

ESTATE PLANNING



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Roadmap

- (1) Reasons to Plan
- (2) Probate
- (3) Wills
- (4) Powers of Attorney

Why are you Planning?

- (1) Who are you trying to benefit?
- (2) Do you care who gets your property?
- (3) Do you care how that property is used?
- (4) Who is going to make decisions for you?

Types of Planning

- EMOTIONAL – Creditors, Predators, Evil In-laws, themselves, Special Needs Trust
- FINANCIAL – Taxes, Probate, other administration costs

Creditors

- Judgments
- Businesses
- Bankruptcy
- Taxes

Predators

- Spouse's new spouse
- Death (Election against the Will)
- Divorce (Inheritances not necessarily safe)

Second Marriage

- The main vehicle to protect assets for a spouse and pass a benefit to your own children is through a trust
- May want to give all to spouse for life, then pass onto children
- May want to give part to spouse and then some to children prior to spouse's death
- QTIP Trust (Qualified Terminable Interest)

Pre-Nuptial Agreements

- Great way to ensure property stays separate in a new marriage
- Not always foolproof
- Trust may better accomplish goals with less animosity

Business Planning

- Critical to provide for transfer of a business in your estate plan
- Buy-Sell Agreement
- Business Succession Plans



What happens to my assets after I die?

Property Passes in 4 ways in Tennessee:

- 1) Beneficiary Designation
- 2) Joint Tenants with Right of Survivorship
- 3) Trusts
- 4) Operation of Law
 - i. Estates/Probate Administration



Probate

- Probate is a legal process by which property both real and personal can be transferred after the death of a decedent.
- It deals only with solely owned property of the decedent
- Occurs with or without a will



Why is Probate necessary?

- The process allows us to settle the decedent's final wishes in an efficient way.
- Everyone knows someone who has had to deal with the issues of who gets what and the strain that it poses to the family. The probate process can resolve almost any issue without further strain to the pain already felt from the passing of the decedent.
- This process at times may seem slow. The reason for this is that in order to resolve any matters related to the passing of the decedent, there are numerous parties, including governmental entities that must be dealt with.

Process



Costs

Filing Fee - \$300.00

Notice to Creditors - \$125.00 - \$135.00

Attorney? -

Small Estate

- "Small estate" means the estate of a decedent in which the value of the property does not exceed fifty thousand dollars (\$50,000)
- Still requires administration
- Cannot have real property in a small estate



Types of Wills

- 1) Attested Will – Standard Will, normally typed and witnessed by two individuals
- 2) Holographic Will – a will completely in the testator's handwriting
- 3) Nuncupative Will – Emergency Will – up to \$1,000 in assets. \$10,000 in assets for Active Military or air or naval service in time of war

Why have a Will?

- Clarity
- Efficiency
- Cost-Effective
- Tax Consequences
- Gifting
- Direction as to who will be in charge
- Avoid litigation

Intestate Succession (Dying without a Will)

- Property passes along this path:
 - 1) To your Surviving Spouse (SS)
 - 2) To your children/issue (if both SS no less than 1/3)
 - 3) To your parents
 - 4) Brothers/Sisters
 - 5) To your grandparents
 - 6) State of Tennessee



Definitions

- Testator – You
- Executor/trix- Person nominated to manage your Estate after you die
- Trustee – Person you nominate to manage a trust (usually for minors)
- Guardian – Person you recommend to look after your children



What can you do in a Will?

- Anything, including:
 - 1) Leave Assets (in Trust if desired)
 - 2) Set up Animal Trusts
 - 3) Scholarships
 - 4) Disown heirs
 - 5) Attempt to thwart Will Contests
 - 6) Charitable Giving
 - 7) Compel or Encourage Action
 - 8) Prevent Waste

Taxes

“America is a land of taxation that was founded to avoid taxation.” – Dr. Laurence J. Peter

Estate Tax:

Federal: \$11.2 million for unmarried and \$22 million for married

- 40% (Ex. \$100k over \$11.2 Mil. = \$40,000 in taxes)
- 99.8% of Estates will avoid Federal Estate Tax or approx. 2 out of every 1,000
- The estate tax will generate about \$246 billion over 2016-2025 under current law
- Tennessee –No inheritance tax as of January 1, 2016

****REVERTS BACK TO \$5 MILLION IN 2025****

- Here's a simple example: Say you're a wealthy widower who expects to live a long time. Today you have an \$11 million exemption level. After 2025, it's likely to fall to \$6 million.
- By giving your kids an \$11 million gift today, you effectively get to give them \$5 million more tax free than you would otherwise if you waited until you die after 2025 to bequeath it to them

Gift Tax

- Tennessee Abolished its gift tax in 2012
- Federal gift tax still exists:
- 2018 Annual Exclusion = \$15,000 per donee or \$30,000 for married couple splitting gifts
 - Doesn't apply (1) Charity (2) Spouse (3) Education (4) Medical
 - Payments must be directly to institution(s)
 - Tied to Estate Tax



Tax Issues

- Best Addressed by Tax Professionals
- Best planning involves multiple professionals
- Depending on your planning one may be more involved than the other

Conservatorships

- Court action to establish legal guardian for disabled Adult (permanent or temporary)
- Disability is broadly defined
- More frequent with the aging population
- POA can help to avoid, but a Conservatorship will supersede a POA

Conservatorships p.2

- Need Physician's Report & Property Management plan
- Annual Accountings (if required)
- Burden to establish is clear and convincing

Powers of Attorney

1) What are they?

- Legally binding document which confers authority upon another person to act on your behalf.

2) Effective date?

- Immediately
- Springing

Types:

- 1) Durable: Survives Incapacity
- 2) Non-Durable : Terminates upon incapacity
- 3) Assets: Management of property, etc.
- 4) Healthcare: Ability to make healthcare decisions



Why have them?

- For your own benefit and assistance
- Also for the sake of your significant other, child or other close family and friends
- Prevent necessity of Court Intervention and legal fees
- Confirms your desires
- Too simple not to

Living Wills

- Document that outlines your choices with regard to artificial nourishment as well as organ donation
- Does not affect comfort level or medication given to ease pain at your final illness

Advanced Care Plan

- Document that provides both a Power of Attorney for Healthcare and a Living Will
- Newer Document
- Not as much case law or litigation behind it

Tips for Successful Planning

- 1) Asset awareness
- 2) Pre-planning
- 3) Professional help
- 4) Discussion with spouse, children, & close friends

Things you need to do

- Check your Beneficiary Designated Accounts (401K, IRA, etc.)
- Consider your Bank Accounts
- Check your titles (property deeds and autos)
- Talk with a lawyer regarding your Will(s)
- Talk with your accountant regarding tax consequences

ENJOY YOUR RETIREMENT!

