

Three Things You Didn't Know You Could Include in Your Estate Plan

Estate plans, much like the people who create them, are all unique. Contrary to popular belief, there is no one-size-fits-all approach. While there are some general similarities that can lead two clients to have a very similar estate planning structure (e.g., all to spouse and then all to children in equal shares), there are always facts and circumstances that are unique to each individual client. For example, one client may be an only child caring for an aging parent, while another stands to inherit a family business. One client may have a child with special needs, while another has no children but many animals they care for. A simple one-size-fits-all or DIY internet solution will not be able to carry out each of these clients' individual wishes in the most effective and efficient manner. Only an estate plan catered specific to the client and his/her family's circumstances can do that.

Although there are a multitude of possibilities when it comes to creating a custom estate plan, I have listed three creative strategies you may not have known you could include.

Pet Trusts

Planning for companion animals has become increasingly common. Your pet may be an important part of your family, and most people want to ensure their pets are taken care of if something were to happen to them. There are generally two types of dispositions for the care of a companion animal:

1. One option is an outright gift to a specific caretaker, such as a family member or friend. This involves giving your pet to someone you trust so the pet can be taken care of as his/her own. Some clients also include a monetary gift to the caretaker; however, in this scenario, the caretaker is not legally obligated to use the money for the care of the animal.
2. Another option is to create a pet trust under Tennessee Code Annotated §35-15-408. Under Tennessee law, you can leave money to a trust to be used for the care of one or more pets in the event of your disability or death. Like a traditional trust, you will need to appoint a trustee who will be responsible for managing and spending the trust money according to your instructions for the benefit of your pets. The trustee could make payments to a designated caregiver who is caring for the pet, or alternatively, the trustee may be the caregiver and use the funds to care for the pet.

The trust terminates upon the death of the animal, or if the trust was created for more than one animal, upon the death of the last surviving animal. The trust may not be enforced for more than 90 years. Upon termination, any remaining assets in the trust would be distributed to the named successor beneficiaries (which could be individuals or charities).

Charitable Funds

It is very common for clients who are charitably motivated to want to leave a specific gift to one or more of their favorite charities after their death. In some cases, the gift may be relatively small, but in others, it may consist of a percentage of the client's total estate. I have seen clients list as many as 30 charities in their will to receive gifts after their death.

Inevitably, things change over time. Charities may develop a different mission or focus, and the causes that are most important to you may change. Therefore, it often makes sense to build flexibility into your charitable planning through

charitable funds, rather than simple one-time specific gifts at death. One option to accomplish this would be to leave assets to a donor advised fund.

A donor advised fund is a charitable fund that you can establish during your lifetime or after your death to receive assets that you wish to leave to charity. The advisors of the fund (you while you are living or whomever you name after your death) make recommendations to the fund holder (usually a financial institution or a local community foundation) as to what gifts to give to which charities at any given time. The fund holder then handles the details of making the gift from the fund to the chosen charity. A donor advised fund could continue for a number of years or may have a time limit (e.g., five years) for when all of the fund assets must be distributed out. The donor may also leave instructions for the successor advisors about which charities and/or causes the donor would like the fund to support.

There are several other options for creative charitable giving. Visit the [Community Foundation of Greater Chattanooga's website](#) for a description of the various giving options available.

Supplemental or Special Needs Trust

If you have a friend or family member with special needs, you may have heard of a "special needs trust." A "supplemental needs trust" is simply another term for this type of trust. There are several different types of special needs trusts, but the general purpose is to provide benefits to a beneficiary that are *supplemental* to any benefits the beneficiary is receiving from other sources, such as need-based government income and/or health insurance (through Medicaid/TennCare). Due to the very careful way a special needs trust is drafted to comply with state and federal laws, the assets in the trust do not "count" as assets of the beneficiary for purposes of determining their eligibility for need-based government benefits.

As an example, if you have an adult child with a disability who has never worked and has never lived alone, that child is most likely receiving some sort of Social Security disability benefit and government-provided health insurance, such as Medicaid. If you were to pass away and leave any assets over \$2,000 to that child, not only will the child lose his/her source of income and health insurance, the child will become ineligible for many support services and programs that are only available to people who are on disability or "Medicaid-eligible."

If you do not have any children or family members with known disabilities or long-term physical or mental limitations, a supplemental needs trust may never even enter the conversation when you are working on your estate plan. However, the future is completely unpredictable and no one is immune from the possibility of developing a disability in the future, either through an accident or an unexpected health diagnosis. Therefore, in all of the estate planning documents we prepare, we plan for the potential of future disabilities or long-term health care needs of our clients and their beneficiaries. While we do not specifically draft special needs trusts for all clients, we build flexibility within our documents to allow the executor or trustee to create one if needed in the future. This is just another way to give you peace of mind that your wishes will be carried out and your beneficiaries will be taken care of, no matter the circumstances.

These three strategies highlight just a few of the many different creative planning options available to clients who work with us at Chambliss to develop an estate plan. If you have questions or wish to begin the discussion about your own personal estate planning needs, please reach out to me, Leah Mitchell, or another member of our [Estate Planning team](#).