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Introduction to Estate Planning

This document is designed as a very brief survey of estate planning tools to provide the reader with a menu of possible choices in preparation for a discussion with an attorney. It is to be read in concert with its companion “Estate Planning Philosophy” and to a lesser extent “Fee Schedule—Estate Planning/Probate” documents.

Estate Planning should be a lifetime endeavor of ever increasing sophistication and complexity. The planning documents will grow with the person, and the person’s wealth. Simple at first, more complex and detailed later.

What is an Estate Plan?

What is an estate plan? It’s a means of determining ***who*** will be entitled to assets upon specified events. Those events are almost without exception disability or death. It’s a means of determine ***how*** the assets will be owned. The choices are generally ‘outright’ or ‘in trust’. A trust provides that someone else will implement the plan and be the custodian of the assets for the person entitled to the assets. Trusts can be of a limited duration or permanent. If we believe the person entitled to the assets is competent, capable and mature enough to own the assets, the assets may be given ‘outright’, but if not, then ‘in trust’ may be a wise plan.

A plan may also provide for management of assets for incapacitated persons, either by providing for a lifetime trust, and/or powers of attorney so that others may manage the assets if the incapacitated person cannot.

A plan may also provide for others to be legally authorized to physically care for the incapacitated person by power of attorney for health care, or for minor children, by use of a guardian(s) upon the parents’ death.

The Lifetime Evolution of Estate Planning

Simple Will:

Beginning plans for younger people with modest assets provide a Will to determine who will succeed to assets upon death, and Guardians for minor children.

Simple Will with Contingent Children’s Trust:

The next evolution of planning adds the use of a trust to hold assets if both parents are deceased. The trust is separate and apart from the children, protects the assets and

often provides for management by a person who is different from the Guardian thus dividing the duties and providing a check and balance system. Again, this trust is only used if both parents are deceased. Of course, the event of both parents dying while children are young is – gladly—rare. But the peace of mind provided by such a plan can last for many years.

The Living Trust:

The next step in planning is to place assets in trust, during the maker's life. This plan is often called a "Living Trust". The maker (usually the person reading this document) is the first trustee, and often does so for the duration of the trust up to death. However, if the maker becomes incapacitated, the trust provides for a successor trustee of the maker's choice to automatically, and seamlessly take over as trustee.

And, because the assets have been transferred to the trust during life, there is no probate, paperwork, and virtually nothing to do upon death. Many of our clients choose a Living Trust after either a 'good' experience when a parent or grandparent had one --- or a 'bad' experience after a lengthy, costly and complicated probate estate. This planning is always done with companion wills to catch any asset inadvertently left outside of the Trust and with Powers of Attorney for Property and Health Care.

Unique attributes of Trusts:

All trusts provide other attributes in regard to the duration and nature of the management. 'Delayed Distribution' is one such attribute. Assets can be held in safety and security while children and young adults mature. Many such trusts provide for a portion of the assets to be distributed at one age (say 25) with the remainder later (say 30). Without a trust, individuals are entitled to the assets at age 18.

Advanced Planning:

More advanced plans are done for those with complicated lives, special needs, or a great deal of wealth. Merged families, addictions, marriages late in life, medical conditions may lead to the need for advanced planning. If you think that any of these situations may require advanced planning, be sure to ask. And, as many already know, if the total of assets to be conveyed reaches in to the million dollar range, then advanced planning will be in order to save tens of thousands of dollars from being paid to the government in taxes.

This brief introduction should not be considered a substitute for a discussion with an attorney; rather, it is just a warm up and meant to start the thought process for a lifetime of estate planning. The next step should be a phone consultation with an attorney to arrive upon what stage of life you are in, and what plan best suits you at this time.

Experience has demonstrated that any plan is better than no plan, and that the only wrong choice in estate planning is no planning at all.