Agenda for Initial Estate Planning Meeting

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1. Death tax issues:

A. Federal Estate Tax (40%) applies to estates over $13 million in 2023
B. Maryland Estate Tax applies to estates greater than $5 million ($10M if election made)
C. Maryland Inheritance tax – no minimum asset level – regardless of probate
10% flat tax if passing to: niece/nephew aunt/uncle cousin friend

2. Avoiding Probate (the court supervised administration of "probate assets"):

A. ***Probate asset*** **–** asset that does not pass to a person <u>automatically</u> at death
B. ***Passes automatically if*** – beneficiary named, joint owner, trust, life estate deed
C. Probate documents are open for the public to see: your will, assets and debts
D. A "life estate deed" names beneficiaries for your property, avoids probate
E. Avoiding probate can save legal fees, accounting fees, appraisal fees – not taxes
F. Probate often takes 7 – 10 months to complete, but access to assets is not a problem

3. Last Will and Testament (If no will, then Maryland laws of intestacy set forth who inherits):

A. Do you know where your original will is right now? A photocopy is not a valid will.
B. Older wills are valid – just make sure they name the people you want to handle your estate.
C. Consider attaching a memo to will indicating who you wish to receive certain items.
D. <u>Protecting the inheritance</u>. A family member's inheritance can be lost to many future problems arising later in life. Consider protecting the inheritance by giving each person their share in trust. They can be the Trustee, take money as needed, choose investments, and have total control. The trust protects them from the following:
<u>Divorce</u> – inheritance not lost to child's spouse in a divorce
<u>Disability</u> – trust allows child to obtain needs-based benefits and keep trust assets
<u>Death Taxes</u> – trust not counted in child's "estate"; no death taxes
<u>Distribution at death</u> – child's estate excludes trust (spouse); passes to grandchildren
<u>Debts</u> – trust assets cannot be taken by a creditor or in bankruptcy.

4. Durable Personal Financial Power of Attorney – authorize family to act for you – sign your name.

A. ***Note: POA's prior to 10/1/10 may not be effective – update to new form.***
B. Appoint one or more "Agents" and back up agents – they can't act until handed the POA form.
C. POA essential to avoid having you declared incompetent and court appointed guardian named.
D. Protects your assets by allowing Agent to gift them to family before paid over to nursing home.
E. Good POA's are very lengthy to cover as many situations as possible, otherwise Agent stuck.

5. Medical Directive/Appointment of Health Care Agent (HCA)

A. Appoint an HCA and authorize to make medical decisions when you cannot.
B. Give the HCA broad powers including power to complete your MOLST form (see below).
C. Give your HCA specific guidance about completing your MOLST form.
D. MOLST = "Medical Orders for Life Sustaining Treatment" – health provider presents this form to you, typically when you are in a health crisis for you to direct what procedures to perform. Goes in your chart as an "order". Medical directive should authorize HCA to complete the MOLST. Have a form prepared to advise your HCA what your specific wishes are for life support usint the MOLST and address the 9 questions on the MOLST.

6. **Beneficiary designations:** Review all prior beneficiary designations to confirm companies have it correct. Example: life insurance policies, retirement accounts, annuities. Older designations often do not reflect your current wishes. Be sure you've named alternate beneficiaries in each instance.

7. **Revocable Living Trust** *[OPTIONAL important document to use when special circumstances exist]*
Trust Defined: a document creating an entity to hold title to certain assets. Initially, you are the trustee and beneficiary – so you maintain total control. Upon disability or death, alternate trustee takes control.
   A. Trust is especially beneficial under unique family circumstances such as:
      - If you're re-married and then mentally incapacitated, you may want your child to be co-trustee with your spouse. This ensures your children do not lose out inheriting their share.
      - Upon your death, also have child a co-trustee for same reasons.

   B. Trust avoids probate on trust assets and can save legal fees, accounting fees, appraisal fees and delays that accompany probate. Especially useful to hold out-of-state real estate.

   C. Note that while accounts such as IRA, 401(k), 403(b) cannot be owned by a trust, the trust can be the beneficiary of those accounts to give the protections outlined in this document.

   D. Trust does not protect assets from ***your*** creditors or ***your*** nursing home situation. Need an irrevocable trust to hold property when you are concerned you/spouse may require long term care.

8. **Gift tax law:** There is a federal gift tax but no MD gift tax. Planning opportunity: make gifts to stay under $5M. The person making the gift only pays a tax when lifetime gifts exceed $13M. You only report to IRS your gifts that exceed $17,000/person in a calendar year (Form 709). Exempt are: gifts to directly pay family member's medical or education expenses. The gift recipient has no tax consequence for gifts received. Most people can give away all they have and there is no tax.

9. **Long term care issues** – For nursing home situations, there exist three ways to pay the nursing home:
   1. **Self pay -** figure at least $150,000 per year.
   2. **Long Term Care Insurance -** Helps pay the nursing home, assisted living facilities as well as aids coming to your home. Get LTC policy before diagnosed with uninsurable condition.
   3. **Public funds** – the only government program pays fully pays a nursing home for what you can't afford is: ***Medicaid.***
      Medi<u>care</u> pays room and board but only 20 days for rehab and then just a portion of next 80 days.

   Protect Assets from the Nursing Home
   1. **Working around the infamous "five-year look back"** – Medicaid laws permit giving away assets at any time, even after admission to a nursing home. Giving away assets can result in protecting close to half your assets, despite there being a 5-year lookback when you apply for Medicaid.
   2. **Medicaid for a Married Person –** A spouse can often protect almost all the couple's assets <u>without any penalty</u> and without concern for the 5-year lookback. Excess assets are sheltered in an annuity.
   3. **Consider options to protect your house** – Many options exist for changing the deed to your home so you ensure it is protected from a nursing home. Consult with an attorney to learn if the "life estate deed without powers of sale" or an irrevocable trust would be best for you.

Other Discussion Items: You may designate a beneficiary of your motor vehicle to avoid having the vehicle get stuck in probate process upon your passing. This is accomplished for $20 through the MVA website. Google: MyMVA Maryland, then find "Vehicle Services" and then "Designate Vehicle Beneficiary"

10. **Insurances:**
    - Automobile and homeowner's insurance – purchase an "umbrella" policy to enhance your coverage.
    - Life insurance – For cash value policies, request an "in force" statement from the company and review to ensure policy won't implode, meaning cash value runs out and premiums skyrocket.
    - Consider re-purposing premiums from your "disability income" policy to a long term care policy.
11. **Investments:**
    - Arrange your investments to be housed with a single company for simplification in future.
    - Shed nuisance investments such as timeshares, out-of-state realty, and small stock holdings.
12. **Retirement accounts**: If you have multiple accounts, consider consolidation.
13. **Develop strategy for drawing Social Security:** maximize benefits by timing when to begin receipt.