

## ESTATE PLANNING

Estate planning means planning for the disposition of your assets upon your death. A good estate plan has three primary goals:

- To make sure your assets reach the individuals or organizations you select in the manner which you choose;
- To minimize the effect of federal or state taxes on your estate; and
- To allow you to select who will handle various functions on your behalf.

An individual works an entire lifetime to accumulate assets: a home, cars, savings, property, etc. The small amount of time and money required to create an estate plan will ensure that your assets are passed on to the people you want with the least tax and expenses.

## DYING WITHOUT A WILL

If you die without a Will, a probate court will take control of your estate and distribute your assets according to state statutes (law of intestacy). The pattern of inheritance set forth in that statute may not provide for distribution of your assets in a way that matches your wishes.

If you have minor children, you will not be able to select their guardian. In addition, because the law of intestacy typically gives part of the estate to the children, the guardian must petition the court periodically for an allowance to support the children, and must report expenditures. Furthermore, your children will receive their shares of your estate at an early age, often before they are equipped to handle property.

If there is no Will, the court will appoint an administrator of your estate. If there is no relative willing or able to serve as personal representative, the court may appoint a professional administrator.

## LAST WILL AND TESTAMENT

A Last Will and Testament is a written directive of how you want your estate to be handled upon your death. It may include instructions on who is to handle your affairs after your death (executor), who is to be the guardian of any minor children, who to give your assets to, and many other matters.

## WHAT IS PROBATE?

Most estates include probate assets and non-probate assets. Probate assets are those owned in your own name which require some sort of intervention by the court to determine where the assets should go (stock shares, for example). Non-probate assets are those which transfer automatically to another person on your death. Examples of non-probate assets include:

- Assets held in a revocable living trust;
- Assets given outright to your surviving spouse;
- Proceeds of an insurance policy, retirement plan, annuity, or payable on death account where beneficiaries are named and survive; and
- Property owned jointly with “rights of survivorship” which passes directly to the co-owner (such as a house in joint tenancy).

For those assets which go through probate, probate involves two procedures:

First, a court of law determines that your Will is valid and is your Last Will.

Second, the court oversees the process of settling your estate. A court will:

- Supervise the actions of your executor;
- Rule on the legitimacy of any creditors’ claims against your estate;
- Supervise the transfer of your remaining property to the beneficiaries named in your Will, or to heirs if you die without a Will; and
- Oversee a guardian’s use of any property which is left to minor children, until they reach the legal age of adulthood.

Court supervision of the probate process ensures your directions are carried out properly.

The probate process can take as little as six months or as long as a year or more (for example, if your Will is contested or if you own property in other states). A properly drafted estate plan which is kept up to date will minimize probate delays and expenses, for it can provide for an unsupervised, informal probate and eliminate the possibility of a contest.

## HOW TO AVOID PROBATE

There are certain advantages to avoiding probate:

- Privacy;
- Uninterrupted management of your assets;
- Avoid the expense of probate; and
- Beneficiaries obtain assets sooner.

The practical way to avoid probate is by employing a revocable living trust, which provides for the management of your assets during your lifetime and for their disposition upon your death. You may change or revoke the terms of the trust at any time and may designate anyone you like--a professional manager, your spouse, or even yourself--as trustee.

## WHAT ARE ESTATE AND GIFT TAXES?

Estate taxes are deducted from the assets in your estate if the estate value exceeds the estate tax exemption amount. If you fail to plan for estate taxes, your estate could be reduced by estate taxes as high as 55%.

## USE OF TRUSTS

A trust is a legal arrangement through which you give property to a trustee to manage and use, for the benefit of whomever you name. There are two main types of trusts:

- Living (“inter vivos”) - which take effect during your lifetime. Living trusts may be revocable or irrevocable; and
- Testamentary - which go into effect when you die.

Trusts should be prepared in conjunction with a Will, ensuring that any assets not placed in a Trust are transferred to your beneficiaries. The use of Trusts is discussed in greater detail in our firm’s Trust brochure

## POWER OF ATTORNEY FOR PROPERTY

A power of Attorney can be a useful tool to help you manage your property and facilitate business transactions when you are unable to or unavailable to act. An “Agent” is appointed by you to act in this capacity.

A power of attorney is durable, that is, it is effective until the principal's death unless it is revoked or amended. Your wishes will be carried out despite your subsequent incapacity.

You can make a power of attorney effective at a future date, or when a certain event (such as medical disability) takes place. The power of attorney may be revoked or amended at any time.

The Agent has broad control to manage all of your personal property.

The power of attorney is a convenient way for you to manage your property and business affairs when you cannot be present or if you are incapacitated or disabled.

### **POWER OF ATTORNEY FOR HEALTH CARE**

With a Power of Attorney for Health Care, you name a person whom you trust to make health care decisions for you. The law calls this person your Agent. You are allowed to provide careful directions to your Agent regarding how to make health care decisions for you when you are unable to do so for yourself.

You may **change** your Agent or any section of your Power of Attorney for Health Care. You may also **cancel** your Power of Attorney for Health Care at any time.

### **COSTS**

Most people equate the value of what we do to the cost of preparing various documents. Actually, that's only a small portion of the benefit we provide. The most important service of any estate planning attorney is in making proper recommendations from among the dozens of choices available. Understanding the big "picture" in your situation can make all the difference in your estate's financial health.

The cost would include: the drafting of documents, a subsequent conference with you to review the documentation, revising the documents, and meeting to sign the papers.

The cost for funding the Trust (re-titling of assets) is not covered by the matters described above and would be billed separately, if those services are also requested.

### **WHERE DO YOU GO FROM HERE?**

Following are several matters to consider in planning your estate:

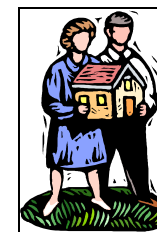
- If you leave assets directly to minor children the guardian (even the child's surviving parent) must keep records of even routine use of the inheritances and petition the court for any unusual expenditures on the children's behalf. Instead, you may be wise to bequeath your property to a trust established in the children's names, and to name their guardian as trustee.
- If you give your executor or personal representative broad powers to settle disputes or sell property as he or she sees fit, it will not be necessary to seek permission from the court for each activity.
- It is wise to avoid provisions likely to be ruled invalid or to cause a challenge from "neglected" children. If you seek to disinherit a child, it should be unequivocally indicated in your Will that this is your intent. Also, bequests that appear as favoritism or slights may cause challenges to the Will or, just as damaging, lasting ill feelings in your family.
- There is little that can be done after death to relieve your estate from taxes if you have not properly planned the disposition of your estate.

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## **Zukowski Law Offices**

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