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ESTATE PLANNING

What is Estate Planning? Estate Planning is controlling your own destiny by deciding today how your affairs will be handled in the future in the event of death or disability.

Why should an individual have Estate Planning? Estate Planning is utilized by an individual to minimize the taxes and costs associated with the administration of his or her estate, thereby maximizing the amount which may be received by his or her heirs, and to control how and by whom his or her estate is administered.

How is Estate Planning achieved? Through the use of Wills, Trusts, Powers of Attorney and Living Wills. However, you should also realize that you do basic estate planning every time you open a joint bank account or purchase an asset in joint name.

ESTATE PLANNING VEHICLES

I. LAST WILL AND TESTAMENT - Document that states what you want to happen with your property upon death and who is to handle your affairs.

- A. Reasons for having a Will.
 - 1) Direct who is to receive your assets, and how.
 - 2) Appoint who you want as fiduciaries to handle your affairs (ie. Executor to administer your estate, Trustees to administer any testamentary trusts, and Guardians to care for minor or disabled dependents).
 - 3) Provides for opportunity to do tax planning upon your death via certain testamentary trusts such as a credit shelter trust or a marital trust.

- B. What if you don't have a Will?
 - 1) Assets will be distributed in accordance with Pennsylvania intestate law. This law favors surviving spouse and children. However, this statutory distribution scheme may not coincide with the way you would want your assets distributed.
 - 2) Fiduciaries (administrators/trustees/guardians) appointed through court proceedings.

- C. Non-Probate Assets - pass by law and are not subject to probate. Examples are joint bank accounts, certain jointly held property, and beneficiary designations (ie. life insurance/pensions). But some non-probate assets still subject to PA Inheritance Tax. Also may cause problems if try to save inheritance tax by putting assets in joint name with person other than a spouse.
 - 1) Joint owner may die first and you would end up paying inheritance tax on own property.
 - 2) Joint owner may take the money and run!
 - 3) Other heirs left out if you don't specify that joint assets are to be split between all heirs.

II. LIVING TRUST - Document created during life that manages your assets and provides for plan of distribution in future. A trust is a mechanism whereby property is given to one person ("Trustee") who holds the property for the benefit of another person ("Beneficiary").

- A. Advantages of Living Trust
 - 1) Reduces cost and delays of probate.
 - 2) Provides maximum privacy because trust is not probated and therefore not public record, but Inheritance Tax Return will be available to public
 - 3) Allows for management of assets if incapacitated.
- B. Types of Living Trust
 - 1) Revocable - grantor can revoke, alter or amend.
 - 2) Irrevocable - grantor can not revoke, alter or amend, therefore lose all control over the assets placed in an irrevocable trust.
- C. Disadvantages of Living Trusts
 - 1) Does not save inheritance or estate tax if trust revocable because you still own and control.
 - 2) May still need a Will to "pour over" any assets that are outside of the Trust into the Trust.
 - 3) Has no affect on non-probate assets (joint property).
 - 4) Have burden of transferring assets to trust when trust established - requires time and money today. Assets may have to be distributed from Trust upon death of creator, which will create extra cost of transferring assets twice.
- D. When are Living Trusts Useful?
 - 1) When you have substantial assets that are difficult to dispose of through probate process. For example, owning real property in several different states requires the probate of an estate in each such state to pass the real estate to your heirs. This could be avoided if the real estate was held by a Living Trust.
 - 2) When you don't want to manage your own property.

- 3) Certain Medicaid planning. Can use Living Trusts to provide for elderly or disabled beneficiaries and, to a lesser extent, to protect own assets from hindering Medicaid eligibility. But if marital residence is owned by a Revocable Trust, will not be afforded same protection from Medicaid attachment to spouse who is still residing in the marital residence.
- 4) Irrevocable Trust used to remove value of life insurance from estate for federal estate tax purposes.

III. POWERS OF ATTORNEY - Document whereby you appoint another (“Agent”) to handle your affairs as if you were present.

- A. Financial Power of Attorney - This document is needed in the event of a physical or mental incapacity which renders you incapable of effectuating financial or legal matters. By use of this document, you appoint an agent to act on your behalf with respect to such financial matters in the event you are unable to do so.
- B. Health Power of Attorney - Similar to the Financial Power of Attorney, this document is used to appoint an agent or attorney-in-fact to act on your behalf with respect to medical decisions in the event you are unable to act due to physical or mental incapacity. Examples of the powers granted under a Healthcare Power of Attorney include having your agent or attorney-in-fact consent to your medical treatment, sign medical authorizations, employ physicians and provide access to your medical records.
- C. Types of Powers of Attorney
 - 1) Durable vs. Non-durable - Durable power of attorney is not affected by subsequent incapacity of principal whereas non-durable power of attorney ceases to be effective upon principal’s incapacity.
 - 2) Springing vs. Non-springing - Springing power of attorney only becomes effective upon the occurrence of some event, generally the incapacity of principal, whereas a non-springing power of attorney is effective immediately upon execution.

Note: Powers of Attorney cease upon the death of the principal.

IV. LIVING WILL - Document allows you to control your medical care in the event you are in a “terminal condition” or state of “permanent unconsciousness”. You specify which treatment you do or do not want when in such a condition, such as:

- cardiac resuscitation
- mechanical respiration
- tube feeding
- blood or blood products
- surgery
- dialysis
- antibiotics

A Living Will becomes operative when given to physician. If physician does not follow living will on ethical or moral grounds, statute requires physician to make an effort to transfer you to a physician who will. *Note:* A Living Will does not condone euthanasia or assisted suicide.