

THE IMPORTANCE OF ESTATE PLANNING

Introduction

Estate planning involves the determination of how an individual's assets will be preserved, managed, and distributed after the death of that individual. It takes into account the management of an individual's properties, and financial obligations in the event of incapacitation.

A common misconception borne by many is that estate planning is predominantly for the wealthy or elderly persons. In Nigeria, statistics indicate that prior to 2000, a meagre two out of ten persons had planned their estate in the event of demise. The number increased in 2010 to six out of ten and in 2020, eight out of ten persons have planned their estate in the event of an unfortunate occurrence.

It is advised that due to the unpredictable nature of life, it is of sacrosanct importance that everyone engages in estate planning regardless of the size of their estate or age. It is crucial as it to a very large extent, ensures the security of an individual's financial legacy as well as ensures that an individual's wishes are honored. It is essential that you look to protect accumulated assets and also ensure provision for loved ones.

What Estate Planning Entails

Estate planning includes making a will, setting up trusts, making charitable donations, naming an executor and beneficiaries and possibly setting up funeral arrangements.

Importance Of Estate Planning

Protection of Assets and Beneficiaries: with a properly planned estate, assets and beneficiaries are adequately identified and allocated as there are specific directives that must be adhered to on the passing of a testator.

Trusts are particularly useful for safeguarding beneficiaries like minors or those with special needs. Estate planning ensures that the legacy of the testator is preserved, and beneficiaries are adequately supported.

Avoiding Family Disputes: Clear estate plans prevent family conflicts by providing explicit asset distribution, instructions and designated trusted managers. This transparency is essential in blended families or complex inheritance scenarios as open communication ensures harmony in the bid to adhere to your wishes.

Documents Essential For Estate Planning

A robust estate plan includes Wills and Trusts.

Wills

A will is a legal document through which a person (testator) declares how their assets should be distributed after their death.

Writing a will is an essential step in ensuring that a testator's assets are distributed according to the testator's wishes.

Considerations When Drafting A Will

Record Keeping

One essential part that can be used to avoid delays and location of assets is adequate record keeping. It is essential to keep records that will assist the executors and beneficiaries on the demise of the testator.

A good firm can assist with keeping an audit on a testator's assets. Please ensure to include everything including digital assets for easy identification and valuation.

Capacity to make a will

In drafting a will, the testator must be at least 18 years of age and of sound mind. The only time anyone under the age of 18 will be considered to have the legal capacity to make a will is if such an individual is serving in the armed forces during a conflict.

The testator must have also made it voluntarily without undue influence or coercion. The will must be signed by the testator in the presence of at least two witnesses that are usually not beneficiaries.

Applicable Laws

The Wills Act of 1837 is applicable in many southern states of Nigeria whilst customary or Islamic laws apply in Northern States. It is important to note that often, a statutory will may override customary laws, some regions prioritize customary practices especially as it relates to land or inheritance.

Executors

Executors are considered the managers of the estate on the demise of the testator pending when the assets are distributed. In choosing an executor, whilst it is sometimes impossible to ascertain the credibility/integrity of people it is essential to consider the capacity of the prospective executor to handle the estate as well as someone who has impeccable integrity.

It is advised that the testator also names an alternative/alternate executor if the primary choice is unavailable.

It is essential to take into consideration the applicable customary law in appointing if there are any restrictions. For instance in some parts of the southern states, if a woman is appointed an executor, her appointment can be contested.

Asset Distribution and Customary Laws

It is of immense importance that a testator specifies how he wants his estate divided with clear indications of what each beneficiary should inherit. It is very important that this is as clear as possible with no room for vagueness.

If there is someone who ordinarily should be a beneficiary and the testator does not want the said person inheriting any of his assets, it is essential that it is expressly stated to avoid any disputes.

In dividing and sharing assets, it is essential to seek advice as to the applicability of customary laws and religious laws which might influence inheritance. For instance, under some customary laws, women may be excluded from inherited property, also, if a testator's assets include ancestral land, the customary law of the community may override the will.

For instance, according to Sharia Law, male heirs inherit double of what female heirs inherit and a widow receives 1/8 of the late husband's estate if there are children while the remainder goes to other heirs. Also, Sharia law prohibits non-Muslims from inheriting property of Muslims.

Drafting the Will

For a will to be legally binding, it must be written, signed and witnessed by at least two (2) independent adults that are not beneficiaries. To avoid dispute, ensure witnesses are neutral parties with no interest in the estate. Ensure you employ the services of a good lawyer/law firm to draft your will.

Please note that whilst handwritten wills are also enforceable in Nigeria, if it complies with the prescription, it is strongly advised to engage a lawyer/law firm to draft your will.

Tax Implications and Debts

It is essential to take into consideration the relevant estate taxes and probate fees. Probate fees range between 5% and 10% of the estate's value.

Updating Wills

Another common misconception is that you may not have finished acquiring assets, and sometimes, incidents happen during the course of our lifetime such as marriage, divorce which may necessitate updating the will.

In such an instance, a will can be updated through the filing of what is known as a codicil.

Registering the Will and safe keeping of the Will

For the will to possess legal validity it is essential that it is registered in Probate. It is important to keep a copy with a lawyer, a copy for yourself and inform the executors of the various places where they have been kept.

Registration with probate though not mandatory gives it legal validity and is usually used to avoid disputes.

Trusts

Another tool used for estate planning is an instrument known as a Trust. A trust is a legal fiduciary arrangement that allows you to set up your assets to be held and managed by a third party known as a trustee and the trustee (either a person or a firm) appointed will be responsible for ensuring that your estate is handled in the manner outlined by the testator.

Through a trust, a grantor transfers assets to a trustee, who manages the assets for the benefit of beneficiaries. The trustee is a fiduciary obligated to handle the trust assets by the terms of the trust document and solely in the best interests of its beneficiaries.

The general belief is that trusts are for overly rich persons, but in reality, it can be beneficial for all sized estates. Some benefits to establishing a Trust include:

- Avoids probate and ensures that the assets pass to beneficiaries quickly and privately.
- Allows the grantor to maintain control and flexibility over the assets.

- Trusts can be used to manage the assets in case of the grantor's death by specifying how assets should be distributed over time (e.g. installments or at a certain age) making it appropriate for instances when there are minor beneficiaries or when there is incapacity of the testator by designating a successor trustee.
- A Trust can be an instrument used to cater for the testator in the event of incapacitation as well as settle any debts.
- It can be private as there is no need for the disclosure of the value of the estate.

Trusts are flexible and can be used during the grantor's lifetime through an instrument known as Living Trust or after death in an instrument known as Testamentary Trusts.

Living Trusts

This type of trust is created during the grantor's lifetime and can be altered, amended or revoked at any time. The grantor retains control of the assets in the trust and can use, sell or transfer them as desired. It is essential to note that assets in a Living Trust pass outside of probate but are included in the grantor's taxable estate.

It is always advisable to have a carefully drafted will, even if most assets are held in trust to avoid delays in probate. A will and a trust can complement each other, allow swift asset transfers and maintain confidentiality concerning sensitive assets.

Conclusion

A will is sacrosanct in anyone's life time to avoid any possible disputes that can arise on the passing of an individual. It helps mitigate issues and ensures that beneficiaries as desired by the testator are appropriately catered for.

Should you wish to speak further on the planning of your estate, do not hesitate to contact our wealth management and estate planning team.

THANK YOU.

Do not hesitate to contact us should you require further information at;

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