What do you want to be remembered for?

It’s a question that most people contemplate at least once in their lives. Perhaps it’s the adventurous sense of spirit that takes you to all corners of the earth. Or maybe it’s the incredible kindness you show to your loved ones. But what about the impact you want to have with your more tangible assets? This is where legacy and estate planning can come into play.
What is the difference between legacy & estate planning?

**AT A HIGH LEVEL,** estate planning ensures you have a plan for potential incapacity or death, and that your assets are distributed according to your wishes. Legacy planning is about giving your estate plan a sense of purpose. This may also include philanthropic goals in addition to family beneficiaries.

Despite how you categorize them, legacy and estate planning can be overwhelming – both financially and emotionally. And they require careful planning and strategic foresight to successfully provide for your current and future financial needs.

*The Personal Capital Legacy & Estate Planning Guide* is designed to help you understand the impact of what you leave behind, what you choose to give away, and all the complexities surrounding them.

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All legacy/estate planning and charitable giving analysis and insight provided are extended to you as a courtesy for educational purposes only. You should not rely on this information as the primary basis for legacy/estate planning and charitable giving decisions. We are not licensed legacy/estate planning and charitable giving professionals. You should consult a qualified licensed professional regarding your specific situation.
When to review your legacy plan

Changing circumstances may dictate the need to change your plan. Here are some of the times you may consider reviewing – and/or changing – your legacy plan:

- Family member experiencing estate and/or health issues
- Change in government policy and/or estate or tax law
- A liquidity event or large changes in net worth
- Changes in your relationship with your beneficiaries
- A new beneficiary, such as a child
- A move to a new state
- Divorce
- Marriage – first & especially second
- More involvement with charity
- Every five years based on potential changes in tax code

Talk to a financial advisor to learn more.
Estate Planning

The heart of an estate plan is figuring out what will happen to your property if you become incapacitated or when you pass away.

**IT IDENTIFIES** the people you want to benefit from your assets, and those you trust to take care of them and yourself if you’re unable to do so.

Your estate includes property such as cash and securities, real estate, insurance, trusts, annuities, business interests, and other assets. When calculating your estate, the fair market value – not necessarily the purchase price – is used.

In addition to determining where your property should go, your estate plan will include decisions about children or other beneficiaries, taxes, probate, healthcare during life, and decisions to be made on your behalf during and after life.
What Documents Do I Need?

When you review your estate planning goals with a local estate planning attorney, you will receive recommendations to establish powers of attorney, living will and a last will and testament. Depending on your own unique situation, your attorney may recommend a living trust or other more advanced estate documents based on your goals.

The following guide covers some of these key estate planning documents.
Prepare To Create/Update Your Estate Plan

Here are some helpful items to think about and/or prepare when you meet with your estate planning attorney.

1. **Establish who will administer your estate plan.** This could be family, friends, or even a professional service.

2. **Decide who will be the primary and secondary heir(s) of your estate.** This could be your spouse, family members, friends, and/or charitable beneficiaries.

3. **Have a snapshot or summary of your assets** including their current market value, how they are titled/owned, account numbers, deeds, and related contact information.

   **SOME EXAMPLES OF THESE INCLUDE:**
   a. Cash/bank accounts
   b. Investment/brokerage accounts
   c. Real estate
   d. Retirement plans
   e. Health Savings Accounts (HSAs)/educational savings plans
   f. Life insurance
   g. Annuities
   h. Closely-held business interests (e.g., an LLC, a partnership, or family business assets)
   i. Any received or expected inheritances
   j. Household property, such as jewelry, artwork, vehicles, or belongings of sentimental value

4. **Determine the key people who will be required to take action on behalf of your estate plan.** These people may include: Who would be named your executor/trustee; the person who would make medical decisions on your behalf; and your designated guardian(s) for any minor or disabled children.

5. **Think through how you want your wealth distributed to your heirs** (which may include any entity from your family and friends to your preferred charities)

6. **Find any existing estate plan from the past or any estate planning documents you need to review and/or update**
Last Will & Testament

A LAST WILL AND TESTAMENT is a legally binding document that distributes your assets and assigns executors, heirs and guardians after your death. While people tend to think planning a will is morbid, it’s actually about life and making sure that your assets provide support for the people you love. According to a recent Gallup poll, only 44% of Americans have a will. Are you one of the majority without one?

If you do nothing else to take care of your legal affairs, you should at least write a will. If you don’t have a will before your death, your estate will be subject to state law guidelines and a judge may decide what happens with your estate and your beneficiaries.

WHAT HAPPENS IF YOU DON’T HAVE A WILL?

If you pass away without a will, the intestacy laws of your state will determine what happens to your property and assets. Typically, your spouse (domestic partner in some states) or children will be the first to inherit your assets; if you are not married and don’t have children, then other relatives may be the recipient of your estate.

No relatives? The state usually receives your assets and property in that case. If you are not married, but have a long-term partner, then not having a will that clearly states how you intend your assets to be distributed can mean your final wishes will be ignored.

Since intestacy laws usually only recognizes relatives, you will want to clearly state your intentions in a will. The laws of succession vary based on what state you live in, so make sure you check to see what the laws are – or better yet, make sure you have a will. Contact an estate attorney to learn more.

Requirements of a Will

Most states require the following for your will to be valid:

- Be at least 18 years old.
- Be of “sound mind.”
- Include what you want done with your assets & property; if you have minor children, include who will become guardian.
- Usually wills are typed or generated by a computer (handwritten wills have different provisions), & should include the statement that this document is your will.
- Appoint an executor who will ensure your estate is distributed correctly according to your will
- Have at least two witnesses who are age 18 years or older, are not beneficiaries & who will see you sign the will.
Living Will/Advanced Directive

A living will is a directive to medical professionals regarding preferences for end-of-life care if you unable to speak for yourself.

A POWER OF ATTORNEY for health care grants a trusted advisor the ability to navigate health decisions should you become incapacitated. In some states, both functions are combined in a single document, the advanced health care directive.

Two key considerations are your medical and financial powers of attorney. As the name suggests, a medical/healthcare power of attorney, which is a type of advanced directive, designates someone to manage your medical needs. This person would make any necessary healthcare decisions for you, communicate with doctors, and work with any other healthcare providers so that you receive the proper treatments.

A financial power of attorney, on the other hand, designates someone to manage your financial matters. It’s a simple, inexpensive, and reliable way to make sure you have a plan for financial decisions if you become incapacitated and unable to make decisions. You may not think that you need a financial power of attorney if you’re married. The truth is, designating one can make life much easier for your family to make financial decisions on your behalf if you become unable to do so.
Powers of Attorney

Two types of powers of attorney are:

**Standard Durable Power of Attorney** – This authorizes a designated individual to act immediately on your behalf, including if you become temporarily or permanently incompetent or incapacitated. This type of authorization ceases when you pass away.

**Springing Power of Attorney** – This authorizes an agent to act on your behalf only if certain conditions are met, such as if you become permanently incapacitated, as determined by a medical doctor. It, too, ceases when you pass away.

Because such powers carry heavy responsibilities, you’ll want to verify that your powers of attorney are in place and still appropriate on a regular basis. Most financial companies will have their own power of attorney forms if you want to establish it on certain accounts. Some states will have their own forms that you can use for free as well. As long as you are mentally competent, you can always revoke any financial power of attorney.

Probate

**Probate is the process of the court deciding who receives the deceased’s assets.** It is a costly, public process that delays the distribution of assets, and can cause strife if one or more people contest the will. In most cases the courts follow the will (if established), but the courts can be avoided by adding a beneficiary to retirement accounts or a Transfer on Death (T.O.D.) to a taxable account.

Trusts avoid probate, and are harder to contest. The average probate takes months before the inheritors receive assets. In many cases, about 5%-7% of the property has been eaten up by lawyers and court fees. Probate also results in a public record of your property and who received it, whereas a trust keeps this information private.

Updating your will

If you have a will, you want to make sure it’s current, and written in a way that will avoid conflict for the rest of the family. You may want to consider the number of beneficiaries you have, or whether there are grandchildren to whom you wish to bequeath your property. Do you have a plan in the event that you and your spouse pass at the same time? An estate planning attorney and a financial advisor – even if there isn’t a trust involved – can be great resources.

Not having an updated will that reflects your current situation can cause strife within an already grieving family. Double-check your will on a regular basis to make sure it’s written to reflect your desires based on your current circumstances.

Talk to your financial advisor to learn more.
When it comes to estate planning, most people associate trusts with the ultra-wealthy. In reality, trusts can be useful for those who want a tax-savvy means of passing their estate onto their heirs, as well as helping determine how your property should be managed during life and beyond.

Trusts can be helpful for families of all sizes and incomes, but creating and administering a trust is a complex, time consuming and a relatively expensive process. The decision of whether to set up a trust – and if so, what type of trust to set up and what provisions to include – depends on your individual circumstances and goals.

WATCH
The Importance of a Trust

0:46
What Is a Trust?

A trust is a legal entity you set up to hold, safeguard, distribute and control your property, i.e. the assets you place into the trust.

There are several players who are involved in creating and administering a trust:

**Trustor**
Also known as the “grantor” or the “settlor,” this is who sets up the trust.

**Trustee**
The person(s) or entity that manages the trust's properties.

**Successor trustee**
The successor trustee takes over if and when the original trustee dies or declines to serve.

When you create a trust, you create rules and provisions that describe what is to be done with the assets under trust. For the trust to work best at carrying out your intentions, you usually decide what type of trust will suit your objectives, follow all the rules for that type of trust and make sure all the legal requirements continue to be met over time.

**Is a trust right for you?**

Some factors to consider in determining whether a trust is the right vehicle for you include the following:

- You're middle-aged or older, or in poor health
- Simpler probate-avoidance methods aren't available
- You own out-of-state real estate
- You're concerned about privacy
- You're concerned about incapacity

If your net worth is over $10 million, or you want to leave property to a person who has a disability or cannot be trusted to manage money, you may want to establish a more complicated trust. Of course, this isn't a full list of considerations. Contact a financial advisor to determine whether a trust is right for you.
Trust Benefits

There are many reasons to set up a trust. Some of the common benefits of creating a trust include (but are not limited to) those surrounding:

- **Taxes**
  Avoiding or reducing estate and gift taxes is probably one of the most popular reasons why people set up a trust.

- **Probate**
  If you have a will, the assets included in your will must pass through the state’s probate process, which can be time consuming and, depending on the state, costly. A trust on the other hand can directly and quickly pass the assets to beneficiaries.

- **Estate Protection**
  A properly constructed trust can protect the assets from the beneficiaries’ creditors and lawsuits.

- **Control**
  When setting up the trust you can dictate how and when you want the estate to be used.

- **Minors & Dependents**
  Trusts can provide support for minor children or dependents with special needs.

- **Charitable Giving**
  Trusts can help you donate to charities in a tax-efficient manner.

- **Privacy**
  Terms of a will and the details of the assets left in the will are usually public while the terms of a trust are not.
Types of Trusts

There are different types of trusts tailored to meet a variety of estate planning objectives. Some of these serve a single purpose, while others serve multiple purposes. Some are set up to function while you are alive, while others work only after you’ve passed. Some can be changed, others are permanent (irrevocable).

Trusts can generally be classified into four basic types:

- **Revocable Trust**
  - Also called a revocable living trust, the trustor can alter, amend or revoke this type of trust at any time.

- **Irrevocable Trust**
  - This type of trust cannot be altered once it’s created, even by the trustor.

- **Inter-vivos Trust**
  - Also called a living trust, the trustor creates this while still living, although distribution of property can occur during or after the trustor’s lifetime.

- **Testamentary Trust**
  - Also called a will trust, this type of trust is created based on the trustor’s will and is created at or following the individual’s death.
Depending on the purpose of the trust, it can be further classified into many different types. Some of these common types include (but are not limited to):

**Marital trust (or “A” trust)**
Provides benefits for the surviving spouse and the married couple’s heirs. A marital trust goes into effect when the first spouse dies.

**Family trust**
Provides benefits for other family members, such as your children. This can be helpful to ensure that assets will go to your desired family members after you pass, in the event that the surviving spouse remarries or becomes estranged from those family members.

**Bypass trust (or “B” trust)**
Created along with the “A” trust, maximizes the use of the decedent’s estate tax exclusion amount to lower taxes.

**Generation-skipping trust**
Lets your children use the assets, keeps them out of the estate to avoid paying estate taxes, and ultimately passes the assets to the grandchildren.

**Special-needs trust**
Allows a person with special needs to receive income without negatively affecting their ability to qualify for public assistance such as Social Security income and Medicare.

**Charitable lead trust**
Is designed to reduce the taxable income of the beneficiaries by donating the income of the trust to a charity and after a specific period of time, transferring the assets to the beneficiaries.

**Charitable remainder trust**
Works the other way; the trust pays the beneficiaries for a specific period of time and then transfers the remainder of the trust to a charity.

**Spendthrift trust**
Protects the assets from irresponsible beneficiaries and their creditors.
Cost of Trusts

While trusts aren’t necessarily only for the wealthy, there are some costs associated with setting up and administering them. Some of these costs include:

**Set-up fees**
Includes attorney fees for drafting the required documents, a will and any durable powers of attorney. The cost can be anywhere from $1,600 to $3,000 or more depending on the complexity of the trust and the value of the assets.

**Re-titling of the assets**
After you set up the trust, the assets have to be transferred and re-titled to the trust’s name. The cost of this will vary based on the type and value of the asset and the state you live in.

**Maintenance fee**
If you are appointing a bank or a trust company as the trustee, they will charge an annual administrative maintenance fee, which can vary depending on the value of the trust and the effort involved in maintaining its assets.

**Trust The Pros**
It is possible to perform most of the process of setting up a trust yourself to save on costs, but a small mistake could cost a lot more than you saved.

Before you set up the initial meeting, prepare the following:

> Why are you thinking of setting up a trust?
> What are your objectives?
> Who will serve as the trustee, & who will be the beneficiaries?
> List of all the assets you own & want the trust to hold
> Who will inherit your property & on what conditions?
> Proof of ownership, deed & other title documents for the assets
> Recent appraisal documents, if applicable

Once you have everything in place, your attorney will likely draft the trust agreement, a will and the required powers of attorney. Once set up, your trust will have its own federal tax identification number. The final step will be to transfer the assets from your name to the trust.

**Contact your financial advisor for more information.**
Trusts & Taxes

Once a trust is set up, it takes its own identity.

**EVERY YEAR** the trust has to file taxes. Trusts (except living trusts, for which the income and deductions are reported on the personal income tax return) need to file a Form 1041, which deducts distributed interest from its own taxable income. The trustee also has to prepare Schedule K-1 forms for each of the trust’s beneficiaries, which tells them how much tax liability they may have from trust distributions. This Schedule K-1 will have to be included in each beneficiary’s personal tax return.

There are many different types of trusts and each one is taxed differently, depending on its structure. Usually a beneficiary does not pay taxes on distributions from the trust’s principal. Interest accumulated from money placed in the trust is usually taxable as income. The trust pays taxes on any interest income it holds; if a beneficiary receives income interest from the trust, then it is taxable to him or her.

From revocable/living trusts to irrevocable and testamentary trusts, trust taxation varies according to your own unique situation. Establishing a trust requires legal guidance, but you can start taking the right steps by scheduling time with a registered financial advisor.

Living Trusts

**A LIVING TRUST** is a trust you can create and make changes to (or revoke entirely) during your lifetime. The advantage to making one is that property left through the trust doesn’t have to go through probate court. More control of final distributions of assets, as well as protection against creditors (in the case of an irrevocable trust, in some states) are two common reasons for trusts.

These trusts can be appropriate for people with more complicated situations and higher net worth. During your life, you, as the trustee, have complete control over the property in your trust. When you die, the person you named as “successor trustee” passes your trust property to the people you named as beneficiaries. This will spare your family the expense and delay of probate proceedings.
Taxes & Your Estate Plan

One of the biggest concerns for those thinking about their legacy plan – and one of the main reasons for creating one – is the amount of taxes your heirs may end up owing upon inheritance. If you plan carefully, though, your family may be able to soften the tax blow. Keep in mind that tax law can change, so you’ll want to stay up-to-date with current laws.
The Estate Tax

CURRENTLY, THE U.S. TAX SYSTEM IMPOSES AN ESTATE TAX when a taxpayer passes away. Tax reform that passed last year means that every taxpayer has a credit against the estate tax that protects his or her first $11.18 million - up from $5.49 million. This means a married couple can exclude nearly $22.4 million from the estate tax.

Estate Tax Marital Deduction

FOR MOST PEOPLE, THE ESTATE TAX IS NO LONGER A REAL CONCERN, especially when you consider the estate tax marital deduction, which exempts estate tax on assets that pass to a spouse. Even if you have $500 million when you die, there will be no estate tax if you leave it all to your spouse. However, once your spouse dies, the estate will likely have a large tax bill.

Paying Estate Taxes

IF THE ESTATE TAX IS A CONCERN FOR YOU, insurance may be used to pay the taxes on your estate so your heirs won’t have to sell assets to pay the taxes. You can also set up a life-insurance trust to be the beneficiary of the policy so that the death benefits won’t be taxed as part of the estate. Some states, however, have estate taxes at a lower taxable estate threshold, so it pays to know the specific state laws where you live. You should consult a professional for more information.

The Gift Tax

THE GIFT TAX DIFFERS FROM ESTATE TAX in that it applies to assets transferred during your lifetime. However, some taxpayers can take advantage of the annual exclusion associated with the gift tax, since using the annual exclusion can help reduce the overall value of your assets (if they don’t exceed the amount sheltered from federal estate taxes).

This exclusion allows you to give $15,000 in 2018 and 2019 (up from $14,000 in 2017) per year to any one person—and you can give this gift to as many people as you want, regardless of their relationship to you. Your spouse can also use the exclusion. These gifts do not count against the lifetime gift-tax exclusion for your potential heirs. This is where estate taxes and gift taxes become intertwined, at least at the federal level. Contact a professional to learn more about how gift taxes may impact you.
Charitable Giving

One component of legacy planning that can make an impact on your heart and your estate is charitable giving. Giving to causes that are near and dear to you can reap many benefits, including financial ones, if you plan ahead and think a little bit strategically when it comes to donating.

**Gifts from Individuals** are crucial to the nonprofit sector. In the United States, individual donors drove rise in philanthropic giving $390.05 billion in 2016. But many donors don’t leverage charitable giving to ensure their maximum impact, while remaining in sync with their broader financial strategy.

Treating your charitable giving as a part of your financial plan by creating a clear strategy and outlining goals means that you can give wisely, which doesn’t always translate to just giving more.
Taxes & Charitable Giving

While very few people likely donate only because of tax benefits, there are some tax breaks you can reap by giving.

The IRS currently allows you to deduct up to 50% of your AGI during the tax year in which you make the charitable contributions if you itemize deductions. If you make cash donations to a public charity, then starting this year, you’re able to deduct 60% of your AGI during the tax year in which you make the contribution(s). Some contributions are limited to 30% of your AGI, and all contributions must be made – in cash or otherwise – before the close of the tax year in order to qualify for deductions in the current year.

If you donate property that isn’t cash to a qualified organization, the IRS generally allows you to deduct the fair market value of the property. Note that donating non-cash personal property has certain reporting requirements if the amount exceeds $5,000, regardless of when you make the contributions during the year. You will need to provide the IRS an appraisal of the value of the items prepared by a qualified appraiser, as well as complete the federal Form 8283, Noncash Charitable Contributions and have it signed by both the charitable organization and the appraiser. Additionally, the signed Form 8283 must be attached to your filed tax return.

You can also use charitable giving to reduce tax liability on property you leave behind if the estate tax is a concern for you. There is an unlimited charitable deduction on your estate tax return.
Gifting Appreciated Securities

You may be able to capture another tax benefit by giving appreciated securities.

**If You’ve Held** the securities for longer than a year, you can avoid paying capital gains taxes because you receive a tax deduction based on the security’s fair market value. (If you’ve held the securities for less than a year, then you receive a tax deduction on the lower of your cost basis or fair market value.) Plus, you can buy back the same security immediately and enjoy the higher adjusted cost basis.

The same goes for gifts of securities to friends or family; you can avoid paying capital gains on appreciated securities by gifting the shares to them. Note that the IRS allows you to make non-taxable gifts to any individual of $15,000 per year and up to nearly $11.2 million over your lifetime (indexed for inflation annually). This makes the most sense if the recipient is in a lower tax bracket, as he or she gets the original cost basis (the only time the step-up basis comes into play is when the investments are inherited).

IRAs Withdrawals

**For Those** who are taking required minimum distributions (RMDs) from an IRA, a qualified charitable distribution (QCD) counts as an otherwise taxable distribution from anyone 70 1/2 years old by year’s end (excepting ongoing SEP or SIMPLE IRAs), and can be excluded from gross income. This means a lower taxable income, which also may reduce the impact to certain tax credits and donations. Keep in mind while you won’t owe income tax on the distribution, you do not get a deduction.

You can elect to have all or part of this year’s IRA required distribution go to charity – or at least up to $100,000 annually (if you file taxes jointly, your spouse can also make a donation of up to $100,000 from his or her IRA within the same tax year). While charitable giving is usually restricted to less than 50% (60% starting in 2018) of your AGI to qualify for a deduction, giving directly from your IRA can help you reduce your AGI, even if the amount you give is greater than that 50%/60% limit.

Other restrictions apply, so you’ll want to consult a professional before using your IRA for charitable donations.
Tips To Improve Charitable Giving

Where do you start when you want to up the impact of your giving? Here are a few simple steps:

**Start with a Goal**
What is your end-game? Figure out what causes mean the most to you and align your strategy with what you care about.

**Do the Research**
Inform yourself about what a charity offers and how your money will support that mission. Use Charity Navigator or Guidestar to get transparency on your organization’s programs, revenue and expense numbers, and the amount of money it pays its leaders.

**Focus on Results**
If you seek to maximize impact, focus on long-term results and evidence of success and avoid funding nonprofits whose budgets are eaten up by costly marketing campaigns and unnecessary overhead. Use Charity Navigator to ensure your nonprofit is not only qualified, but highly and objectively ranked.

**Plan Your Contributions**
The amount you want to give is personal. To calculate what is a feasible donation number, you will want to take into account what you make, what you want to save, and whether your financial condition is sufficient to meet your ongoing needs. Using our free tools will help you put charitable giving into perspective.

**Capitalize on Tax Benefits**
Giving is good for the heart and the wallet. Certain tax benefits may be available to you; consult a professional to ensure you’re getting the most bang for your buck.
We combine unprecedented transparency through our online tools with personal attention from registered financial advisors. The result is a complete transformation in how you track, understand, and manage your financial life.
This communication and all data are for informational purposes only and do not constitute a recommendation to buy or sell securities. You should not rely on this information as the primary basis of your investment, financial, or tax planning decisions. You should consult your legal or tax professional regarding your specific situation. Third-party data is obtained from sources believed to be reliable. However, PCAC cannot guarantee that data’s currency, accuracy, timeliness, completeness or fitness for any particular purpose. Certain sections of this commentary may contain forward-looking statements that are based on our reasonable expectations, estimate, projections and assumptions. Forward-looking statements are not guarantees of future performance and involve certain risks and uncertainties, which are difficult to predict. Past performance is not a guarantee of future return, nor is it necessarily indicative of future performance. Keep in mind investing involves risk. The value of your investment will fluctuate over time and you may gain or lose money.