OVERVIEW AND ESTATE LAW CHANGES

By Gregory J. Anderson, Esq.

OVERVIEW AND ESTATE LAW CHANGES

- First part of presentation: 50,000 foot view of the purpose, goals, tools and procedures of “estate planning”.
- Second part: changes in estate planning laws

WHAT IS "ESTATE PLANNING"? (Lifetime)

- Making sure things are in order in the event of <u>physical or mental incapacity</u>
  - Health care/end of life (avoid conservatorship)
  - Living arrangements (avoid conservatorship)
  - Finances (avoid conservatorship)
    - Bill paying
    - Investments
    - Accessing Social security, Retirement Accts

WHAT IS "ESTATE PLANNING?" (Upon Death)

- Ensure your estate goes where/how you want it to go
  - Intended beneficiaries (spouse, family, charities)
  - Lifetime interests; delayed/staggered distributions
  - Special Needs, spendthrift, discretionary distributions
  - Guardianships for minor-aged children

WHAT IS "ESTATE PLANNING?" (Upon Death)

- Ensure your estate goes where/how you want it to go (con't)
  - Disinherit individuals (pretermitted spouses, children, etc.); "no contest"
  - Protect children from separate marriages
  - Pets
  - Closely held businesses (S Corp, LLC, Partnership, Sole Proprietorship)
  - Charitable Planning (Presentation 4/30)

WHAT IS "ESTATE PLANNING?" (Upon Death)

- Ensure your estate will be pass in the most efficient/convenient manner
  - Clear, unambiguous instructions
  - Avoid/minimize court involvement and related delays in settlement of estate (probate)

WHAT IS "ESTATE PLANNING?" (Upon Death)

- Ensure your estate will be pass in the most <u>cost efficient </u>manner
  - Minimize attorney and court fees/costs
    - Probate fees (statutory), costs, probate referee
  - Minimize Taxes (Estate/gift Taxes, Income Taxes, and Property Taxes)

Estate/Gift/GST Tax

- Federal Exemption Amount $15M
- Combined w/gift tax
  - Annual gift tax exclusion amount $19K
- State estate/inheritance tax
  - NONE is California!
  - Oregon: $1M exemption
  - Washington: $2M exemption

Property Tax in California (Maintaining Low Tax Basis)

- Prop 13 – Reassessment exclusion
- Prop 58 – Parent/child exclusion
- Prop 19 - Reduced p/c exclusion
- Proportionality exclusion

Income Tax (Capital Gain Tax)

- Favorite slide!!!
- First, death does not trigger income tax!
- Step-up in tax basis at death
- Community property: full step-up upon 1st spouse's death
- Potentially 2nd step-up upon 2nd spouse's death

Income Tax
(IRD)

- Retirement accts (IRA, 401K, 403b)
  - excluded from step-up
  - IRD ("income");
  - Distribution deferral (and <u>tax</u> deferral)
    - roll-over for spouse
    - "stretch" up to 10 yrs

Tools/Actions for Lifetime Estate Planning (Disability/Incapacity)

- Co-titling of bank accounts & other assets
  - NOT Pay-on-Death/POD/TOD
- Durable Financial Power of Attorney
  - Springing vs. immediate
- AHCD w/HCPOA and "personal needs"
- Conservatorship (not planning)
- Trusts

Tools/Actions Planning for Death

- Co-Titling of Assets
  - Real property: JTWROS
  - Accounts: typically just named
  - NOT TIC (real property or personal)
- Beneficiary Designations on death
  - Life insurance
  - Retirement plans, IRA/401K (April 16)
  - Certain brokerage accounts

Tools/Actions Planning for Death (con't)

- Pay on Death (POD/TOD) designations
  - Bank/investment accounts
  - Real Property TOD!!!
- Wills and Trusts (April 9)
  - Single/Joint
  - Simple, comples or w/Disclaimer to Credit Shelter/QTIP
  - Charitable Trusts
  - Funding! Title, assignments, bene desig.

Tools/Actions Planning for Death (con't)

- Property Ownership/Transmutation Agreements
- Gifting, via annual exclusion or not
  - Irrevocable Life Insurance Trust
  - Discount valuation via LLC, FLP
- Buy-Sell Agreements
- Remains: pre-paid, directions in will, AHCD

Creation, Maintenance and Implementation

- Creation:
  - sign documents into effect
  - Coordinate tools/procedures
- Maintain: trust funding, gifting
- Administration (May 7)
  - Trustee notification, reports, accountings
  - 706 estate tax return (portability, QTIP)

Estate Planning Law Changes (over the last decade)

- Digital Assets – RUFFADA
- Caregiver Gifts--Cert of Indep Review
- No contest laws (narrowed in effect)
- HIPAA laws
  - Releases; now planning for “young adults”
- C/P WROS

Estate Planning Law Changes (over the last decade) (con't)

- TOD Deed (now "permanent")
- "Small Estate" exemption amounts (to escape probate)
  - $750K personal residence
  - $209K personal property
- Increasing application of "Hegstadd" case to assets not titled in name of trust

Estate Planning Law Changes (TAX LAWS)

- Federal Estate Tax
  - Portability
  - Exemption Amounts
- Federal Gift Tax
  - annual exemption amount indexed to inflation
- California Property Tax
  - Prop 19

Estate Planning Law Changes (TAX LAWS) (con't)

- Income Tax
  - "Stretch" IRA's reduced from "lifetime" to 10 years
  - Must take RMD each yr in 10 yr period
- Step-up in Tax basis at death:
  - repeated attempts to eliminate (Bernie Sanders)
- California inheritance Tax:
  - Legislation failed in 2021

THANK YOU