Introduction To

Estate Planning

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INTRODUCTION

There often exists a myth that estate planning is only important to the wealthy. This misconception is largely due to an emphasis that is placed on the importance of planning for estate taxes, something that only relates to owners of large estates. Even so, estate planning is important to everyone. The word ‘estate’ describes the property that is owned by an individual and does not encompass a particular definition. That estate might be small or large. Estate planning involves a series of steps that are used to ensure that after your death your property will be handled in both a way that recognizes your wishes as well as the value of your property.

Naturally, when one begins to think about such things, many concerns often come to mind that can also extend to possible mental and physical disabilities. This is why such issues are also commonly addressed in estate planning as well.

Estate planning can often be intimidating to many people because there are no single clear cut answers. The two most basic questions to focus upon when addressing estate planning are:

If you were to die tomorrow what would you want to happen to your property?

What would actually happen to your property if you do not have an estate plan in place?

An effective estate plan is specifically designed to ensure that reality is in line with your wishes. Steps involved in estate planning can include family discussions, writing a will and trust, changing beneficiary designations, purchasing life insurance, etc.

Above all, the most important aspect of estate planning is to make sure it is given thorough consideration. When approached in a step by step manner, the process of estate planning is not nearly as daunting and intimidating as many people believe.

Are you ready to embark on the process of planning for your estate?

Let’s get started!

CHAPTER 1

The Basics of Estate Planning

What is estate planning? In its most basic sense, estate planning involves planning for certain death as well as for the possibility of physical and/or mental incapacity or disability.

Mental Incapacity

While we would all like to assume that we will go through the duration of our lives with our mental faculties fully intact, the simple truth of the matter is that we are not guaranteed this. Accidents, health problems and the sheer process of aging can cause one's mental faculties to become impaired. If you should become mentally disabled, it is important to have an estate plan in place that will ensure your personal decisions are met as well as your financial decisions. Without this type of two-part estate plan the result will be that both you as well as your assets will come under the care of a court-supervised conservatorship or guardianship.

Two documents are used in an estate plan to address the possibility of mental incapacity.

Advance Medical Directive

An advance medical directive is necessary for the delegation of your personal decisions. This document is also sometimes referred to as a Medical Power of Attorney or a Designation of Health Care Surrogate, depending upon the state in which you live. This document makes it possible for you to give to an individual of your choice the right to handle your personal needs as well as make medical decisions if you should become permanently or temporarily unable to do so on your own.

Financial Power of Attorney

This document is necessary for the delegation of your financial decisions by allowing you to select someone who will manage your assets on your behalf if you are unable to manage them on your own. In the event the Power of Attorney is 'durable' it means that the person chose will be able to immediately handle your property and will continue caring for it even if you should become mentally incapacitated. If the Power of Attorney is 'springing' it means that the person chosen will not be able to manage your property and assets until after you have been determined to be mentally incompetent.

Estate Planning for Death

At the time of your death, it is important for you to have a carefully thought out estate plan in place. Such an estate plan will ensure that all debts are paid and will also establish who shall receive any assets left remaining. The basic legal document that will address planning for death is known as a Last Will and Testament.

This document contains written instructions regarding the way you wish your estate to be handled following your

death. Using a will does have some drawbacks and one of those is that the document must go through probate before your family and beneficiaries will be able to legally take control of your property and assets.

Probate is a court supervised process that involves taking an inventory of all of your assets following your death. The process also involves paying all of your final bills. Only then will what is left be distributed to your family and beneficiaries. The entire probate process will be dictated according to the probate laws of the state in which you lived at the time of your death. A big drawback of this process is that your property and assets can possibly be tied up for months, and in some cases even years, before your loved will be able to access it.

Revocable Living Trusts

Revocable living trusts are used for the purposes of planning for mental disability as well as death through the use of one document. This specific type of trust makes it possible for you to maintain control of your property while you are still alive and well while at the same time designating someone to manage you and your finances if you should become mentally disabled.

At the same time you are also able to provide instructions regarding what you wish to have happen with your assets following your death. One of the benefits of a revocable living trust is that your family and beneficiaries can gain almost immediate access to your property and assets following your death. Property that is held in this type of trust avoids court supervised probate.

What Happens if you Die without an Estate Plan?

It is always important to be sure you have a thorough understanding of what will happen to your property and assets if you die without an estate plan. In every state, there is a legal process in place which determines who will inherit property if a person should die without having a valid will in place. These laws are known as intestacy laws. Intestate means that the person died without having a valid last will and testament.

If this happens, the intestacy laws of the state where the person last lived at the time of their death determines who will inherit their property. Each state has different laws, but they all follow the same general rules or patterns. For instance, first your spouse and your children would inherit your property. If you do not have a spouse and children, then your parents would inherit your property. If your parents have already died, then your siblings would inherit your property. If your siblings have predeceased you then your nieces and nephews would inherit.

Last Will and Testament

There are typically four parts to a Last Will and Testament. They are:

- How final bills will be paid
- How the cost of settling the estate and estate taxes/inheritance taxes will be paid

- Who will be in charge of overseeing the settling of the estate. This person is known as the executor or representative. This section will also deal with the powers this person will have and if you have minor children who will be responsible for raising the children

- Who will receive the balance of your estate, how they will receive it and when they will receive it

Using the Revocable Living Trust to Avoid Probate

As previously mentioned, while a Last Will and Testament is an important element in an estate plan, the drawback of using this document is that all of your property and assets must pass under the terms of the will and must also go through the probate process. That process can take six months or longer and sometimes even years. This means that your family and beneficiaries will not be able to access your assets until that process has been completed.

The Revocable Living Trust sets forth the precise way in which your property will be managed while you are alive as well as after your death. In terms of while you are alive, the trust deals with the way your property will be managed should you become mentally disabled. The second part contains instructions for the way in which your property will be handled after your death, in the same manner as would be addressed in a Last Will and Testament.

Revocable living trusts make it possible to avoid probate because your assets are funded into the trust while you are still alive. As a result, there is no need for probate after your death. In terms of real estate and bank accounts, your name will be removed from the asset and in its place the name of the trust will be inserts. For assets such as retirement accounts and life insurance, the trust will be named as the beneficiary.

After the trust has been fully funded, this does mean that you will no longer own those assets. The trust will own them. This makes it possible for the property of the trust to pass directly and immediately to your beneficiaries.

Getting Started with Estate Planning

When approaching estate planning, it is important to have a full understanding of the steps that should be taken.

First, determine your estate planning needs. This should involve assessing your own current family situation as well as financial status. In addition, you should locate and hire an attorney that is experienced in estate planning. Another important element involved in estate planning is establishing an estate plan that will address your current family and financial situation. Once you have followed these steps, it is important to recognize that you are not finished.

A solid estate plan involves maintaining as well as updating your plan. Every year or every few years should review your estate plan to make certain it still meets all of your goals and needs and determine whether any changes need to be made. Even if your situation has not changed, state and federal laws can sometimes affect

estate planning and so it is a good idea to review those laws to make sure that your estate plan still makes sense to your situation given current laws.

CHAPTER 2

Will Based Estate Planning

If you do not feel that your current situation warrants the need for a revocable living trust, your estate plan might include the use of the following documents:

- Last Will and Testament
- Advance Medical Directive
- Living Will
- Financial Power of Attorney

The Basics of a Simple Will

At a minimum, everyone should have a will. Even if your assets are only modest, a simple will names an executor or representative and specifies what will happen with your property and assets following your death. If for no other reason, a will can be useful to avoid family fights.

As previously discussed, without a will, state laws regarding intestacy determine how your property will be distributed following your death. Family squabbles can frequently occur when family members are not able to agree regarding the way someone's belongings will be distributed. When expensive items are involved, things can become very ugly very quickly. Therefore, a will can be used to name particular people who should receive certain items or for establishing a procedure for making such distributions.

There is no particular format that is required to write a will. The design of a will is typically straightforward and will usually run between 2 and 5 pages. A simple will usually contains the following sections:

- A paragraph which states that the person writing the will is of sound mind and that he/she intends for this to be their last will and testament
- A paragraph that names the executor of the will. There should also be an alternate representative.
- A section that nominates guardians for any minor children if both parents should die prematurely. It should be noted that whoever is nominated as the guardian will still need to be approved and appointed by the court.
- A section that states the executor will first pay all debts and taxes of the decedent.
- Any specific bequests to named individuals.
- Disposition of the remainder of the state which is left after taxes, bequests and bills.

In some cases a will may establish an alternating selection process that will be supervised by the executor. If there is not a procedure specified, the job of the executor will be to ensure the property distribution is conducted according to how they see fit, provided it is fair to all beneficiaries.

The Essentials of a Valid Will

There is no need for your will to conform to a specific format or formula to be valid. Some states even recognize handwritten wills. There are some elements that must be present; however.

1. You must be of legal age. In most states, this is age 18, but in some states the age may differ, so you should check the specifics regarding the state in which you live.

2. You must be of sound mind. This means you must know you are executing a will, you are aware of the nature and content of your property and you are aware that your spouse, descendents and relatives would typically be expected to share your estate.

3. The will must contain a substantive provision that will dispose of your property. It must indicate that it is your intent for the document to be your final word regarding what will happen to your property.

4. You must voluntarily sign the will; unless illiteracy or accident prevents you from doing so. If that is the case, you may direct a witness or attorney to sign it for you.

5. In certain limited circumstances oral wills are permitted in some states, but in most cases wills must be written and witnessed. To be completely safe, it is best to avoid handwriting a will.

6. The will must be properly executed, meaning that it contains a statement at the end of the document asserting that it is your will as well as the date and place of signing. It must also contain a statement demonstrating that you have signed it before witnesses and that the witnesses also signed the will in your presence. Most states do allow self-proving affidavits. These documents eliminate the necessity of a witness testifying that they actually witnessed the signing of the will. The affidavit will be sufficient proof.

Who can Legally Write a Will

Under the law, you are not required to use an attorney to write your will. Provided it meets the legal requirements in the state in which you live, it will be valid regardless of whether it was written with the help of a lawyer. There are some alternatives and considerations that should be made when deciding which type of will to use.

Preparing your Own Will

There are some options that are available which are completely free. An oral will is allowable in some states, but

only under very limited circumstances, such as in a final illness. You should be aware that oral wills only apply to personal property.

Wills that are handwritten and unwitnessed are also valid in about half of the states. They can be effective for disposing of property, but are not typically recommended. This is because it can be difficult to prove they are actually intended to be wills or to be a last will and testament. They are also vulnerable to fraud and do not cover all of your assets.

A soldier's and seaman's will is permitted in about half of the states as well. These wills allow people serving in the armed forces to dispose of their personal property and wages either in an informal written document or orally. Oftentimes, they are only valid during war or when the person making the will is in a hostile situation.

Another free alternative is known as a statutory will. This type of will is a form that is created by state statute. All of the formalities are covered in this type of will and all you have to do is fill out the document, have it witnessed and that's it. The problem with these types of wills is that they can be quite limited. For instance, they typically assume that you will want to leave all of your property to your spouse and children and do not allow you to provide for many other gifts. Also, you must precisely follow the form and they cannot to be legally changed.

In recent years, there have been a number of books and even online kits that have become available, making it possible to you to write your own will. They can be an effective alternative for simple estates that do not involve a lot of money or assets. The key is to make sure that the book or kit you are using is up to date, especially since laws can vary from state to state.

Using an Attorney

The cost of having your will professionally written can depend on the size as well as the complexity of your estate. When using an attorney, you will usually be able to benefit from a free consultation first. Many lawyers do provide a fee schedule for various different types of wills. Always make sure you ask the estimated cost ahead of time before you proceed.

Writing your Will

If you are working with a lawyer to have your will written, he or she will likely suggest various options once they have an idea of the nature of your assets and your goals. For the most part, you can choose whom you want to receive your property and how you want to divide it. With that said, there are some exceptions. For instance, a surviving spouse may be entitled to receive a statutory share of your estate regardless of what your will says. This is a percentage that is established by state law. Spouses may voluntarily give up such legal protections in a prenuptial agreement. Otherwise, you can choose to disinherit anyone, but if you do decide to disinherit a family member you need to make certain you do it specifically and not by omission so that there is no doubt regarding your intent. In some states, a surviving spouse may be entitled to receive the family home by homestead right.

Download the rest of this book for $11.99.

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