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ESTATE PLANNING OUTLINE

1. What happens if I die without a Will?

   Dying without a Will is referred to as dying "intestate." If you die intestate, the State of Michigan has a statute which describes who will receive your solely-owned assets. Generally, if you leave a surviving spouse and children, the spouse is entitled to the first $188,000 (indexed for inflation) plus 112 of your estate. Your children will share the other 112 of your estate. If there is no surviving spouse, your surviving children will share your estate, as vise versa.

2. What is a Will?

   A "Last Will and Testament" is a legal document which allows you to choose your own beneficiaries. You can also name your Executor, appoint a Testamentary Guardian" of any minor children and provide for your burial or other similar matters. A "Will" does not legally transfer title to your property after your death; it merely identifies the beneficiaries who are supposed to receive your property.

3. What is Probate?

   Probate is the legal process of transferring title of your property to your beneficiaries after your death. The process is called "probate administration," and takes place in the Probate Court for the county of your residence at the time of your death. It is this court proceeding which transfers your property to your beneficiaries.

   Probate also refers to the legal process of appointing someone to act on your behalf if you become incapacitated and you need a legal representative. You can avoid this by signing a Durable Power of Attorney and Patient Advocate Designation (see below).

4. Does a Will avoid Probate?

   No. Any asset that you own, individually, at the time of your death (leaving no living owner) must go through probate administration before it can be legally transferred to your beneficiary(ies). Generally, there are 3 ways to avoid probate administration: Joint Ownership, use of a Trust (both discussed below), and beneficiary designations. Jointly owned property, except "joint tenants-in-common"

(discussed below) passes automatically, by operation of law, to the surviving joint owner(s). Property owned in a Trust does not have to be probated at your death, since the Trust, not you, owned the property at the time of your death. Any asset having a beneficiary designation (e.g., life insurance, IRAs and other retirement benefits) will be distributed directly to the designated beneficiary, if then living, without the need of probate administration.

5. What happens to Jointly Owned property at my death?

If you die owning property that you owned jointly with another person with rights of survivorship, the survivor will inherit your property by operation of law, without probate and regardless of what your Will says. If your Will says to leave everything to your four children equally, but you own your house and bank accounts jointly with just one of your children, that one child will receive your house and bank accounts, regardless of what your Will says. The same is true for assets that pass by beneficiary designation, like life insurance, retirement benefits and "payable on death" or "transfer on death" accounts.

There are 3 types of joint ownership: Joint Tenants With Rights of Survivorship, Joint Tenants-In-Common, and Tenants-By-the-Entireties. Property owned "joint tenants with rights of survivorship" (jtwros) passes automatically to the surviving owners(s) upon the death of one of the owners. Property owned "joint tenants-in-common" does not pass to the surviving owners. Instead, the estate of the deceased owner continues to own the interest of the deceased owner, and this interest must go through probate administration before it can be transferred to his/her beneficiary(ies). "Tenants by the entireties" is the legal term used when a husband and wife own property as joint tenants with rights of survivorship. Accordingly, when one spouse dies, the surviving spouse is automatically the sole owner of the property.

6. What is a Revocable or Living Trust?

A "Revocable "or "Living" Trust is a trust under which the creator (grantor) of the trust usually serves as the trustee of the trust during his/her lifetime. The creator (grantor) has the right to amend, change, or revoke the trust during his/her lifetime. Any property which is titled in the name of the trust before the grantor's death will avoid probate. Upon the death or incapacity of the grantor, the trust becomes irrevocable (cannot be amended or revoked), continues, and the successor trustee takes over the investment and administration of the trust.

A trust can be used to avoid probate administration, avoid the need for a conservator in the event of incapacity, hold your property for the benefit of your beneficiaries pursuant to the terms of your trust, and, if applicable, save federal estate taxes (discussed below). To ensure a person with a disability is eligible for these savings, a Special Needs Trust can be used.

7. What are the advantages of a Trust?

A trust can be used to avoid probate administration, avoid the need for a conservator in the event of incapacity, hold your property for the benefit of your beneficiaries pursuant to the terms of your trust, and, if applicable, save federal estate taxes (discussed below). A person with a disability can be ensured eligibility for government needs-based benefits such as SSI and Medicaid by using a Special Needs Trust.

8. Federal Estate Taxes.

Current federal estate tax laws allow each individual to transfer at death up to $2,000,000 without incurring any federal estate tax. Thus, with a properly planned estate, a husband and wife can transfer $4,000.00 to their children and pay no federal estate tax. This $2,000,000 is referred to as the "unified credit exemption equivalent" (UCEE). The UCEE is, under current law, scheduled to increase as follows:

Year	**Unified Credit Exemption Equivalent**
2007	$2,000,000
2008	$2,000,000
2009	$3,500,000
2010	Unlimited – no estate tax!
2011	$1,000,000

In addition to the $2,000,000 UCEE, there is an unlimited marital deduction against the federal estate tax which is available for every $1 a deceased spouse "leaves" (in Trust or outright) to a surviving spouse. Thus, no matter how large the deceased spouse's estate is, there will no federal estate tax at his/her death if the UCEE and the marital deduction are properly utilized.

Finally, there is a "generation skipping tax" which is imposed on certain transfers from a transferor/donor to a transferee/donee who is 2 or more generations below the generation of the transferor/donor. There is a $2,000,000 exemption available to each individual, so a husband and wife can transfer $4,000,000 to their grandchildren and pay no generation skipping tax. Transfers that qualify for the "gift tax annual exclusion" (discussed below) are not treated as generation skipping transfers.

CAUTION: It is quite likely that the current estate and gift tax system will be changed significantly in the coming years. While there is some political support for a permanent repeal of the federal estate tax, there is strong opposition to any repeal.

It is difficult to predict at this point which side will prevail and what the final federal estate tax legislation will look like.

9. How is Life Insurance taxed?

Generally, there is no income tax imposed on the receipt of the insurance proceeds. However, if you have any "incidents of ownership" in a life insurance policy at the time of your death, then the value of the policy is included in your estate for federal tax purposes. An "incident of ownership" includes owning the policy, having the right to change the beneficiary designation, having the right to surrender the policy for its cash surrender value, or having the right to borrow against the policy. If the policy is on your life and you have an incident of ownership, the value of the policy is the proceeds to be collected. If the policy is on someone else's life, but you have an incident of ownership at the time of your death, the value of the policy is its cash surrender value, in the case of whole life or universal life insurance, and the unused premium payment, in the case of term insurance.

You can avoid the inclusion of life insurance in your estate for federal estate tax purposes by transferring all of the incidents of ownership in the policy to your spouse or to an "Irrevocable Life Insurance Trust." However, if you die within 3 years of the transfer, the value of the policy will be included in your estate for federal estate tax purposes.

10. Federal Gift Tax.

Current federal gift tax laws allow each individual to gift up to $1,000,000 during his/her lifetime and pay no federal gift tax. In addition, there is a $12,000 annual exclusion, per donee, for gifts of a "present interest." Thus, a husband and wife can gift up to $24,000 per year to each donee and pay no federal gift tax and not use up any of the $1,000,000 lifetime credit. A gift in trust must be specially qualified to constitute a gift of a present interest eligible for the annual exclusion. There is no gift tax imposed on any gift from one spouse to the other spouse.

11. How can I plan for incapacity?

You should have a Durable Power of Attorney (DPA). A DPA allows you to name an agent to act on your behalf for financial and personal matters if you become incapacitated. This document can provide the agent with unlimited power, including the ability to sign tax returns, sell assets, purchase assets, make gifts, transfer assets to the incapacitated individual's trust, and pay bills, etc. on your behalf. A regular power of attorney is revoked upon death or incapacity. A "durable" power of attorney remains in effect if you become incapacitated. However, it is revoked upon your death. A properly drafted Durable Power of Attorney should avoid the need for a Probate Court proceeding (i.e., Conservatorship and/or Guardianship) if you become incapacitated.

You also should have a Patient Advocate Designation (PAD). A PAD allows you to designate a person to make medical decisions on your behalf if you become ill and are unable to communicate your wishes regarding health care decisions. In effect, it allows you to make pre-determined choices regarding life support, thereby relieving family members of having to make that difficult decision.

12. How can I prepare for my first meeting with an estate planning attorney?

    Remember, most attorneys charge by the hour! Therefore, you should do your preliminary thinking/discussing before you meet with the attorney. Who will be the Executor (called the Personal Representative today)? Who are the alternate Personal Representatives? If minor children, who will be the Testamentary Guardian? Who are the alternate Testamentary Guardians? Are there any burial requests (e.g., cremation, donation of body parts, interned in a certain plot or cemetery)? Are there any specific bequests? Who is to receive the property if the immediate family dies in a common accident?

    Also, you should review your financial situation. Part of the estate planning attorney's job is to be sure your estate is large enough to achieve your objectives, and is liquid enough.

13. How much would a "basic" estate plan cost?

    My hourly rate is $300, but I use paralegals with lower hourly rates for most of the work. We can usually do an estate plan consisting of a Will, General Durable Power of Attorney, Patient Advocate Designation and HIPAA authorization for $2,000 or less. If we prepare a Revocable Living Trust as well, the cost increases to over $3,000.

    The cost to probate an estate is usually over $3,000, so you can pay now or pay later!