

Trusts & Estates

Brody Wilkinson's Trusts & Estates Group is one of the most sophisticated and extensive practices of its kind in Fairfield County. The Group provides diverse and highly personalized services to individual clients throughout Connecticut in the areas of estate and tax planning, estate and trust administration, wealth preservation and transmission, charitable giving, business succession planning, family foundations, conservatorships and guardianships, elder law, and probate and trust litigation. Attorneys in the Group serve as trusted family advisors to a substantial base of senior executives, entrepreneurs and wealthy individuals. In addition, the Group counsels many charitable organizations on tax planning. Collectively, our attorneys have represented clients in trusts and estates matters for over 150 years.

With support from the firm's Business Group, our Trusts & Estates Group attorneys are well qualified to represent entrepreneurs and owners of family and closely held businesses. This cross-disciplinary approach enables the firm to coordinate and manage the needs and goals of these clients, both personal and business, in a seamless manner. We also counsel these clients with respect to business succession planning.

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- Estate Planning
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- Tax Planning
- Trust Administration

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TRUSTED ADVISORS, PRACTICAL SOLUTIONS

A Primer on Estate Planning

Estate Planning

A good estate plan will help care for your family now and in the future. Your plan should address current needs, retirement planning and end-of-life issues. Starting the process can be an intimidating and even depressing topic, however, failure to have a plan can lead to unintended and expensive consequences. Allow an experienced Brody Wilkinson attorney to help develop a plan for you and your family.

Important Terms

Probate. The legal process of appointing an executor and implementing the terms of a Will.

Will. A written declaration of a person's wishes concerning the distribution of that person's property after his or her death.

Codicil. An amendment or addition to a Will.

Testate. Referring to the estate of a deceased person (a 'decedent') who leaves a Will at death.

Intestate. Referring to the estate of a deceased person who dies without leaving a Will.

Fiduciary. One who holds property in a position of trust for another, such as an executor, administrator, trustee, guardian, or conservator.

Executor. A person named in a Will to manage and settle an estate and to carry out the directions contained in the Will of the decedent.

Administrator. A person named by the probate court to administer and settle the estate of a decedent who dies without leaving a Will or whose named executor under a Will is unable to serve.

Trust. Property, real or personal, held by one party for the benefit of another. Trusts are often used to manage property on behalf of the beneficiaries, reduce taxes or protect the property from creditors.

Guardian. A person given the power and duty by a probate court to manage the property or provide for the care of a minor child or person with mental retardation.

Conservator. A person given the power and duty by the probate court to supervise the affairs of another person who is incapable or who needs assistance in managing his or her affairs or caring for himself or herself.

Probate Bond. A promise by a fiduciary, usually guaranteed by a third party known as a surety, to replace any funds up to the amount of the bond to fulfill the faithful performance of his or her duties.

Real Property. Real estate such as a home, land, or farm, including the ownership of a condominium unit.

Personal Property. Property (other than real property) such as bank accounts, shares of corporate stock, bonds, automobiles, household furnishings and personal effects.

Ancillary Documents

In addition to a Will, your plan should also include:

Durable Power of Attorney. By this document, you appoint someone else to make financial decisions for you.

Living Will/Health Care Representative. This document sets forth your wishes with respect to end of life and health care decisions.

HIPAA Authorization. This authorization allows named people to access your medical records.

Non-Probate Assets

Only probate assets pass pursuant to a Will. Non-probate assets pass in accordance with state law or the contract governing the assets.

Examples of non-probate assets include:

Joint Property. Property owned in joint tenancy passes at death to the surviving joint tenant.

Life Insurance. The insured can dictate the beneficiary of the proceeds in the contract.

Retirement Benefits. The plan participant can name the person who will receive the retirement benefits through a beneficiary designation.

What if I do not have a Will?

If you don't have a Will, you are deemed to have died 'intestate.' Your probate assets will be distributed in accordance with state law. In CT, if you are survived by a spouse and children, your spouse receives \$100,000 + one-half of the remaining property. Children take the other half. If you are survived by a spouse and parents (no children), the spouse takes the first \$100,000 + 3/4 of the remainder. The balance goes to your parents.

Tax Considerations

A state and federal tax may be imposed on the transfer of property, whether during your lifetime or at death. Strategic planning can minimize the tax implications of providing for your spouse or children or grandchildren. Proper use of the marital deduction, annual gift tax exclusion, and exemptions can save your family a significant amount in state and federal transfer taxes.

Marital Deduction. Property can be transferred between U.S. citizen spouses outright or in certain types of trusts tax-free.

Annual Exclusion. Each year you can make tax-free gifts of up to \$13,000 per recipient.

Federal Exemption. In addition to the annual exclusion amount, you may shelter from federal transfer tax up to \$5,000,000 (for 2011 and 2012). This exemption applies to total transfer made during lifetime and at death.

Tax Rate. Federal tax is imposed on transfers over \$5,000,000 at a rate of 35%.

State Tax. A tax may also be imposed at the state level on the transfer of property. CT imposes a tax on lifetime or testamentary transfers totaling more than \$2,000,000. NY imposes a tax on testamentary transfers over \$1,000,000.

Portability. A new federal law allows a surviving spouse to use any unified credit not used at the death of the first spouse.