

Estate Essentials

Have you ever seen some of the magnificent ancient buildings in Rome or in Athens? Whether you have seen them in person or in photographs, one thing is clear: They were built to stand the test of time. And many did for centuries. Life & Estate Planning is like that, too. Your Life & Estate Plan must be built to stand the test of time. It should properly serve you throughout your lifetime, and your loved ones after you are gone. In this article we review six essential structural components common to ancient buildings as metaphors for six essential components common to proper Life & Estate Plans. Those structural elements are: a firm foundation, four critical columns and a secure roof.

Firm Foundation: No building can exist without a firm foundation to support it. Likewise, no Life & Estate Plan can exist without an initial commitment to create the plan and then an ongoing commitment to keep the plan up-to-date thereafter. Here is the key question every responsible, adult American should ask from time to time regarding their firm foundation: Is my legal and financial house in order? In other words, if something were to happen to you today, would everyone you love and everything you have be okay tomorrow?

Column One - Planning for Incapacity: Even if a building has a firm foundation, it will be of little value unless it provides shelter from the elements. So, the building must have a roof. And that roof must be supported by at least four solid columns. Each column must be solid, for if even one fails, the roof collapses and the building no longer serves its purpose. So it is with your Life & Estate Plan. Each of the four columns of your plan must be solidly built or the plan may not serve its purpose.

The first column of your Life & Estate Plan is Planning for Your Own Potential Incapacity. The law requires each adult American to make his or her own personal, health care and financial decisions. However, should you become incapacitated (whether through illness, injury or infirmity) and can no longer make those decisions for yourself, they must be made for you by a legally-appointed agent. You have the right, under the law, to select and appoint this decision-maker in advance. If you do not exercise this right while you are healthy and capable, then a probate judge, who may not know you or your wishes, will appoint an agent for you. This process can become costly and may invade your privacy by making your personal and financial circumstances a matter of public record. At a minimum, the first column requires that each adult American have Durable Powers of Attorney for Financial Matters, along with Health Care Treatment Directives/Durable Powers of Attorney for Health Care Matters.

Column Two - Planning for Death & Taxes: In erecting the second column, we look to the two certainties in life as identified by Benjamin Franklin: Death & Taxes. Unfortunately, only one of these certainties (taxes) can be completely avoided by proper planning. We will address that certainty first. Upon your death, the transfer of your wealth to anyone but a bona fide charity is subject to taxation. However, the law allows each taxpayer to exempt \$2 million from this death tax. Married couples may combine their exemptions and shelter up to \$4 million from death taxes – but this double exemption is not automatic. Although a married couple may protect up to \$4 million* of their assets from federal estate taxes through proper estate planning, careful planning is required. For example, if your plan includes the joint ownership of assets between

spouses, with reciprocal beneficiary designations and simple Sweetheart Wills, then you likely are shortchanging your loved ones and unnecessarily enriching the IRS. Consider this: On an estate of \$4 million, the taxes could exceed more than \$800,000 for a married couple. [* Note: The future of this tax exemption amount is uncertain under current federal tax law and many states are imposing their own estate taxes, independent of any federal estate taxes. Careful monitoring of the economic, political and legal climate is required.] Since death is a 100% certainty on the actuarial tables of every life insurance company (with a long history of anecdotal evidence in support), it seems only logical to make proper legal plans to protect your loved ones and your things when it is your turn. And planning is important, regardless the size of your financial estate. For instance, silver and gold aside, most parents consider their children to be their most valuable assets.

Parents often devote considerable time and treasure to providing educations, social/athletic activities and religious training for their children. Incredibly, however, these same parents may fail to legally appoint guardians (i.e. *back-up parents*) for their minor children in the event both parents die. By the way, listing the guardians on a cocktail napkin in the airport lounge will not work. You must legally appoint the guardians in your *Last Will and Testament* in advance of tragedy. Probate is the court process for transferring assets owned by decedents who did not make legal arrangements to avoid probate while they were alive. In fact, the only time and place a Last Will and Testament has any purpose is in probate. Much has been said and written over the years about whether probate should or should not be avoided. Bottom line: Probate is more burdensome in some states than in others and you should evaluate the cost-benefit of probate/probate avoidance for your unique circumstances.

Column Three - Inheritance Protection: Each column in the building is essential and the third column certainly is no exception. Have you ever noticed that no one values a dollar like the person who earned it? Appropriately then, the third column stands for Inheritance Protection. Indeed, an inheritance representing an entire life of work and thrift could be lost or taken if this column is not solid. How? If you do not incorporate Inheritance Protection into your estate distribution planning to protect any inheritance for (and maybe from) your heirs, then your hard-earned assets could be squandered by your surviving spouse's new spouse, your children/grandchildren, or lost to their potential divorces, lawsuits or bankruptcies. Alternatively, instead of outright or staggered distributions of your estate, consider establishing Long-Term Discretionary Trusts with Spendthrift Provisions for your heirs. Such arrangements may even include incentives to encourage positive behavior and to discourage negative behavior, too.

Column Four - Risk Management: Finally, we are ready to erect the fourth and final column. This column represents the need for proper Insurance Protection for several risks that can reduce or eliminate your estate. For example, disability income insurance is needed to continue your income should you become incapacitated during your earning years, life insurance is needed to protect your family upon your death (and perhaps to provide estate liquidity for post-mortem expenses, debts and taxes), and long-term care insurance is needed to avoid depleting your estate due to nursing home costs. Many otherwise proper Life & Estate Plans unnecessarily risk failure due to inadequate risk management.

The Roof - Peace of Mind: Once all four columns are solidly standing, you will be able to confidently answer yes to the key question every responsible, adult American should ask themselves, from time to time, regarding their firm foundation: Is my legal and financial house in order? The secure roof represents nothing less than the peace of mind this confident, affirmative answer brings you and your loved ones.