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Estate Planning Overview

Estate planning can be overwhelming. Although the concept is simple – determining how you want your property to pass at your death, there are numerous options and issues we will need to discuss to prepare your estate plan. We use a lot of terminology that is not used in everyday conversation. We try hard to define these terms for you, but please stop us if we are using a term that you do not understand. It is our goal to make this process as simple as possible for you while working diligently to cover all the various areas needing our attention.

Documents included in our Estate Plans:

- **Will** – A will allows you to nominate a personal representative (the person that will manage your estate), a guardian for minor children, and to distribute your **probate** estate. Not everything you own will be part of your probate estate. For example, your *protected* homestead is generally not part of your probate estate. Also, retirement accounts such as IRAs and 401(k)s that have named beneficiaries, joint bank accounts, and life insurance are generally not included in your probate estate.

- **Revocable Trust** – A revocable trust is a document that allows you during your lifetime to place your assets in a trust, and appoint trustees to manage the trust assets. The main benefits of a revocable trust are avoiding probate and planning for incapacity. Trust documents are also more private as opposed to Wills, which become public at the testator's (person who executed the will) death. A revocable trust is more involved to prepare than a Will. Additionally, when a revocable trust is utilized, you must reregister the title of your assets from your individual name to that of the trust, this a process we refer to as "funding". The funding process requires additional time and expense. However, in most cases, this expense and inconvenience is far outweighed by the benefits of avoiding or reducing the burden of probate and the potential complexities of a guardianship proceeding. We will discuss the benefits of using a revocable trust at our meeting.

- **Durable Power of Attorney** (Financial Purposes) – A durable power of attorney allows you to appoint an individual to act on your behalf regarding your financial affairs. The primary purpose is to allow someone to make decisions in the event of your incapacity. However, the power is fully exercisable at the moment of execution and is not contingent upon your incapacity.

- **Designation of Health Care Surrogate** – A designation of health care surrogate allows you to name a person to make health care decisions for you if you are unable. This is essentially a health care power of attorney.

- **Living Will** – A living will states your wishes regarding end of life care. It applies only when you have been diagnosed as (1) terminally ill, (2) having an "end of stage" condition, or (3) being in a persistent vegetative state, and two physicians have determined there is no medical probability of your recovery.

- **Declaration of Preneed Guardian-** The declaration naming preneed guardian nominates the person of your choice in case you are ever in need of a court-appointed guardian. Although it is not binding on the court, by suggesting to the court your preference for a guardian in this manner, your family may avoid some of the administrative burden within a court proceeding to determine a guardian.

- **HIPAA Authorization-** This form is a release for medical personnel and institutions so they can provide your medical information to the persons you have named. The power to make decisions relating to your medical status or care is not granted (that is in a Designation of Health Care Surrogate), but this document allows someone else also to have access to medical information.

<u>Things to consider before our meeting:</u>

- Fiduciaries - The following are various roles that you will need to appoint individuals to serve. Often the same individuals will be appointed to serve in the various capacities. This is usually a good idea.

  1. Personal Representative - You will need to name a personal representative to handle your probate affairs. We recommend naming an alternate. Typically, a married couple will nominate the spouse as the personal representative. A child, sibling or close friend are also options provided the individual is qualified. We will discuss alternate possibilities in our meeting. We recommend you name at least one successor personal representative.

  2. Trustee - If your plan consists of a trust, you will need to name a trustee. This will be a person to manage the trust assets. You will need to name successor trustees as well.

  3. Attorney-in-Fact – This individual will handle your financial affairs if you are unable. Typically, a married couple will nominate their spouse. We recommend you name a successor attorney-in-fact.

4. Guardian for Minor Children – If you have minor children, you will need to appoint a guardian for your children. Usually, we recommend you name one individual as a guardian, but if you wish to name a married couple, that is fine. You may consider naming a successor guardian.

5. Health Care Surrogate – A health care surrogate does not need to be the same individual that you have named to handle your financial affairs. Location may be more of a factor because it is usually important for the surrogate to have proximity to you for evaluation. You want to name an individual that you feel knows your wishes regarding health-related matters and who you trust to follow your wishes. You should also name a successor surrogate.

- ❖ Ultimate Distribution of your Estate – We ask that you give some consideration to how you wish your property to ultimately pass to your beneficiaries. For example, you could direct the property to be distributed outright, distributed in installments or remain in trust for the benefit of your children and then distribute any remaining property outright to your grandchildren.

<u>The Process</u>

- ❖ Process – How long will this take? We aim for estate plans be completed within four to six weeks. Complicated decisions do not get easier. Too many people start the process and never finish, however, this is too important to allow it to be pushed aside. After our initial meeting, assuming we have been provided with all the necessary information, we aim to prepare your estate planning documents to be reviewed by you within three weeks. We can then meet to discuss the plan in detail. We will then make any necessary changes and execute the documents at your earliest convenience.

- ❖ What happens after we sign? We scan your documents so we have an electronic copy. We prepare copies for you and the originals will be returned to you for safekeeping.

- ❖ Additional work – Once the estate planning documents have been executed, we may still have some work to do. If you execute a revocable trust, we will need to "fund" the trust with your assets. We will also need to review and possibly update your various beneficiary designations (IRA, 401(k) and life insurance policies). This work is performed on an hourly basis.

❖ Follow Up – We strongly recommend reviewing your estate plan at least every 3 to 5 years, or when a substantial event occurs (marriage, divorce, death, birth, incapacity of self, beneficiary or fiduciary).

<u>What to bring to our first meeting:</u>

1. Completed estate planning questionnaire
2. Current estate planning documents
3. Copy of Driver's License

We look forward to working with you. We understand it can be a bit overwhelming, however we ask that you please do your best to complete the following questionnaire, as it makes for a much more meaningful and efficient estate planning process. Please do not hesitate to call our office if you have any questions.