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ESTATE PLANNING
GETTING STARTED – WHAT YOU SHOULD KNOW

INTRODUCTION

It's true that just about everyone, regardless of net worth or family circumstance can benefit from a personal estate plan. If you invest the time now to design a solid, comprehensive estate plan, you can protect your estate from unnecessary taxes and minimize complications for your loved ones.

This guide is designed to give you the information you need to get started on your estate plan. It contains an overview of the important estate planning concepts and provides additional information to prepare you for meeting with a qualified estate planning attorney. We believe that the better you understand the fundamentals of estate planning before seeking professional help, the smoother the process will be for you. We hope you'll find this guide a helpful introduction to this important subject.

PROBATE -THE COURT PROCESS THAT OVERSEES THE DISTRIBUTION OF YOUR ESTATE

Probate is the legal process that is used to validate your will, collect your assets, value your estate, settle any debts, pay estate and other taxes and oversee the distribution of your assets to your heirs. Estate planning can help minimize or even avoid the costs, delays and publicity of probate. As you can see by the chart below, the probate process has several disadvantages, including the possibility for delays in the distribution of assets and costly legal and administrative fees. Avoiding this process can save your loved ones a great deal of hassle and expense.

UNDERSTANDING PROBATE

ADVANTAGES	DISADVANTAGES
Claims and disputes can be finalized by the probate court	Legal and administrative fees associated with probate can be high, leaving less for your beneficiaries
Probate estates may use a fiscal tax year instead of a calendar tax year, which may be more favorable for income tax purposes.	Generally takes a minimum of 12-14 months, and for complex estates can take 2 years (or longer).
	In the absence of a will or if your will is challenged, your assets may be frozen during this time.
	Out of state property must be probated in the state where located.
	All documents filed are public record, resulting in lack of privacy for your heirs.

AVOIDING PROBATE

There are several methods available to avoid the necessity of an asset having to go through the probate process. While there are pros and cons to each of these methods, and some methods may be more beneficial than others in different circumstances, these methods include:

1. Placing a beneficiary designation on all retirement, investment and bank accounts, including, but not limited to, certificates of deposit, checking and savings accounts, IRA's, life insurance and brokerage accounts. These designations are commonly referred to as "TOD" (transfer on death), "POD" (pay on death), "ITF" (in trust for), or just as plain "beneficiary designations". A beneficiary designation should not be confused with a joint account, as a beneficiary designation only passes an interest in the account to your heirs after your death. Your beneficiaries have no interest in the asset during your life and, therefore, you beneficiaries' creditors, spouses, etc. have no right or claims to your accounts during your life.

2. A joint account "with right of survivorship" or held as "tenants by entireties" is a second method that will permit an asset to avoid probate. These types of joint accounts involve placing another person's name on an account so that, upon your death, the account will automatically transfer to that person's name individually. There are many pitfalls that accompany the joint account method. An example of a pitfall are that a joint account's assets are open to the claims of creditors for any

person listed on the account. Also the original account holder may lose the ability to manage or close the account without the joint signature of the other joint owner.

Many people also put real estate into joint names in order to avoid probate. The same pitfalls as mentioned above occur with real estate, in addition to some other concerns. Placing another person's name on real estate may result in reassessment of the property for property tax purposes and could result in a documentary stamp tax being due on the transfer deed if there is a mortgage on the property. In addition, the original owner loses the exclusive control and management of the property and can no longer sell the property without the joint owner's signature. Likewise, any proceeds from the sale of the real property must be split between the joint owners and any joint owner may partition and sell his or her interest in the real property at any time without approval from other joint owners.

3. Another method used to avoid having to probate assets is a revocable trust. A revocable trust is more further defined on page 7 of this outline, and any assets that are titled in a revocable trust will not need to go through the probate process. Instead, these assets are titled in a trust entity, which is treated as a separate entity from the decedent's estate. A trust will remain subject to the estate tax and the grantor's creditors, but the assets will remain in the trust's name after the decedent's death and do not need to go through the probate process, since they are not individually titled in the decedent's name.

UNDERSTANDING THE ESTATE PLANNING BASICS

Planning for Incapacity and Minor Children

Reducing estate taxes and avoiding probate are important objectives in any estate plan, but a complete estate plan can accomplish more for you. Should you die or become incapacitated, a complete plan should also make all of the following provisions:

- Ensure someone you trust will make your financial and medical decisions while you are living.
- Make sure your heirs (especially minor children) are provided for.
- Appoint someone you trust to act as guardian for your minor children.

Its important you make these provisions yourself with a personal estate plan, or state law will determine these things for you.

Federal Estate Tax Federal Estate Taxes can have a significant impact because estates worth over $5,340,000 will be taxed at 40%. Estate planning can substantially reduce the amount the IRS takes, and increase the amount you leave to your beneficiaries. If your estate is large enough to trigger estate taxes, an estate planning attorney can advise you on the techniques available to help minimize these costs. Some common methods include gifting to family members and to charity, maximizing the use of your lifetime gift and estate tax exemption, and maximizing the use of the marital deduction.

Gift Tax

A gift can be defined as the transfer of assets where the person giving the gift receives less in return than the full value of the asset transferred. However, not all gifts are taxable. Under current law, several categories of gifts are not subject to gift tax (subject to certain exceptions), including:

- Gifts to your spouse (via the Unlimited Marital Deduction).
- Tuition or medical expenses paid on behalf of another person.
- Gifts to political organizations (within legal limits).
- Gifts to charities.

Annual Tax-free Gift Limits - "ANNUAL EXCLUSION GIFTS"

In addition to the types of transfers above that can be made free of gift tax, each individual is allowed to give up to $14,000, free of gift tax annually to as many people as he or she chooses.

Gift Splitting

To take go a step further, married couples can give up to $28,000 to an individual donee each year. For example, suppose you and your spouse want to give your niece $17,000. You can stay under the $14,000 limit by splitting the gift. You and your spouse will be credited as giving $8,500 each. Any time you use this method, a gift tax return must be filed to show that you and your spouse both agree to the gift splitting.

Lifetime Gift and Estate Tax Exemption

As discussed, gifts of less than $14,000 made to an individual in any given year are free of gift tax. If you give more than $14,000 to any individual in a single year, the amount over $14,000 is considered a taxable gift, but this does not necessarily mean that you will be required to pay gift taxes on it because of the lifetime gift and estate tax exemption. All U.S. citizens have a lifetime combined gift and estate tax exemption. The exemption can reduce or eliminate taxes that would otherwise be required on asset transfers made during your lifetime or upon your death. In 2014, the estate tax exemption is $5,340,000 per person. In addition, the gift tax exemption is fixed at $5,340,000 million. If none of your gift tax exemption is used during your life, you can use the full estate tax exemption to offset tax due upon your passing. However, if you have used a portion or all of the gift tax exemption, then the amount used reduces the estate tax exemption.

If you give more than $14,000 to an individual in any given year, the amount over $14,000 is subtracted from your lifetime gift exemption until the exemption is used up. For example, if you give your son $35,000 in 2014 and you don't gift split with your spouse, the amount over $14,000 ($21,000 in this case) will be subtracted from your lifetime exemption ($5,340,000 minus $21,000). This means your exemption amount will be reduced to $5,319,000. If you exhaust your lifetime exemption limit, any subsequent taxable gifts (over the $14,000 gift tax exclusion each year) will be subject to gift taxes that can range as high as 40%. Whatever remains of your lifetime exemption at your death is applied to the value of your estate for estate tax purposes.

Estate Tax

At the time of a person's death, the value of the estate above the remaining lifetime exemption is subject to estate taxes of up to 40%. If an individual dies in the year 2014 and leaves a net estate (assets less liabilities) valued at $6.09 million, approximately $750,000 ($6.09 million minus the year 2014 exemption of $5.34 million) will be subject to estate tax. The amount subject to estate tax will be even larger if the individual has already used part of his or her gift tax exemption.

Other estate tax considerations

When someone dies, the estate tax is due before the beneficiaries receive their share of the assets and it is payable in cash, meaning that some assets may need to be liquidated to pay the tax. In most cases, payment of estate tax is due within nine months of the date of death.

Just as in the case of the gift tax, the estate tax is assessed on the fair market value of all your assets (minus debts and certain estate expenses) as of the date of death. This value includes property you would expect such as real estate, bank accounts, stocks and bonds, and personal property such as automobiles and home furnishings. It also includes some items you might not expect, such as IRAs, 401(k)s and other retirement plans, as well as life insurance policies on your life in which you retain some form of policy ownership or control.

COMMON ESTATE PLANNING VEHICLES

WILLS

What is a Will?

A will is a legally binding document that states how all assets titled in your name will be distributed at your death and names an executor for your estate. Of course, your will won't become effective until your death, but until then, you can change the terms or revoke it as long as you are considered mentally competent. Among other things, a will can:

- Designate assets to be placed in trust for family members or other beneficiaries.
- Designate a guardian for your minor children
- Direct how debts, taxes, probate fees and other costs are to be paid.
- Provide living expenses for family members during the probate period.
- Designate a fiduciary to manage the affairs of an incapacitated beneficiary.

What Happens at Death (with a Will)

At your death, your will must be probated. Probate is the court supervised legal procedure that validates your will and oversees the settling of your estate. Generally, during the probate period:

- Your executor notifies beneficiaries of your death and provides each with a copy of your will, if they request it.
- A death notice is published in a local newspaper and mailed to any ascertainable creditors. This gives creditors the chance to present unpaid bills and allows any interested party the chance to contest your will.
- The probate attorney files the appropriate papers with the court and attends any required hearings requested by the court.
- Your executor works with the court to inventory and value your assets, pay debts, pay estate and other taxes, collect benefits and file your final income tax returns.
- The executor distributes remaining assets to the beneficiaries.

THE PROS AND CONS OF WILLS

ADVANTAGES	DISADVANTAGES
Any disputes can be settled impartially through the probate court.	There's a lack of privacy because all documents filed with the probate court are public record.
The probate process can shorten the time creditors are allowed to make claims against your estate.	Distribution of your assets to your heirs may be delayed because the probate procedure takes a minimum of 12-14 months for simple estates (2 years or longer for more complex estates).
Probate estates may select a fiscal year rather than a calendar year, which may be favorable for income tax purposes.	A separate probate proceeding may be required for every state in which you own property.
Low cost to prepare.	Estate settlement costs can be high due to the administrative and legal fees associated with probate.
Allows you to appoint a guardian and make provisions for minor children.	A will makes no provision for your own incapacity or illness and is only effective at your death. For this reason, it's wise to accompany your will with another legal document called a Durable Power of Attorney.

TRUSTS

What is a Trust?

A trust is a legal arrangement in which you (as the trustor or grantor) place property in trust for the benefit of one or more individuals (beneficiaries). A trust is established via a trust document in which you name someone to manage assets placed in trust (a trustee) and give instructions on how distributions are to be made.

Trusts Can be Revocable or Irrevocable

A "revocable" trust allows you to change the terms or cancel the trust at any time during your lifetime, but the terms become irrevocable at your death. Since most people want to retain control and ownership of their assets during their lifetimes, they often choose to create revocable trusts. Because you retain ownership and control of the trust assets during your lifetime, there are no immediate gift or income tax consequences when you create this type of trust.

An "irrevocable" trust can never be altered or revoked once it is established. With this type of trust, you relinquish beneficial ownership of the trust's assets and thus remove them from your taxable estate. Common uses for irrevocable trusts are to support an incapacitated family member, to establish an education fund for children or grandchildren, or to fund a Charitable or Life Insurance Trust. However, any assets transferred into the trust will be subject to gift tax, if applicable, at the time of transfer.

Assets of all kinds can be placed in a trust, including bank accounts, real estate, securities, mutual fund shares, limited partnerships and personal property such as cars or jewelry. Some assets may not be appropriate to place in a trust, so be sure to consult your attorney.

With a trust you can:

- Maintain ownership and control of your assets during your lifetime, if you wish.
- Provide a vehicle for the management of assets for beneficiaries such as a spouse, minor children or incapacitated or financially inexperienced individuals.
- Stipulate the circumstances and timing under which distributions are to be made. For example, you can specify that your children should receive a certain amount solely for educational purposes or specify that a child is to receive a certain lump sum at age 21, receive income from the remaining trust investments until age 35 and then receive an outright distribution of the balance.
- Arrange for your spouse to receive investment income for life with the principal distributed to your children at his or her death.

How a revocable living trust works during your lifetime.

With a revocable living trust, you can manage trust assets the same way you would manage your personal investment portfolio. A revocable living trust gives you a great deal of flexibility because:

- You or anyone you name, who is competent and of age, can act as trustee.
- You can retain full control of the assets in your trust.
- Income tax filing procedures remain the same during the grantor's lifetime.
- You can change the terms or revoke the agreement at any time should your financial circumstances or family relationships change.
- You can identify one or more successor trustees in your trust document, providing a specific successor trustee to take your place should you become incapacitated or no longer wish to be the trustee.

What happens to a revocable living trust at your death?

A revocable living trust typically becomes irrevocable at your death. Your successor trustee will then become responsible for carrying out the terms of the trust, managing and distributing assets, filing and paying taxes, and performing any other duties outlined in the trust.

THE PROS AND CONS OF REVOCABLE LIVING TRUSTS

ADVANTAGES	DISADVANTAGES
Can help avoid the delays and costs of probate (Settling a trust can be far less expensive than probating a will).	The initial costs of setting up and implementing a trust are usually higher than those for writing a will. (But, ultimately, your beneficiaries may save on probate costs.)
Can maximize use of both spouses' gift and estate tax exemption amounts, meaning the surviving spouse can retain control over more of the marital assets while minimizing estate tax. (Note: a testamentary trust can do this also.)	Time and effort are required to transfer assets to the trust, as a certain amount of paperwork is necessary.
Preserves financial privacy. The terms of a trust are generally not public record.	Real estate placed in a trust may make refinancing more difficult because you must often reassume the title to the property until refinancing is complete.
Assures uninterrupted management of your trust investments should you become ill or incapacitated.	
Avoids probate for real property held out of state.	
Can provide for the ongoing management of your investments for family members who may be financially inexperienced or incapacitated.	

POWER OF ATTORNEYS

What is a Power of Attorney (POA)?

A POA is a legal document that allows you (as the "principal") to authorize another individual (the "agent" or "attorney in fact") to act on your behalf. Different types of POA allow different levels of authority and are used for different purposes. The most common POA, a "General Power of Attorney" gives the attorney in fact the right to conduct broad financial and legal affairs on the principal's behalf, including the right to obligate the principal in a variety of transactions, such as buying and selling property, opening or liquidating bank accounts and purchasing items on credit. Actions performed under authority of a Power of Attorney are treated as if you actually made the transaction. As you will be held accountable for anything your attorney in fact obligates you to, a POA should only be granted with extreme caution.

Without language to the contrary, Power of Attorneys cease to be effective when the principal is deemed incapacitated. Therefore, if you want your attorney in fact to retain the powers entrusted to him/her after the onset of incapacity, the POA document must include specific language that makes it "durable". Thus, the majority of people prefer that the POA be a "Durable Power of Attorney", so that the attorney in fact may use the power for your benefit should you become incapacitated for a period of time.

DESIGNATION OF HEALTH CARE SURROGATE

This document, which is similar to a Power of Attorney but dealing with Health related decisions, authorizes your agent to make medical decisions for you when you are unable to do so. For example, if you are in a car accident and are unable to make decisions concerning your medical treatment, the person named in a Health Care Surrogate, usually a spouse or trusted friend who understands your wishes, can make health related decisions on your behalf.

LIVING WILL

This document, which is often comically referred to as the "Pull the Plug Document", sets forth your wishes pertaining to Life Prolonging Procedures such as artificial respiration and tube or IV feeding. Some individuals, if they have little of no chance of improving from a terminal or vegetative state, wish that these life prolonging procedures be withheld, and only medication for pain and comfort be administered to them. This document sets forth your personal wishes, and names an individual who you wish to make the final decisions regarding whether to administer a procedure.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its regulations were enacted with the goal to protect against improper disclosure of your medical records and related health information. This goal, however, can prevent your family and those named in your estate planning documents from obtaining your medical information, which may lead to problems implementing your estate plan. Under HIPAA, medical personnel may incur substantial penalties, both financial and criminal, for improperly disclosing your medical information. Understandably, doctors and hospitals tend to interpret HIPAA conservatively making it harder for family members and loved ones to access your medical information.

Many attorneys are now addressing this issue by providing an advance authorization for medial entities and medical providers allowing them to disclose the protected medical information to specific classes of individuals. Many forms, such as our firms "Authorization for Disclosure of

Protected Health Care Information" form, allow information to be released to a client's Agent named under a valid Power of Attorney, to the Health Care Surrogate named under their Designation of Health Care Surrogate form, to their successor Trustees in their trust, and to a guardian ad litem if one is appointed for them at some time in the future. These classes of individuals may need access to the client's medical information to help make the important decisions that their various roles require.

The previous information was provided solely for information purposes. An estate plan for an individual may or may not contain the documents discussed. We highly suggest that you seek the professional advice of a specialist in this field to determine the appropriate estate plan for your situation.