

Follow these safeguards to make
sure wealth is transferred to the
next generation

exit gracefully

By Donald Jay Korn

“ONCE YOU HAVE KIDS, YOU CAN’T BE a kid any more,” says Dahari Brooks, 35, a surgeon in Worcester, Massachusetts, when asked why he and his wife, Michelle, 31, recently took steps to complete their estate plan. “We were reluctant to even think about making wills,” he admits. “It seemed kind of morbid, but once we became parents it became even more important to have an estate plan, including our wills.”

With their estate plan, Michelle and Dahari are protecting their family, which includes 2-year-old Jason, and a newborn, Alexandria. “I’ve purchased disability insurance,” says Dahari, “in case I’m injured and can no longer perform operations. The insurance policy will make up for my lost income.”

As the baby boomer generation begins turning 60 this year, making sure estate plans are in place has taken on greater significance. If a significant number of black baby boomers die without estate plans, millions of dollars of accumulated wealth will not be transferred to the next generation.

The Brookses have been proactive about ensuring that their wealth is passed on properly. They say completing their estate plan has given them comfort and peace of mind. Their decision assures that their assets will be transferred to their survivors. You can do the same by following this advice. ▶



“power” documents for your estate

Sometimes an estate plan calls for a power of attorney. A power of attorney is created when you give someone else authority to act on your behalf. That person can sign contracts, liquidate investments, etc., for you while you are still alive. In legal terms, you are known as the principal and the person to whom you give authority is the agent. A nondurable power of attorney takes effect immediately and remains in effect until the principal revokes it, becomes mentally incompetent, or dies; a durable power of attorney remains in effect even if the principal becomes incompetent, and a springer power of attorney “springs into effect” when a specific event takes place, such as the principal becoming incompetent or disabled.



Lori Anne Douglass, attorney for Kurzman, Eisenberg, Corbin, Lever, and Goodman L.L.P., says the terms “durable,” “non-durable,” and “springer,” refer to when the attorney has authority to act. However, what you designate the power of attorney to oversee is what is most important. A financial power of attorney allows someone you trust to handle your financial matters should you become disabled or incapacitated. A medical power of attorney allows someone to make medical decisions on your behalf if you cannot. “A will only takes its life upon your death,” Douglass explains. So, even if you have an executor of your will, that doesn’t help at all if you become disabled and can’t handle your finances.”

protect your estate through a trust

Trusts offer their creators control over their assets. “A trust can provide continuity of financial management during your lifetime, after your death, or both,” says Miller. “If you’re concerned about what will happen to your assets in case of incapacity or when you die, you should consider creating a trust.”

You can create a trust during your lifetime and re-title your assets so that they are actually owned by the trust—not by you. If you have a revocable trust—one that can be cancelled—you can elect to be the trustee—the individual who manages the assets in the trust. You can also be the trust beneficiary. In this way, you remain in control of your own assets.

However, you’ll also name a successor trustee or a co-trustee. “If you become unable to manage your own affairs,” says Miller, “your co-trustee or successor trustee can take over control of the trust assets.”

The new trustee will have a fiduciary responsibility to act in your interests, the trust beneficiary. “The entire process can be handled privately,” says Miller. “There will be no need for an expensive public court hearing to appoint a guardian.”

At death, “assets in a trust don’t have to go through probate,” says Miller. This can save your heirs considerable time and expense because assets held in trust can be kept in trust or be distributed outright to specific heirs the way you instruct.

Martin Shenkman, an estate planning attorney in Teaneck, New Jersey, says the legal fees involved in setting up



a trust as part of an estate plan might range from \$500 to more than \$2,500. “The more special instructions you put into the trust, the higher the fee.” Legal fees are higher in some areas of the United States and lower in others. Dahari Brooks created a trust in conjunction with his will. If Dahari dies when his children are young, and he has accumulated sufficient assets, the money will go into the trust rather than directly to his survivors. He has also made provisions for trust money to be spent on his children’s college education, and for specific amounts to be doled out when they reach certain ages. This will protect his loved ones from squandering the money over a short period of time.

If that type of arrangement appeals to you, be sure to work with an attorney who is experienced in drafting trusts. Ask friends or associates for references or contact the American College of Trust and Estate Counsel (www.actec.org) to locate a skilled lawyer in your area.

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—FRED MILLER

your estate action plan

Lori Anne Douglass, an attorney who specializes in estate planning, estate administration, and real estate for Kurzman, Eisenberg, Corbin, Lever, and Goodman L.L.P., in White Plains, New York, suggests people approach estate planning with the following steps:

Document citizenship and marital status.

While it may seem like an odd place to start, Douglass says it is important for an estate planner to know at the outset if the client is a U.S. citizen. "There are more tax advantages for U.S. citizens," she says. It is equally important to document whether a person is legally married or divorced. "If you are married and not *legally* divorced, that person has rights to your estate," Douglass explains.

Establish your heirs.

You must determine who your natural legal heirs are under state law. Typically this includes the husband or wife, children, brothers, sisters, and parents who are living. "You need a family tree," Douglass notes, "because no matter who somebody wants to leave their property to in a will, your blood relatives have legal standing."

Determine your assets and liabilities.

List all of your valuable items, including real property, tangible personal property (artwork, jewelry, etc.), all retirement benefits, bank accounts, stocks, mutual funds, real estate, and life insurance. Also be sure to tally up your debt. This will determine how large an estate you actually have.

Decide where your wealth will go.

Do you want your assets distributed to family members, friends, or charities, and what is the best way to do that? Here, your attorney's expertise in determining how to execute your wishes is key. For example, says Douglass, "If a person says, I really want to leave something to my children, but one of them has a credit problem, that lets you know that child's share needs to be left in a trust."

Decide whom you want to be in charge.

You'll need an executor, who makes sure your estate is administered properly in accordance with your will; trustees, who are responsible for all financial decisions and the administration of any trusts that are set up; and guardians for minor children, whom your children will actually live with and will serve as the guardians of any property.

Prepare your will.

Once you have all the biographical background information, your assets and liabilities, an understanding of how you'd like to distribute your assets, and who will be in charge of that process, then you are in a position to prepare a will. "The will should be prepared, taking into account the client's desires as well as the most tax advantageous planning you can do," says Douglass.

Prepare powers of attorney.

In addition to the will, these documents are crucial to the estate plan. The financial power of attorney and medical power of attorney protect your estate by allowing someone you trust to handle your financial matters and make medical decisions for you if you are incapacitated or disabled. As part of their plan, Dahari and Michelle Brooks have executed powers of attorney so they will be able to act on each other's behalf.

Buy adequate insurance.

Make sure to purchase disability insurance as income replacement in case of injury or illness. Douglass says life insurance provides immediate cash to use for administration costs, such as the funeral, hiring an attorney, or carrying the mortgage until you can sell the house. It can also provide income replacement for the family breadwinner (the general rule is a death benefit equal to a minimum of 10 years of income).



Think about trusts.

An experienced attorney can help you create trusts that serve multiple purposes, from asset protection while you are alive to long-term financial security for your loved ones after your death. Douglass also suggests considering an irrevocable life insurance trust.

Clarify your beneficiaries.

Life insurance, annuity, and retirement accounts will go to the people you list on the beneficiary designation forms, NOT to the names on your will. "Your estate planning attorney needs to coordinate all of your beneficiary designations," says Douglass, and "make sure all your property is titled in accordance with the overall estate plan."

Keep the plan current.

Douglass suggests updating your plan every three years, whenever you experience a change of life circumstance, or if you hear about changes in laws governing estate planning and taxation.