

# Golden Years

Planning is key in preparing for retirement

by Ronald S. Matheny, Esq.



Earlier in the year, The Arizona Republic reported that one in four Arizona residents is a baby boomer, with the youngest in the range just hitting 40 years old. And perhaps like no other generation before, this retirement segment will take a healthy and vibrant approach to their retirement, which will span an average of 30 years. While hobbies such as golfing, oil painting and traveling will be on the agenda for many of these boomers, so will proper estate planning.

For many, basic estate planning will mean implementing various legal documents such as wills, trusts, powers of attorney and living wills to facilitate the management and administration of estate affairs during life and after death. A popular technique for asset administration is the revocable living trust. With this trust, an individual (called the “transferor”) transfers legal title to assets to a trustee who then has a fiduciary duty to administer the assets for the benefit of the transferor during the transferor’s lifetime (which is most important if the transferor becomes incapacitated) and later for the other designated beneficiaries after the transferor’s death. With the trustee holding legal title to assets, issues such as conservatorship and probate are avoided. This trust has further appeal because, during the transferor’s lifetime, the transferor retains the authority to amend or change the trust terms to accommodate changing circumstances.

With the proper implementation of a living trust, the primary purpose for a will is relegated to designate guardianship appointments for minor children left without a parent and, if desired, outline specific funeral and burial instructions. Powers of attorney, both financial and medical, and living wills are useful only during one’s lifetime. The financial power of attorney allows a person to designate an agent to control the person’s assets, not including assets that have previously been transferred to a living trust, effective immediately or only during a specific period, such as when a person becomes incapacitated. The medical power of attorney works in the same manner except the agent’s authority is limited to administering a person’s medical concerns. The living will is yet another form of medical authority directed specifically at dictating the type of medical treatment a person desires during a period of terminal illness.

Advanced estate planning typically involves the use of other trust strategies different from the living trust and most often irrevocable in nature, usually with an aim to minimize various taxes. Two common forms of advanced trusts are the charitable remainder trust and the life insurance trust. With the charitable remainder trust, the transferor makes a donation to the trust in return for an immediate charitable tax deduction and a period of annual payments, usually lasting the lifetime of the transferor. After the trust receives the donation, the trustee can liquidate the asset, if desired, incurring no capital gains treatment. With the insurance trust, the transferor gifts sufficient funds to the trust to enable the trust to purchase a life insurance policy on the transferor’s life. The beneficial result to the transferor is that the life insurance policy and the resulting death benefits are owned by the irrevocable trust, thus escaping the transferor’s estate tax liability, where the proceeds can be administered for the transferor’s descendants free from both income and estate taxes. As each estate is unique and the desired plan specific to the wishes of the estate owner, it is important to consult with an experienced estate planning attorney when considering what type of plan is most suitable to accomplish the preferred goals.

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