trust companies and other reputable sources. Sharing information from estate planning meetings is another way to get a conversation going. What you learn from these meetings may serve as a basis for discussion and illustrate the benefits of planning and the consequences of not planning.

Other opportunities for mentioning the topic of estate planning may arise from visits with attorneys, bankers, accountants, insurance representatives and certified financial planners. A discussion of estate matters may come up in an incidental fashion and serve to initiate action. It's tragic, but true, that the death of a neighbor, friend or relative may lead a family to realize that estate planning is not a subject to be overlooked. Don't be put off by family members who are not ready to talk. They may never be, and later may be too late!

Once a dialogue is initiated, many families find it's easier to discuss their situations, concerns and objectives. Difficult decisions may need to be made—and they may be decisions upon which not every family member will agree. But the alternative of doing nothing allows Montana and federal laws to decide how the estate is distributed. Neither entity has an appreciation of your unique family situation.

Step 2: Take Stock of the Present

The next step in formulating an estate plan is to make a critical review of your present financial situation. This step is crucial, because it becomes the foundation of your entire estate plan. The end result will be satisfactory only if the information is complete. The checklist on the back page, "What My Attorney Should Know," provides examples of information needed. The list asks for pertinent facts, family information, locations of legal and business papers, and names and addresses of persons you consult for advice. The checklist also will help you determine what your estate contains (liabilities, as well as assets), its value and how real and personal property is titled.

Step 3: Develop Objectives

As you begin forming an estate plan, establish your objectives. What do you want to accomplish? Objectives vary from family to family because of differences in assets and liabilities, aptitudes and ages of survivors, number of children, and values that are important to the person making the estate plan. The individual objective of each family member, as well as the family's overall objectives, may be considered. Objectives may change with age, marital status, income, quantity and kinds of new property acquired and other circumstances.

Some common objectives are listed in the chart. Check those that apply to your situation, and add the others to the list. If there is conflict among objectives, rank them in order of importance.

Step 4: Choose Professional Advisers and Discuss Objectives

Since estate planning has become technical and complex, most people do not have the time to learn all they need to know to plan an estate thoroughly. Neither can they be expected to keep up with changes in Montana and federal laws. That's where a team of professionals—such as attorneys, certified public accountants, financial advisers, trust officers and life insurance underwriters—can be of assistance. An attorney with expertise and experience in property law, probate, trusts, tax law and other estate settlement issues generally serves as the key person on the team, coordinating the work of others.

When working with professionals to design and implement an estate plan, you may discover that they

Common Estate Planning Objectives

1.____ Provide security for surviving spouse.

2.____ Relieve surviving spouse of estate management responsibilities.

3.____ Provide security for both spouses after retirement.

4.____ Retire at age ____.

5.____ Provide security for an incapacitated family member.

6.____ Assure continuity of farm, ranch or other business.

7.____ Provide educational opportunities for beneficiaries.

8.____ Assist beneficiaries, including in-laws, to get started in business.

9.____ Minimize federal estate and Montana estate taxes.

10.____ Name guardians, conservators, or trustees of minor children.

11.____ Name a personal representative for the estate.

12.____ Provide means for paying expenses of estate settlement, taxes and other debts.

13.____ Provide equitable (not necessarily equal) treatment of family members.

14.____ Transfer specific property to specific people.

15.____ Make gifts to family members and others during lifetime.

16.____ Reduce income taxes by disposing of income property during life.

17.____ Transfer property during life by installment sale.

18.____ Provide for charitable bequests to favorite charities or organizations.

19.____ Minimize probate and settlement costs.

20.____ Review current operation and ownership of farm, ranch or other business.

have different opinions on the recommended best course of action for your situation. You have the final say, however. It's important that you be as knowledgeable as possible about your situation, and to clarify your objectives.

Step 5: Consider Alternatives and Implement the Plan

There may be several different ways to reach your objectives. Ask questions so you will completely understand the plan and its implications. Ask your professional advisers to explain the alternatives from legal and tax angles. Also, explore the consequences of each alternative from the family's perspective. As an example, while the special-use valuation for farm and ranch property may save federal estate taxes, the surviving family members may not be comfortable with a federal government lien on the property for 10 years.

Decide who is to receive what, when, and how. A sounding board—someone to talk things over with and receive reactions to your ideas—may be needed. Your spouse, a friend, a partner, or one of your professional advisers could serve in this capacity. A sounding board may help you explore the needs of your beneficiaries, your property and its value to your family, and the proper balance between providing for your own future and meeting your estate planning objectives.

Once the estate plan has been formulated, it is important that it be implemented. Otherwise, the time, energy and money involved in the previous steps may have been wasted.

Step 6: Review and Modify

After you have completed your estate plan you can relax—but only temporarily. We live in a world of continuous change, so your plan should change with your circumstances. For example, the value or nature of your property may change; your objectives may change; beneficiaries may marry, divorce, die or have children; or Montana and federal estate tax laws may be revised. Some professional advisers suggest a review of an estate plan every three to five years, or whenever there is a major change in your situation or in the tax laws.

What Can a Good Plan Do For You?

A good estate plan can help provide financial security for you and your family members— now and in the future. A properly designed plan may save thousands of dollars in income taxes, federal estate or gift taxes, Montana estate taxes and other estate settlement costs. A well-thought-out estate plan may help protect your family from bitter quarrels by providing for contingencies, and prevent the forced sale or disposition of a farm, ranch or family business. A plan can also provide for skillful property management for younger family members, as well as for older family members who can no longer manage their own financial affairs.

Summary

No one will force you to plan your estate. You may do nothing, if you wish. However, by not doing so, you allow others to make the decisions for you. For example, your solely owned or share of tenancy-in-common property will pass to those in the proportions prescribed by Montana intestate statutes. This may or may not be the way you would prefer your estate to be distributed. Planning also allows you to conserve as much of your assets as possible from federal estate taxes and other costs of estate settlement.

MSU Extension MontGuides: Estate Planning

- Accessing a Deceased Person's Financial Accounts (MT 200301 HR)
- Annuities. (MT 199213 HR)
- Cremation (MT 200201 HR)
- Custodial Accounts for Kids Under Age 21. (MT 199910 HR)
- Designating Beneficiaries through Contractual Arrangements (MT 199901 HR)
- Dying Without a Will in Montana. (MT 198908 HR)
- Estate Planning for Families with Minor Children. (MT 199117 HR)
- Federal Estate Tax. (MT 199104 HR)
- Gifting: A Property Transfer Tool of Estate Planning. (MT 199105 HR)
- Letter of Last Instructions. (MT 198304 HR)
- Life Insurance. (MT 199211 HR)
- Medicaid and Long-Term Care Costs. (MT 199511 HR)
- Montana Estate Taxes. (MT 200105 HR)
- Montana Rights of the Terminally Ill Act. (MT 199202 HR)
- Non-probate Transfers. (MT 199509 HR)
- Power of Attorney. (MT 199001 HR)
- Probate. (MT 199006 HR)
- Property Ownership. (MT 198907 HR)
- Revocable Living Trusts. (MT 199612 HR)
- Talking With Aging Parents About Finances. (MT 199324 HR)
- What is a Personal Representative? (MT 199008 HR)
- Who Gets Grandma's Yellow Pie Plate: Transferring Non-Titled Property. (MT 199701 HR)
- Wills. (MT 198906 HR)
- Your Important Papers: What to Keep and Where. (MT 199611 HR)

Visit the Estate Planning Website:

http://www.montana.edu/extensionecon/publications/estate.html

What My Attorney Should Know

Time and money can be saved by having necessary information and documents in hand for that first visit with your attorney and other estate planning professionals. This checklist is a condensed summary of some of the legal information your attorney will require. Actual documents may also be needed—such as wills, deeds, major debt instruments, past gift tax returns, income tax returns and financial statements for the past five years, trust instruments, information about the income tax basis of property, and any other document that will clarify how property is titled or who would be responsible for the debt.

____1. **Personal information:** family members' names, birth dates, addresses, occupations, social security numbers.

____2. **Real estate:** type of property and size, location and description, year acquired, cost, how titled, market value.

____3. **Personal property:** motor vehicles, machinery, livestock, crop inventory, home furnishing, jewelry, art, antiques, personal items. Provide a description that includes cost, value, ownership, how titled.

____4. **Checking and savings accounts:** name of institution and location, exact names on accounts, amounts, how titled on signature card, number of each account.

____5. **Stocks, bonds and other securities:** description, when purchased, number, exact name of owner, face value, costs.

____6. **Life insurance:** company and address, policy number, face amount and any supplemental values, cash value and any outstanding policy loan, exact name of owner, name of insured, beneficiary.

____7. **Trusts:** type, location, trustee, who established, exact name of beneficiary, value of trust property.

____8. **Notes, mortgages and other accounts receivable:** description, year acquired, value, person who owes you, repayment plan.

____9. **Mortgages and other real estate debts:** description, name of creditor, date due and amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured.

____10. **Liens against personal property:** description, name of creditor, date due, remaining amount to be paid, whether debt is an individual or joint responsibility, whether insured.

____11. **Other personal liabilities:** unsecured notes, notes endorsed, real estate taxes, personal property taxes, state taxes, federal taxes, unsettled claims—name of creditor, date due, amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured.

____12. **Retirement benefits:** pensions, profit sharing, deferred compensation, individual retirement accounts, social security, qualified domestic relations orders, amount invested, accrued benefits, annual benefits, death benefits.

____13. **Other financial information:** income last year, current income, salary, qualified domestic relations orders, retirement income, annuities, rents, interest, bonuses, dividends, trust, capital gains.

____14. **Taxable gifts:** amounts, when made.

____15. **Location of important documents:** all wills, trust documents, deeds, insurance policies, stocks and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnerships and corporation agreements, profit sharing plans, marriage dissolution decrees, pre- and post-nuptial agreements, employment contracts, pension benefits.

MSU Extension publications "Record of Important Papers" (Circular 1241) and "Your Important Papers—What to Keep and Where" (MT 199611) may be helpful in gathering some of this information. They are available at your county Extension office.

Disclaimer

This publication is not intended to be a substitute for legal advice. Rather, it is designed to create an awareness of the need for estate planning and to help families become better acquainted with some of the devices involved. Future changes in laws cannot be predicted, and statements in the MontGuide are based solely upon the laws in force on the date of publication.

Acknowledgments

The Business, Estates, Trusts, Tax and Real Property Law Section of the State Bar of Montana has approved this MontGuide and recommends its reading by all Montanans.

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