



Your legacy is the gift that shapes the lasting impression you wish to leave behind. Financial and material aspects are important, but your legacy also encompasses the impact that your support and values can continue to make upon the lives of others. While there are many components involved in the crafting of one's legacy, this guide focuses on real estate considerations.

## **THE LEGACY MYTH**

Most people think that legacy planning and estate planning are basically the same and that one process can serve as the other.

Legacy planning goes far beyond picking the right will or trust and there is a lot more to the process than completing forms and signing documents. It also does not start with your tax attorney, CPA or broker. It starts with YOU.

## **WHAT IS LEGACY PLANNING?**

Legacy planning is identifying how you want to be remembered and, then, formulating the means to create the type of impact that you want to make – both during your lifetime and afterward. The objective is to create a solid foundation for the future that you hope will evolve. At the same time, you need to secure your real estate assets in a fashion that will ensure that those assets will always be there to fulfill the legacy that you envision.

The process starts by spending some self-evaluation time and asking yourself those hard questions. What do you want to have happen to your properties? What purpose do you want your wealth to serve? What is your hope for the future of your heirs and their heirs?

Then, you need to seek out the right resources to help you execute your wishes. Equally critical to the success of this process, you have to learn how to effectively communicate your goals and desires not just to your advisors, but also to your heirs.

This guide is designed to get you thinking about the questions to ask. The answers will come from many different sources – your tax attorney, your CPA, your investment brokers, your real estate advisor, your heirs, your spouse and, most importantly, yourself.



## LEGACY PLANNING: A CIRCULAR PROCESS



## LEGACY PLANNING VERSUS ESTATE PLANNING

An estate plan covers the essentials and typically includes such items as a last will and testament, a living trust, an advance health care directive, a durable power of attorney and a durable power of attorney for health care.

Legacy planning goes beyond the basic protections and helps you shape the way that you will be remembered. Everyone is unique – both in terms of their personal circumstances and what they desire to see happen in the future.



## POSSIBLE ELEMENTS OF A LEGACY PLAN

The methods that you use in executing your legacy plan will vary depending upon your vision for the future and the assets that you currently hold. There are also factors related to income or tax issues that might need to be resolved, along with any accommodations to be made for the needs, abilities and goals of your heirs and beneficiaries.

Different estate planning and wealth transfer strategies to be considered include:

- Making a will with bequests to family members, institutions or charitable organizations
- Creating a living or more specialized type of trust
- Purchasing life insurance or changing beneficiaries on existing policies
- Establishing a foundation
- Funding an endowment
- Charitable giving and donations
- Gifting to children, grandchildren or other heirs
- Forming a family limited partnership

## TRIGGER EVENTS REQUIRING A FURTHER REVIEW

Whether you have an estate or legacy plan already in place, chances are good that it needs updating. Trigger events, such as those listed below, happen all of the time.

- Changes in family structure (expanded family from marriage or birth children, etc.)
- Change in employment status (new job, retired, change in compensation)
- Change in a personal financial situation (inheritance, large unexpected expenses, etc.)
- Market events (stock market, housing, commodities, etc.)
- Federal, state and local laws (tax, ownership, administration, etc.)
- National and international events

The fact that you experience one of these events does not always mean that a change is needed. However, at a minimum, it is always good idea to review your plan and discuss any changes that might be considering with the appropriate advisors.

Remember, legacy planning is an ongoing, circular process and every trigger event requires at least some level of review.



## ADVISORS TO CALL UPON

There are numerous resources available to guide and assist you through the legacy planning process. Rather than relying upon one specialist to put your entire plan together, use your trusted advisors according to their particular areas of expertise.

For example, an estate planning attorney can advise you as to ways to structure your legacy plan to avoid probate; while a real estate tax specialist may have knowledge of how to evade certain taxation pitfalls. Concurrently, a financial planner is likely to focus on other estate planning considerations such as charitable gift funds, life insurance options and beneficiary designations on retirement and investment accounts.

If you want your legacy to extend beyond your immediate heirs and beneficiaries, you may want to consider some type of philanthropic giving. Most universities, colleges and hospitals have foundations or planned giving departments that help arrange for charitable gifts or donations. Non-profit organizations and charities often have information on their websites as well as individuals to contact regarding how to specifically phrase your bequest.

If you own income properties, consulting with your real estate advisor should be included in this process. A real estate expert can provide you with not only a current evaluation, but help you make sure that your real estate holdings are well-secured and properly aligned with your legacy wishes and goals.



## YOUR GOALS & WISHES

What does leaving a  
legacy mean to you?

How do you make sure your  
wishes can be fulfilled?

Determining your own wishes and goals is the starting point. Do some serious thinking about what, if any, type of legacy you would like to leave and how you might like to be remembered.

You may decide that now is the time to spend some money creating memories for your family. Paying off school loans or helping your children buy a home or paying for a grandchild's tuition to a special program or college may be more meaningful if done today rather than held in an inheritance trust.

And, in looking ahead to the future, think about how your heirs will perceive your legacy. What is happening in their lives? Where are their priorities? Will they have the time, ability or desire to assume the responsibilities of income property ownership? What have you done or should you do to get them ready?

Now is also the time to also consider whether or not you want your legacy plan to include philanthropic giving. Is there a particular organization, cause or institution to which you would like to make a special bequest. If yes, do some research and talk to others who know the organization. Check out Charity Navigator and similar non-profit watchdogs.

In terms of your real estate assets, ask yourself these questions:

- How well do your family members understand the benefits of property ownership?
- Will your heirs appreciate the wealth-building head start that you are providing or will they simply cash out and sell off your assets?
- What about equity growth? How important will that be to your heirs?
- How do their priorities in terms of wealth building and wealth accumulation differ from yours?
- Do your heirs have the ability and/or the desire to operate your properties at the same level as you have been doing?

These are questions which require very honest answers. Talk with your heirs. You may realize that you need to make some adjustments, seek ways to get them more actively involved or initiate a learning process.



## PROPERTY CONSIDERATIONS

Can your property  
operate without you?

Are there any maintenance or  
other deferred liabilities?

Based upon the insights you gained from ascertaining what type of legacy you want to leave and how your wishes will best be fulfilled, you next need to look at how well your real estate assets are positioned both from a strategic standpoint and on a by-property basis.

First and foremost, are your properties secure? Have you taken the steps necessary to ensure that a change in economic or other policies – regionally, nationally or globally – will not destroy all that you have worked so hard to create.

Here are some questions to ask:

- Do you need some diversification, either in terms of location, levels of participation and/or types of properties in which you are invested?
- How balanced is your overall portfolio?
- Are there other ways to secure your legacy that you should consider?

In regards to your real estate portfolio:

- Do you have a written real estate plan and have you discussed that plan with your heirs?
- Are the properties within your portfolio still serving the purpose intended, both individually and as a whole? If not, why not?
- Is it time to make some type of change either to better secure your legacy or better align your position with the needs and abilities of your heirs?



On a property-specific level, you need to consider:

- Can your property operate without you?
- What is the status of your cash reserves? Are they sufficient?
- Are there any deferred maintenance issues that should be addressed?
- Is the documentation regarding the property and the residents organized, current and complete?
- Is there an easily accessible list of trusted advisors and vendors?
- What steps have you taken to mitigate any potential legal liabilities?

### **OTHER INHERITANCE ISSUES REGARDING REAL PROPERTY**

When you are planning to bequeath real property to your heirs, there are a number of special considerations to address:

- Do you foresee any potential issues if your heirs have to share ownership?
- If there are mortgages or liens on the property, can they be assumed without penalty, acceleration of any clauses or interest rate changes and what are the due dates?
- When leaving a particular property to multiple heirs, what happens if one person wants to sell and the others want to continue holding onto the property?
- If a property requires a lot of hands-on work or oversight, do provisions need to be made to ensure that this burden doesn't create future problems that might derail your original wishes and intent?
- Will the heirs be willing and able to pay all of the taxes necessary for keeping the property and will such a payment be equitable for all involved?
- Will your executor or trustee be able to easily and quickly locate all your heirs and beneficiaries? A delay in settling an estate and/or in contacting all of the heirs can have unforeseen consequences, such as misdirected and missed tax notices.
- If you share in the ownership of a property, are there potential conflicts between your estate plan and how the other property owners plan to use or distribute their interest in the property?

Schedule an appointment with your real estate advisor. Go through the questions and obtain his or her insights. You may also want to discuss ways to get your heirs either more involved or better informed as to the wealth-building benefits of owning income-producing real estate.



## TAX CONCERNS

Will probate or other taxes force a sale?

Have you done everything possible to minimize taxes?

Once you have a good sense of your legacy wishes and goals as well as what needs to be accomplished regarding your properties, it is time to meet with your tax advisor.

Under any circumstances, should you decide to make any adjustments regarding your real estate holdings, always talk with a knowledgeable real estate tax professional to ensure that there are no unexpected consequences.

In addition to reviewing your legacy plan assets from a tax perspective, your real estate tax professional may make suggestions as to various trusts and the different ways that such instruments can minimize or eliminate the possibility of having the estate be subject to probate and/or inheritance taxes. Spend time and consider all of the options – both from a tax viewpoint and in terms of what you foresee for yourself and your heirs.

The same considerations may also apply to the ways of holding title. How a property is vested may also require a legal review. So, before taking any action, talk with your real estate attorney, too.



## THE LEGALITIES

Are your will and trust  
up to date?

Are you holding title in the  
most beneficial manner?

As you begin to implement your legacy plan, make sure that you obtain appropriate legal expertise – be it in terms of updating a living trust, changing title on a deed or creating a family limited partnership.

A property owner can only bequeath or grant the rights to a property that he or she legally possesses. If you share ownership with someone else or there is another name on the deed, full ownership may not be yours to will to someone else.

How title is held is a critical issue. Some forms of title allow for you to designate someone to inherit your portion of the property, while other forms dictate a right of survivorship, which means that your share of ownership goes to all of the others holding title on that property.

Be aware that there are numerous legalities involved and failure to comply with even one requirement can result in costly legal problems for your heirs and beneficiaries. Once you have decided upon a particular course of action regarding how you want to allocate your properties, you then need to make sure that all documents (deeds, tax bills, mortgage instruments, account registrations, etc.) are set up so as to accommodate your legacy wishes.



## WHAT HAPPENS WITHOUT A WILL?

If you do not have the bare minimum of an estate plan in place – i.e. a Last Will and Testament, then the State puts into place its own plan, which is probably not the one you intended.

Often, with property, the beneficiaries are determined by how the title is held. In other cases, where the title is in your name only, inheritance rights are determined by state law, which sometimes brings into the ownership picture an unexpected heir.

Key points to keep in mind:

- The laws governing real property deeds are state-specific. Therefore what you read online may or may not apply to what needs to be done and stated based upon where your property is located. Always verify what is stated in the deed conforms to the requirements of applicable state laws.
- How the signing of the deed may also vary. Some states require a witness and/or the attendance of a notary. Be sure that you know and understand the requirements before you attempt to execute the deed.
- Recording the deed with the local county clerk is another important, yet often overlooked, step. Check the local county recorder's office website for information on how to record the deed and what fees must be paid. And, when in doubt, call the county recorder's office and ask questions.
- There may be additional compliance requirements regarding consideration paid or acknowledgment in order for a deed to be deemed legally binding. Again, consult with an attorney licensed to practice in the state and/or municipality where the property is located.

## MUST HAVE'S TO INCLUDE

As you are crafting that solid foundation for the future that you hope will evolve, be sure to also pay attention to the basic essentials covered under a traditional estate plan.

Be it a legacy plan or an estate plan, there are five key inclusions:

1. A Will or Testament (often termed Last Will & Testament) – This legal document serves as the means for expressing your wishes as to how your property and possessions are to be distributed at death and, concurrently, identifies who shall handle that distribution after paying all final expenses and taxes. Depending upon the complexity of the estate and the governing state laws, there may be a requirement that, upon death, the will has to be supervised by a judicial process known as probate. Often both time-consuming and expensive, probate is one of the primary reasons that most estate plans also include some type of trust or other means of circumventing this particular form of judicial oversight.
2. Durable Power of Attorney – With this document, you are authorizing your appointee to act as your agent in managing your financial affairs. Choose this person carefully, as



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(2 continued) they could be able to sell, invest or spend your assets. Typically the document grants these powers in a very broad fashion; however, you can place terms, conditions and limitations upon those powers. You can also specify that the Power of Attorney does not go into effect until a doctor certifies that you have become incapacitated. As long as you are competent, a Durable Power of Attorney can be revoked at any time; otherwise, it remains in effect until death.

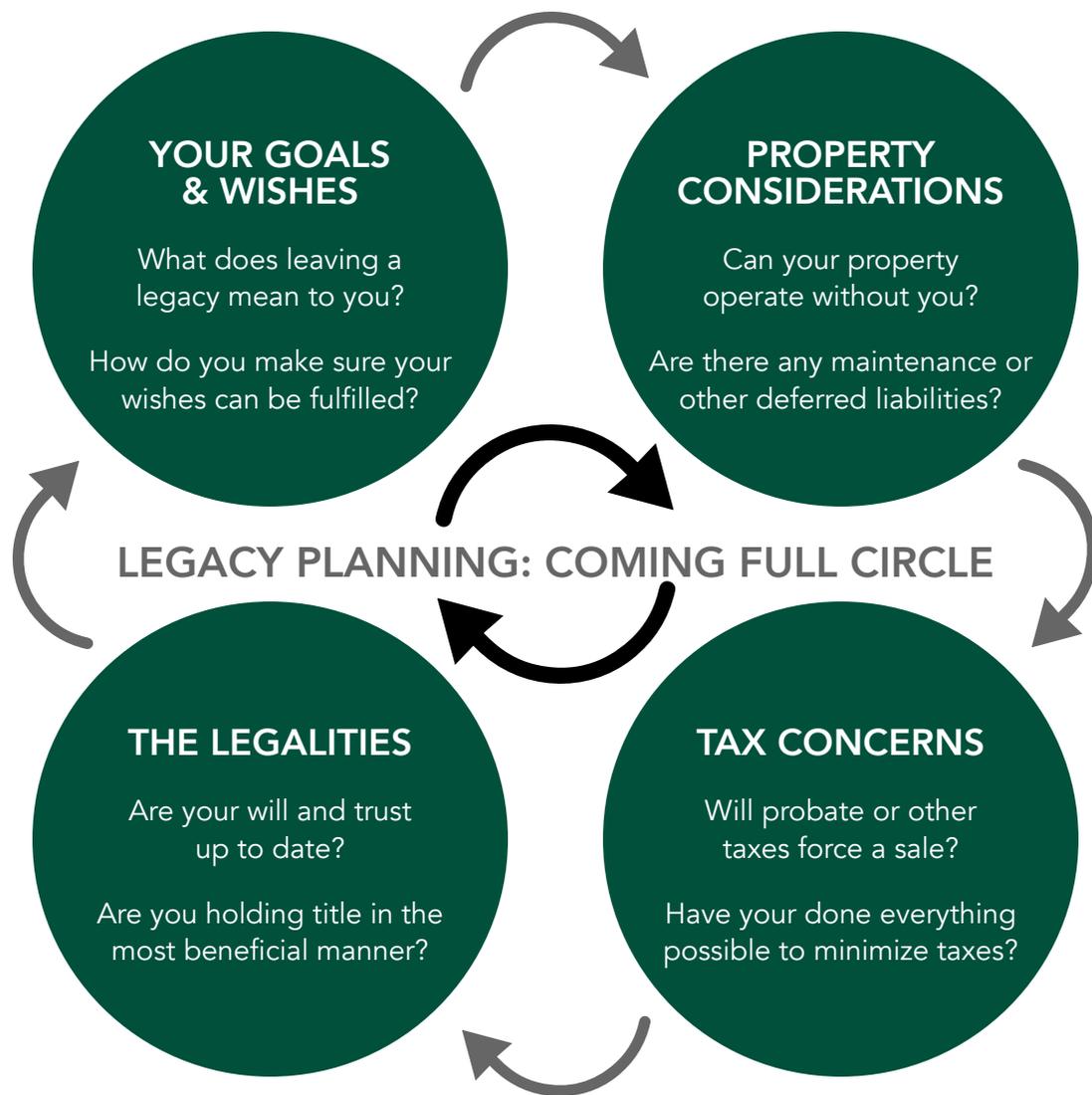
3. Medical Power of Attorney (also known as a Durable Power of Attorney for Health Care or Health Care Power of Attorney) – This form of a Durable Power of Attorney authorizes someone to make medical decisions for you in the event that you are unable to do so yourself. In some states, this document is known as a Health Care Proxy and is often combined with a Living Will or incorporated into an Advance Health Care Directive.
4. Living Will – This document expresses your intentions regarding the use of life-sustaining measures in the event of terminal injury or illness. To be effective, it is typically combined with the Health Care Power of Attorney. An Advance Health Care Directive allows you to not only approve or decline certain types of medical care as well as includes both a Durable Power of Attorney for Health Care and a Do Not Resuscitate Order. Should there become a point when you are incapacitated; these documents can be invaluable in minimizing family conflicts and avoiding possible court intervention. Be advised, however, laws vary state-by-state and allowable provisions or approved wording change frequently, so regular updates by a qualified professional are advised.
5. Revocable Trust –There are many different types of trusts with different purposes. It is advisable to pick the purpose first, then discuss with you tax and legal advisors the best trust instrument to achieve your goals. A Revocable Living Trust (often referred to as a Revocable Trust or Living Trust) is one type of trust often used in estate planning.

A Living Trust is a written legal document through which your assets are placed into a trust for your benefit. Upon your death, the trust is transferred over to your chosen representative whom you have designated as your successor trustee, who then distributes the assets as per your directions to your designated beneficiaries.

Under the terms of this document, you can continue to manage your own financial affairs during your lifetime. Or, if you prefer, you can designate a family member or a corporate trustee to manage the trust assets with you continuing to receive the income generated by those assets and/or any return on principal that you arrange.. For the trust to be effective, you need to legally transfer your assets into that trust. So long as it is a Revocable Trust (and not an Irrevocable Trust), as the creator of that trust, you can later change which assets are held within the trust as well as any of the trust provisions and even the entire existence of the trust, itself.

A Revocable Living Trust provides a means of avoiding probate, which often means a faster distribution of assets to your heirs. It also provides a potential savings of probate and other costs, although there are costs involved in establishing this trust and potential taxes consequences related to property transfers. A Revocable Trust also better protects private personal information that is apt to become a matter of public record in Probate Court.





### LEGACY PLANNING: COMING FULL CIRCLE

Most importantly of all, legacy planning is a circular process that requires some level of review at least annually or whenever circumstances change. Always keep in mind that your legacy revolves around you and your wishes for the future that your gift is shaping.

WR Gorman & Associates can assist in ensuring that your real estate assets are secure and that your portfolio is balanced. We also can help educate your heirs as to the benefits of wealth building through the ownership of income producing property.

This *Your Legacy Plan & Your Real Estate Assets* guide is a great way to get started. As you read through these pages you are apt to have questions. Should you like a free, one-on-one review session or referrals to some great tax, legal and other resources, contact our office at (714) 255-9998, extension 1 or send an email to [info@wrgorman.com](mailto:info@wrgorman.com).



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