Estate Planning Fundamentals & Recent Changes in the Law

It’s Your Estate
Financial & Estate Literacy
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- Questions to be answered in today's presentation:
  - What is estate planning and why is it important?
  - What are the basic estate planning document that almost everyone should have?
  - What is Probate and how can it be avoided?
  - What are the current estate and gift tax laws and what changes are coming?
  - What is the step-up in cost basis that occurs to a decedent's assets at death?

What is estate planning?

- Distribute assets to beneficiaries in the most efficient manner
- Provide for you incapacity
  - Financial Decisions
  - Health Care Decisions
- Nominate individuals to care for minor children
- Avoid probate
- Avoid or reduce estate taxes

What is a last will and testament?

- Legal document that expresses a decedent’s wishes as to disposition of assets
- Revocable and amendable until death
- Does <u>NOT</u> avoid probate

What is probate?

- Triggered when you die with more than $208,850 assets in your name alone and without beneficiary designations
- Probate means “proving the will” through a court proceeding
- Problems with probate
  - Costly
  - Time consuming
  - Complex
  - Lack of privacy
  - Court supervision

What is the cost of probate in California?

- Statutory Fees to be paid to Attorney and to Executor
  - 4% of first $100,000
  - 3% of next $100,000
  - 2% of next $800,000
  - 1% of next $9,000,000
- A probate with $1,000,000 of assets would have $23,000 in attorney's fees AND $23,000 in executor's fees
- Court costs
  - Filing fees, probate referee fees, etc.
- Extraordinary Fees

How is probate avoided?

- Gifting assets during lifetime
  - No probate on assets you no longer own
- Joint Tenancy with Right of Survivorship
  - Tenancy in Common does NOT avoid probate
- Community Property with Right of Survivorship
  - Available for real property located in California owned by married couples

How is probate avoided?

- Disposition by contract
  - Payable on Death (POD) or Transfer on Death (TOD) designation for non-retirement assets
  - Beneficiary Designation for Retirement Accounts
  - Beneficiary Designation for Life Insurance
  - Beneficiary Designation for Annuities
- Revocable trusts (also referred to as living trusts, inter-vivos trusts, family trusts, etc.)

What is a revocable trust?

- Legal document established during a person’s lifetime
- Properly funded, assets WILL avoid probate at death
- Assets managed by a trustee for the benefit of beneficiaries
  - Careful consideration should be made when choosing a trustee
    - Child, other family member, or friend?
    - Bank or trust company?
    - Professional fiduciary?

What is a revocable trust?

- Amendable until death and irrevocable upon death
- During lifetime, tax identification number of the revocable trust is the social security number of person who created the revocable trust
- At death, a separate tax identification number will be used when the trust becomes irrevocable

What other estate planning documents are needed?

- Durable Power of Attorney
  - Naming Agent to make financial decisions in the event of incapacity
  - Revocable and may be limited in scope
  - Springing Durable Power of Attorney v. Immediate Durable Power of Attorney
- Advance Health Care Directive
  - Naming Agent to make health care decisions in the event of incapacity
  - Revocable and may be limited in scope

What are the current gift and estate tax laws?

- Tax Cuts and Jobs Act signed into law December 22, 2017
  - $13,990,000 gift and estate tax exemption per person for 2025
  - Law was scheduled to expire December 31, 2025 and revert to prior law

- One Big Beautiful Bill Act signed into law July 4, 2025
  - $15,000,000 gift and estate tax exemption per person for 2026
  - Amount is indexed for inflation in 2027 and beyond

What is the step-up in cost basis that occurs to a decedent’s assets at death?

- Step-up in cost basis refers to the tax rule that adjusts the cost basis of inherited assets to the fair market value on death of the assets at the owner’s death
  - Essentially, the original cost basis of the asset is “stepped up” to its current market value at the time of inheritance, rather than remaining at the original purchase price
  - Applies to non-retirement assets: real estate, stocks, mutual funds, etc.
  - Example: Your mother buys 100 shares of stock at $10/share. Your mother dies, and you inherit the 100 share of stock with a fair market value of $50/share. Under the step-up in basis rules, the cost basis of the inherited stock increases to the fair market value at the time of your mother’s death. If you later sell the 100 shares of stock at $55/share, you only pay capital gains tax on $5/share.

What is the step-up in cost basis that occurs to a decedent’s assets at death?

- Adjustment can significantly reduce potential capital gains tax on the sale of such inherited assets
  - Loss of step-up in cost basis if a child is added as an owner to real property or bank accounts
- Assets held by spouses as community property receive a stepped up basis to the fair market value at the first spouse’s death
  - Essentially, a double step up in cost basis

Final Thoughts…

- Many issues to think about for your estate plan
- Carefully consider the individual you name as your successor trustee, executor, and agent
- Maintain an organized inventory of your assets
- Use professional assistance
- Don’t procrastinate!

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