



Public or Private Estate Plan, Which is the Answer?

Written By: Leon Jones, Jr.

BIGROCK

LEGACY LAW GROUP

ATTORNEYS AND COUNSELORS, PLC

Managing Attorney

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Leon Jones, Jr.

Managing Attorney

INTRODUCTION

I had a stroke in 2014 which was one of the scariest times of my life because I thought I would never see my children grow up and graduate from high school or college or get married and have children of their own, but thankfully I survived. However, so many others do not survive and their loved ones are left with questions and no solutions.

In the years since, I have been able to see my oldest son graduate from high school, college, and grad school and see my oldest daughter graduate from high school and start college. I have also been blessed to have 2 more daughters. I have a full life and I plan to be around for a long time. Now, I want to share my knowledge of the Probate and Estate planning process with you as a guide to help you decide which plan to choose, Public or Private.

When a major life event happens such as a marriage, the birth of a child, the purchase of a home, or a health scare or the death of a loved one, we all think about what will happen to our loved ones if we are not around.

We think about putting together a Will or even a Trust. We think about who will take care of our kids, where our spouse and children will live and how will they afford to pay the bills. Our minds begin to race and sweat forms on our foreheads and we spring into action looking for an attorney and trying to make an appointment.

Then after a week of searching and finally setting an appointment, you meet with the attorney, go over your wishes, and get excited that you put something in place. So you go home and several weeks later you meet again to sign your documents and you think, “I am so glad I did that”.

But have you ever thought about what happens if the plan you created doesn't work? Have you considered the possibility that it isn't properly funded? Have you thought about which plan you have in place, a Public or Private Estate Plan? Have you contemplated having your assets on public display? Have you thought about the cost of not doing anything at all?

I. PUBLIC VS. PRIVATE ESTATE PLAN

Have you heard much about Michael Jackson's estate and how it was administered after his death? Or what about Jay Leno and how he had to seek an order from a Judge to be his wife's Conservator? The issues with each of these matter was public. It was there for the world to see and read about and consume. They didn't have the option of keeping their private matters just the, private.

Although they would have chosen to keep these matters private and out of the public's prying eyes, Judges made decisions because their planning wasn't complete.

A public Estate Plan is either an "I don't have anything to leave to anyone plan" or "I don't have enough money to have an estate, plan" which is translated into there is no plan and I don't have any of my wishes written down. A public plan can also be written but with no follow-up or funding after it is created.

A private Estate Plan is written to meet your desires and wishes. It is fully funded with your major assets titled in the name of your Trust or retitled during your lifetime to reflect a present transfer. It is reviewed regularly every 12 to 36 months to make sure all provisions are up to date and your wishes and desires are written down as you want.

Just creating an Estate Plan is good and going through the act of writing down what you want and why this is an exercise that most people never do and shockingly only 33 percent of Americans have an Estate Plan.

II. WILL MY PLAN WORK

Anyone who has created an Estate Plan wants to believe it will work when the time comes for it to work, but all too often I see plans that look good on paper, but when you look closer the realization hits that your plan won't work.

The question I get often is, "What do you mean it won't work?"

What I mean when I say an Estate Plan doesn't work, is that either your attorney didn't put in provisions for you to lay out how you want your assets distributed, in other words, your wishes are not clear as to "who gets what", or you didn't properly fund your plan.

When a plan doesn't work it can cost a family thousands of dollars and several months and even years in court. Your assets will be on public display, there will be fights among your family members, some of whom you have not spoken with in years.

You have to look closely at the hundreds of pages you received from your attorney the day you signed your documents and you have to review your plan regularly to make sure that what you want to happen when you die, does, actually, happen.

You have to put that bank account in the name of your Trust or you have to transfer the deed from your name to the name of your Trust or retitle that car to give it to the person you intended to have it.

Funding your plan could be as simple as having an attorney draft a Beneficiary Deed that leaves your house to your children or someone you choose without drafting a Will.

Not only that, a Judge may decide when assets may be sold, for how much, and to whom. Is this how you pictured things going after you are gone?

Your loved ones will be forced to spend more time with attorneys and in court than grieving your loss and taking time to remember the good times you shared.

III. THE COST OF DOING NOTHING

I am sure you have heard like I have heard, “I don’t care what happens to my stuff, I won’t be here anyway”. Well that in and of itself is a plan. It is the “Do nothing plan”. With this plan, you give control to the first person who decides they will “take care of everything”. You give the Judge the control to appoint the first person who comes up with the filing fee and you give up the ability to leave behind a legacy that will live on in the cherished memories of your loved ones.

Not creating a plan and having your loved ones handle your business is the surest way to have them more angry, frustrated and confused than taking time to remember the experiences and laughter and good times.

A “Do nothing plan” creates the risk that everything you worked for your entire life could end up in the hands of that one relative whom you never liked and haven’t spoken to in 20 years. This plan brings out the worst in people and rips families apart. This plan costs loved one thousands of dollars in attorney’s fees and court costs and lasts several months to years.

Give your loved ones one final gift and leave your instructions regarding your estate so they can take care of things in private, save time and money and make time to cherish and remember your lasting legacy.



CONTACT US

P H O N E

501.604.0220

E M A I L

leon@brllg.com

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