

page 2  
Prenuptial agreements can be positive, not negative

page 3  
Good reasons to update your power of attorney today

Think carefully about who will pay your estate's expenses

page 4  
Four big dangers of having assets in joint accounts

Estate Planning  
winter 2013

# Legal Matters®

## Even young families need to have an estate plan

Ken and Judy are a couple in their 30s. They recently bought a home, and they have a small child. But apart from some home equity, a retirement account at work and a life insurance policy, they don't have a lot of assets or investments. Do they really need estate planning? Can't they get by with a simple will from the Internet?

The truth is, even a couple like Ken and Judy can benefit from a good estate plan, and it doesn't have to cost them an arm and a leg.

Leaving aside the many serious errors that are commonly found in "form" wills in books and on the Internet, Ken and Judy should consider setting up a living trust.

No one wants to think about it, but suppose something happened to both of them – they died in an accident with a drunk driver, for instance. Chances are, they named each other as the beneficiaries of their life insurance, with their child as the secondary beneficiary. If they both were to die, the insurance company won't pay their minor child directly. Someone will have to go to court and set up a guardianship over the property.

If Ken and Judy didn't plan properly, the court might end up appointing a stranger as a guardian to oversee the child's insurance funds. Every time the child needs money, such as



©istockphoto.com/Justin Harrocks

for medical care or schooling, the guardian will have to make a decision about it, and probably petition the court to release the funds – incurring many costs and delays.

Even worse, once the child becomes a legal adult – which might happen when he or she turns 18 – the guardianship will end and the child will have full access to all the money. And very few 18-year-olds are mature enough to wisely handle a financial windfall.

*continued on page 2*

## JUDITH A. JARASHOW, ATTORNEY AT LAW

60 Walnut Street, Wellesley, MA 02481  
Tel.: (781) 943-4144 • Fax: (781) 943-4199  
judy@jarashowlaw.com  
www.jarashowlaw.com

# Even young families need to have an estate plan

continued from page 1

With a trust, Ken and Judy can put someone they know in charge of the assets. That person can use the money for the child's benefit without endless court costs and attorney fees. Plus, the money can stay in the trust after the child turns 18, and can be used as Ken and Judy direct – for education, a wedding, etc., or given to the child in increments as he or she gets older.

In addition, if Ken and Judy establish a living trust, it can be used later as a vehicle for more complicated estate planning once they acquire significant assets.

Beyond a living trust, Ken and Judy should each have a power of attorney document and a health care proxy. If something were to happen such that one

of them became incapacitated – even temporarily – having these documents in place could make life for the other spouse a lot easier. (And while you can find generic documents like these on the Internet, they're often riddled with errors and don't take into account the specific needs of you and your family.)

Generic wills also don't take into account the kinds of assets that don't go through probate – such as IRAs, 401(k)s, brokerage accounts, and jointly-owned property. A good estate plan should coordinate these assets with a will and/or a trust.

The bottom line is that everyone should have a proper, professionally prepared estate plan. For young people, the process is usually inexpensive and painless, but the benefits can be profound.

---

## Preuptial agreements can be positive, not negative

Many people have an instinctively negative reaction when they hear the term “prenuptial agreement.” That's because, when prenups first became popular, they were often seen as weapons by which rich spouses took advantage of less wealthy, less sophisticated partners. A person who got engaged and said, “I want a prenup” was often seen as unromantic at best and scheming at worst.

But the truth is, prenups often provide important advantages for both partners. They're not always just about protecting yourself in the event of divorce. They're often about planning your future affairs so as to arrange things legally and tax-wise in ways that are mutually beneficial.

If you approach a prenup in this spirit, it's often a win-win for everyone.

For example:

- Spouses who have children from a prior marriage are typically very concerned about protecting them. A prenup can be a good way to make sure that if something happens to you, *both* your spouse and your children will be taken care of, in a way that's fair and that minimizes intra-family disputes.
- Prenups can be a way to protect against joint liability for debts. For instance, if a spouse owns a small business and personally guarantees loans, or is a professional and is subject to malpractice claims, a prenup can limit legal responsibility and preserve assets for both spouses.

- If one spouse co-owns a business, a clear succession plan is often necessary to obtain financing. A prenup can clarify what happens if the business owner dies, and make running the business easier.
- By making clear how assets will be titled during the marriage, a prenup can facilitate gift and estate tax planning.

Speaking of prenups, it's worth noting that it's often neither the bride nor the groom who is most interested in having a prenup signed. It's the *parents* of the couple, who are worried that the assets they plan to pass on to their children might someday be decimated by divorce.

It's not uncommon for parents to bring up the idea of a prenup, only to have it rejected out of hand by the infatuated lovebirds.

But if parents are legitimately concerned, there is something they can do that doesn't require getting the engaged couple to sign anything at all. Rather than giving the assets to their child, either directly or in a will, the assets can be put into a trust for the child's benefit. The parents can name a trustee who will have discretion to manage and distribute the assets for the child.

If the trust is set up properly, then the assets will be protected in the event of a divorce. Even better, the trust may have many of the other benefits of a prenup described above – helping children from a prior marriage, protecting against debts, and so on.



©istockphoto.com

# Good reasons to update your power of attorney today

If you haven't updated your power of attorney documents in many years, it might be worth having them reviewed to see if you can take advantage of some recent changes in the tax laws.

If you're ever near death and unable to manage your affairs, your agent may be able to make some smart financial moves that will dramatically reduce taxes for your heirs. But your agent can do this only if your power of attorney documents allow him or her to – so you might want to consider whether to give your agent this authority.

For instance, your agent could:

*Convert your IRA to a Roth IRA.* This would trigger an income tax bill, which would reduce the value of your estate for estate tax purposes. If you recover, you or your agent could undo the conversion, so you wouldn't be socked with the tax. This could be particularly important if you have losses or carry-forwards that otherwise couldn't be used.

*Make gifts.* Some power of attorney documents limit the power to make gifts, such as to the amount of the annual federal gift tax exemption. But you might be able to save more taxes by allowing additional gifts. This is particularly true in states that have recently "decoupled" their own estate tax from

the federal estate tax, because larger gifts in these states could reduce amount of the state estate tax bill.

*Borrow money.* Suppose your agent wants to make gifts for tax reasons, but most of your liquid assets are appreciated securities in a brokerage account. If your agent makes gifts of the securities, your heirs will owe capital gains tax when they sell. Instead, your agent could margin the securities and give your heirs the cash. The resulting debt would reduce the value of your estate for tax purposes, and when your heirs later inherit the stocks, they will get a stepped-up basis and owe much less tax if they sell.

*Buy assets in a grantor trust.* If you have a grantor trust (an irrevocable trust that is not included in your estate for tax purposes, but on which you pay the income tax), and the trust owns appreciated assets, your agent could buy those assets for cash. Your heirs will ultimately get both the cash and the assets, but this way, the assets will get a stepped-up basis, and your heirs will be on the hook for much less in capital gains tax.

Thanks to new laws, these can all be smart moves – but again, many older power of attorney documents don't allow them, so it might be wise to have yours reviewed.



©istockphoto.com

## Think carefully about who will pay estate expenses

Many wills provide that the executor will pay the estate's expenses out of the estate's assets, and what's left over will be divided up among the heirs.

But it's good to give some thought to this, because an estate's expenses can be, well, expensive.

"Expenses" can include estate taxes (and even if federal estate taxes aren't an issue, many states have their own estate taxes, often with a lower threshold than the federal tax.)

Expenses can also include professional fees for accountants, lawyers, and appraisers; medical and funeral expenses; probate fees; fees for transferring title to assets; local taxes on a decedent's personal property; and certain debts of the decedent.

Here's why this is important: The estate's expenses

are paid only by the heirs who receive property under the will. But sometimes, other heirs receive property outside the will – they're beneficiaries of an

IRA, a co-owner of a bank account, the payee on a transfer-on-death brokerage account, etc. Unless you specify otherwise in your estate plan, the beneficiaries of these "non-probate" assets won't have to contribute at all to the estate's expenses.

So if you think your expenses could become significant, or you've recently arranged for substantial assets to pass to your heirs outside of probate, you might want to review your will. Otherwise, some heirs might be unevenly saddled with large expenses – which might not be what you intended.



Here's a way to keep heirs from being unevenly saddled with large expenses.

## Four big dangers of having assets in joint accounts

Often, older people will add the name of one or more of their children to their checking accounts or brokerage accounts. They might do this to make it easier for the children to help them with their financial affairs. Or they might think that it's a clever way to avoid probate.

Joint ownership can be good in some cases, but there are dangers in setting things up this way.

To illustrate, imagine that Anna has three children – Barry, Louise, and Todd – and she adds their names to some of her various accounts so they can help her with her finances. What could go wrong?

**A child's debts.** Suppose Barry loses his job, and runs up large debts. Since Barry is a joint owner of one of Anna's accounts, his creditors could potentially come after Anna for repayment. Or suppose Barry owns a business and guarantees a loan. If the business goes under, Anna could be on the hook.

**A lawsuit.** Suppose Louise causes an auto accident, and the injured driver sues her. The driver

might be able to empty Anna's bank account as well as Louise's.

**A divorce.** If Todd gets divorced, his wife could potentially claim some rights over a joint account. If Todd's wife makes a claim to divide an account, Anna might be required to trace and prove the entire history of her contributions to it. If she can't do so, then Todd's wife might have a claim on it.

**A family fight.** When Anna dies, any assets in her joint accounts will go to the co-owners named on those accounts. If Anna has a will that divvies up her other property, it won't cover the joint accounts. If Anna intended to ultimately split her property evenly among her children, that might not happen. And even if one sibling wants to make things right and offers to even things up with the others, this might create gift tax problems.

An estate planner can suggest alternative ways to avoid probate and allow children to help with finances.



©istockphoto.com

## JUDITH A. JARASHOW, ATTORNEY AT LAW

60 Walnut Street, Wellesley, MA 02481

Tel.: (781) 943-4144 • Fax: (781) 943-4199

[judy@jarashowlaw.com](mailto:judy@jarashowlaw.com)

[www.jarashowlaw.com](http://www.jarashowlaw.com)