It's Your Estate

Week 8 Review 11/2021

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Use the "Ask First" Form

Questions to ask the attorney: Primary area of Practice? What is your hourly rate? Do you have a set fee the estate planning documents? Do you charge extra for transferring real property to the trust? Look up the attorney on the California Bar Search.

Basic Estate Planning Documents – giving another person **LEGAL AUTHORITY** to act on your behalf either during life or after your death. We live in a suburban heavily populated county and NOT having these documents means a conservatorship.

Will – Executor

- **Usually a Pour–Over Will**
- **Emergency document**
- **How you have title to your assets?**

Durable Power of Attorney (DPA) – Attorney in Fact

- **"Durable" - why is this important? (incapacity)**
- **"Immediate" or "Springing"**
- **Financial Institutions**

Advance Health Care Directive (AHCD) – Health Care Agent (POA for Health Care)

- **Confronting death is one of the most important and difficult tasks we face as humans and discussions about death with your loved ones are important. A lot of assumptions are made by your health care agent that may or not be what you want.**
- **Why do Doctors die differently than the rest of us?**
- **Allow yourself as you age to change your mind**
- **YOUR WAY booklet to begin the conversation**
- **Pick your agent carefully & train your agent as to your wishes. From drugs to hospice care and make sure they have the time to be your advocate.**

Living Trust – Grantor/Trustee/Beneficiary (income, remainder)

- **Fictitious way to have/hold TITLE to assets**
- **Allows another person (successor trustee) to easily manage your financial affairs in the event of incapacity while you are alive or desire to transfer the responsibility (especially important if you are single)**
- **Yes it avoids probate however if this is most important to you have your children pay for the drafting attorney. (you will be dead when your probate occurs)**

Additional Documents: Personal Property Assignment, Grant Deed

Distributions whether from a WILL or LIVING TRUST

- **Think twice before giving to a grandchild directly. Or think about using a sub-trust with the grandchild being the beneficiary.**
- **Should there be a sub-trust distribution for a tax purpose? For a blended family? For a special needs beneficiary? For a spendthrift or alcoholic beneficiary? Or for creditor or spousal protection for a beneficiary?**
- **Sub-trusts require a separate trustee, separate EIN, separate accounts, separate tax returns - all requiring time and money.**
- **Distribute in % and not in specific dollar amounts for the majority of your giving**
- **Review every 3 to 5 years or when there is a death or marriage or incapacity (trust is effective upon execution)**
- **Distribution from a Living Trust takes around 7 to 12 months.**

TAXES

- **Your assets will receive a “STEP-UP” in basis upon your death. This means your heirs will not pay any income tax on anything sold.**
- **The exception is “Income in Respect of Decedent” (IRD) assets such as commercial annuities, IRA, 401k, Sep IRA, 457 Plans or any income that has not been taxed. If you are planning to give to charity use these assets since charities do not pay taxes.**
- **Do not listen to the pundits as to the future of ESTATE & GIFT taxes because they are rarely right.**
- **If over 70 1/2 and don’t itemize give to charity from your IRA**

Charitable Remainder Trusts (CRT)

- **Most effective to use LOW COST BASIS assets with HIGH appreciation which can provide the donor with income, deferral of capital gains tax and an income tax deduction. Rental property, business and commercial property are likely candidates.**
- **"RUN THE NUMBERS" with a gift illustration before you sell the asset and compare the results with a straight sale with your after tax return.**
- **Most professional CPAs, Attorneys, Brokers, Financial Advisors & Insurance folks are not familiar with the benefits.**

Charitable Gift Annuity (CGA)

- **An irrevocable FIXED INCOME instrument that is a two page contract providing the donor with income based on age, an income tax deduction & tax free income.**
- **Income is guaranteed by all the resources of the charity or a community foundation.**

Retirement Funds (IRA, 401k, 457 plans, Sep IRA)

- **Should pass to your adult heir through your "BENFICIARY DESIGNATION" form. Probate is avoided.**
- **These are IRD assets and your heir will pay income taxes based on their total income in the year they inherit your retirement funds.**
- **Check with your financial institution to make sure that they have a copy of your DPOA on file and you have a copy of the Beneficiary Designation form with your estate planning documents**

Organize Your Assets

ASSET	TITLE	COST BASIS	MARKET VALUE
House	LT	$35,000	$750,000
Apple Stock	JT	$500	$100,000
Inherited Bank Account	FEE	$300,000	$300,000
IRA	bene - estate	$500,000	$500,000

80 year old dies with the above estate.

Will any assets have to be probated?

Before she died she wanted to make a $50,000 gift to her children – what asset should she use & why? What is the amount of the gift tax?

The house was left in kind to her two children. Her son is single and receives government benefits and leaving the house to him would give him some place to live and have his sister take care of the house.

The daughter who is the CEO for a company that has $5m in revenue a year was named successor trustee.

The IRA designation form states "follow my estate plan."