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Estate Planning Overview



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Estate Planning Overview

GOALS

A good estate plan should accomplish the following goals:

- Your lifetime financial security.
- Your lifetime incapacity protection.
- Carry out your plan for the distribution of your property to your beneficiaries.
- Minimize confusion, disputes, delays and expenses and taxes.

BASIC ESTATE PLAN DOCUMENTS

The basic estate planning documents include the following. We have provided more details on each in the following pages.

- Will
- Beneficiary Designations
- Revocable Trust (also known as Living Trust)
- Probate Process
- Power of Attorney
- Health Care Directive
- Standby Custodian

PLANNING PROCESS

A good estate plan should be the result of the best efforts on the part of you and your attorney to address each of the goals set out in Part I of this memo through a process of information gathering, document drafting and design which takes into account your resources, needs and your family.

It should include a thorough discussion of all aspects of the plan, execution of the documents and follow through to make sure that proper filings and other steps are taken to put your plan in place.

The process usually takes two office conferences and perhaps more discussions over the telephone that occurs over a period of several weeks. You need to have the time to reflect upon your plan and consider changes or alternatives. Flexibility in the language of the documents is very important with the goal of giving you and the persons involved with the administration of your estate the widest range of options to respond to future events, many of which are unpredictable. We outline the steps in the process in the following pages.

Definitions & Details

for Basic Planning Documents

WILL provides your centralized disposition of your estate in a single document, and you may include trusts to protect beneficiaries.

- Formal signing requirements.
- If you include one or more trusts, they will be established by your personal representative during the probate process.
- You may make gifts to charities and anyone else and in any shares or amounts.
- May include trusts for longer-term protection of beneficiaries and property management.
- You exercise your power to designate your personal representative who will administer your estate and carry out the provisions of your will. You may identify alternate personal representatives who may serve if your nominated personal representative cannot serve. Your property will be distributed by your personal representative through the court probate process.
- Failure to title assets correctly may defeat all or part of your dispositive plan.

BENEFICIARY DESIGNATIONS allow you to name one or more primary and back-up (contingent) people who will receive the assets upon your death.

- Beneficiary designations are just as important as your will or trust. Failure to coordinate the beneficiary designation with your will or trust could defeat all or part of your estate plan.
- Life insurance policies, IRAs, retirement plans, annuities, and other financial contracts include beneficiary designations.
- Beneficiary designations for IRAs and retirement plan assets are particularly important – potentially enormous income tax benefits may occur depending upon the options selected.

STANDBY CUSTODIAN is a written document that allows a person to designate a temporary or standby custodian to assume legal and physical custody of the designating person's child. This may be appropriate when a custodial parent is facing medical procedures or an illness causing debilitation or incapacity where the other parent is either unable or unwilling to parent.

- Process: The designator must make a written designation, properly witnesses, naming a standby or temporary custodian. Notice must be given to the other parent. The designator may petition to have the designation approved by a court during his or her lifetime or the named standby or temporary custodian may petition after a triggering event has occurred.
- Triggering Events: The statute allows the designator to set "triggering events" and defines three situations: debilitation, incapacity, or death.

Definitions & Details

for Basic Planning Documents

REVOCABLE TRUST (ALSO KNOWN AS LIVING TRUST) designates an owner of your property while you are living or to receive your property at the time of your death. That is how the trust allows your family to avoid probate.

- You reserve the power to change the trust at any time or revoke it.
- You may create a revocable trust for lifetime management of your property. It may be used to avoid a court conservatorship proceeding if you become incapacitated or incompetent.
- You may make a centralized disposition of your property at the time of your death, and you may include trusts to protect beneficiaries. If you include trusts for beneficiaries, your trustee will fund and establish them after your death.
- You may make gifts to charities and anyone else and in any shares or amounts.
- Your trust may be used to collect and invest life insurance proceeds upon your death quickly.
- It may be used to avoid probate if your property is titled correctly. After your death, your trustee administers the trust property privately and without probate court involvement.
- The trustee assumes considerable responsibility.
- You may serve as trustee of your trust with or without co-trustees. You reserve to power to appoint or remove trustees as you wish and without court approval.
- If you own real estate in another state, you should title the property in your revocable trust. In the event of your death, your family will avoid probate in the state in which the real estate is located.
- You will name one or more successor trustees who will be appointed to serve as successor trustees after your death. These may be family members. If appropriate, professional trustee services are available from trust companies and bank trust departments.
- Income taxes must be paid on income earned by trust assets.
- You retain control of the trust property. You may buy, sell or give away your property any time you wish.
- A living trust will not protect your property from nursing home or other long term care expenses. The assets held in a living trust are treated as available assets which you would be required to spend for your long-term care if needed. You will have to spend your money and draw down your property to pay for your long-term care expenses that are not covered by insurance, regardless of whether you create a living trust or whether you own your property outright.
- Failure to title assets correctly may defeat all or part of your dispositive plan.

Definitions & Details

for Basic Planning Documents

LIFETIME PROTECTION

Power of Attorney – A revocable written document that allows your spouse, child or children, or other trusted person to make financial decisions for you.

- You designate one or more individuals who take of your financial affairs.
- The power of attorney can, if properly drawn, continue if you become incompetent – in fact, that is the primary purpose for the power of attorney, as it may help you avoid a court conservatorship proceeding should you become incompetent.
- The power of attorney ends at your death. Thereafter, your personal representative (in the event of probate) or your successor trustee of your revocable living trust will be responsible for disposition of your property and payment of your final expenses.
- You may revoke your power of attorney and create a new one if you decide to name a new team of individuals to take care of your financial affairs.
- You cannot use a power of attorney in Minnesota to address medical care. That job is reserved for the health care directive.

Health Care Directive - A written document that allows you to designate someone to be your health care agent (who could be your spouse, one or more children or any other trusted person) to make health care decisions if you are unable to make those decisions for yourself.

- The document grants broad powers to your health care agent team to make treatment decisions, get second opinions, change hospitals, doctors, etc. You are authorizing your health care agent to do essentially everything that you could do yourself.
- Your doctor determines whether the health care agent should make a decision concerning your treatment. If you are able to decide and speak for yourself when the decision needs to be made, you will make the decision. If the doctor concludes that you are not able to decide or speak for yourself at that time, your health care agent will be called.
- "Living will" ground rules addressing for your final treatment wishes are incorporated into the health care directive.
- A copy of the health care directive should be filed with your doctor's office and with the hospital (if you have a chart at the hospital).
- A health care directive, if properly drawn and administered, will allow your family to avoid a court guardianship proceeding if you become incapacitated.

The Estate Planning Process

STEP 1: Information gathering and planning

It's important that your attorney has a thorough understanding of your assets and life insurance policies, including estimated current value and how the assets are titled. You will want to address the specific needs of each of your beneficiaries. Those needs may call for the use of one or more trusts to provide for the management of property for the benefit of beneficiaries who may need protection.

The analysis of your estate includes a determination of whether there are potential income, capital gains, or estate tax liabilities and whether steps might be taken through the planning process to reduce or eliminate these taxes. Your plan should include a provision to make cash available to your trustee or personal representative for the payment of any debts or your final expenses.

You are an integral part of the planning process and must have a thorough understanding of your options. Estate planning takes teamwork, including other professionals, such as life insurance agents, accountants and financial planners.

During this time, you need to talk with those persons whom you would like to nominate as your attorney-in-fact (for your power of attorney document), your health care agent (health care directive), your personal representative and guardian for your minor children (for your will) and your trustee (if trusts will be part of your plan).

STEP 2: Preparation of your documents

During this phase, you work with your attorney to prepare and revise the estate plan documents that will be used to implement your plan. The documents must be understandable and must be fine-tuned to meet your specific needs.

STEP 3: Execution of your documents

Your estate plan documents are usually signed in the attorney's office during a session that also includes a thorough review and discussion concerning aspects of each document.

STEP 4: Filing of your beneficiary designations and other follow-through tasks

Failure to effectively file insurance policy and retirement plan/IRA beneficiary designations will doom your plan to defeat. The same is true for not properly titling assets. We prefer to oversee the beneficiary designation process and property re-titling process (if needed) so that we can be assured that your plan has been put in place.

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