ESTATE PLANNING 101

I. WHAT IS ESTATE PLANNING?

Estate planning is the process of analyzing assets, establishing goals and devising a plan for managing your wealth during life, and for minimizing taxes and distributing wealth upon your death. It also enables you to reduce the emotional toll that your spouse or children may endure. The document to effect your estate plan is a Will.

II. WHY IS ESTATE PLANNING IMPORTANT? WHAT HAPPENS WITH YOUR ESTATE WHEN YOU DIE?

A. Personal Representative. You designate someone to handle your affairs and distribute your assets as stated in your Will. This person is appointed by the Court not the Will. Domiciliary letters are issued to the Personal Representative by the Probate Court.

B. Guardianship for Minor Children (Up to Age 18). Who will raise your children if you and your spouse predecease them? Even people with very modest estates, or those with no probate estates, still need a Will in order to name a guardian for their minor children. Your children's guardian does not have to be the same person you name to manage your children's inheritance called a Trustee. You can also state when the funds left in the trust can be disbursed to the children. In addition, you can provide suggestions, guidance and directives as to how you want your children raised and as to what are acceptable expenditures for them to the Trustee.

C. Disposition of Property. Who do you want to inherit your property? This decision can be complicated, especially if you have children from a prior marriage or if your children have different needs from one another. You may need a Trust or Marital Property Agreement in addition to the Will.

D. Adequacy/Liquidity of Estate. Do you have sufficient assets to provide for your family on your death and, even if so, do you have adequate *available cash assets* needed to pay for debts, expenses of administration, and for family needs without forcing the sale of non-cash assets at a disadvantageous time? Life insurance may be one way to ensure those needs are met.

E. Asset Management. Who will manage your assets if you become incompetent? Who will manage your estate upon your death? Who will manage funds left to your minor children? This is called a Trustee. Who will handle the financial affairs of a special needs child?

F. Business or Farm Continuity. Are you concerned about the succession of ownership and control of your family business or farm? A Buy-Sell Agreement with life insurance to fund the agreement might be an important part of your estate plan. An LLC is also a tool you might use to assure continuity and control and as a way to preserve the value of your business while passing it on to your family.

G. Tax Savings. Death taxes used to take a significant bite out of inadequately planned estates. This year the exemption from federal estate taxes is $11,180,000 and there is no Wisconsin estate tax.

III. WHAT ARE ESTATE TAXES?

Generally, a person receiving an inheritance from your estate does not pay an "inheritance tax." Rather, our system taxes your assets before they are passed on. When you die, both the state and federal governments may impose an estate tax on the assets that you have accumulated during your lifetime. Many people refer to this as a "death tax." Not all of your assets get taxed. The state tax varies from state to state. The Federal estate tax exemption is now $11,180,000 and if you are married, times that number by two because of the marital deduction. Wisconsin has no estate tax.

IV. OTHER ESTATE PLANNING DOCUMENTS:

A. Health Care Power of Attorney. This is a statutory form wherein you authorize someone to make health care decisions if you are incapacitated. They go into effect if two doctors, or a doctor and a psychologist certify in writing that you are unable to make health care decisions for yourself. It includes advance directive for tube feeding and also authorizes admission to a nursing home or CBRF.

B. General Durable Power of Attorney. There is a statutory form which can be used, or you may have one drafted by an attorney to best suit your needs. You designate someone to handle all of your personal business and financial affairs in the event you are unable.

C. Authorization for Final Disposition. You may also designate someone to handle your burial arrangements. This is a statutory form where you can designate someone authorized to carry out your wishes (e.g. cremation, non-traditional burial). This is especially important if you die without a spouse or children.

V. WHAT HAPPENS IF YOU DO NOT HAVE AN ESTATE PLAN OR A WILL?

Laws of Intestacy. If you have no will, the court will distribute your assets according to the law of intestacy. Intestacy laws essentially provide a default will for people who die without wills. Under Wisconsin intestacy law, your property will pass to your surviving spouse if either 1) you leave no children, or 2) all of your children are also children of your spouse. Under intestacy, if you leave children that are not the children of your spouse, one-half of your marital property and one-half of your individual property will go to those children. Minor children take control of their shares at age 18 regardless of their ability to manage funds. The Court will also appoint the Personal Representative.

VI. WHAT IS PROBATE?

Probate is the court-supervised process of validating wills ensuring that creditors and taxes are paid, and distributing assets to the rightful heirs. In Wisconsin, multiple forms of probate: Formal Administration, Informal Administration (very common); Summary Settlement, and Transfer by Affidavit if estate under $50,000.

Do All of Your Assets Have to Pass Through? No. With proper planning, you can pass many of your assets to your heirs completely outside of the probate process. As a result, your probate estate may be much smaller than your taxable estate. You may, in fact, have no probate estate whatsoever.

Probate assets are only those assets that pass under the terms of your Will or under the laws of intestacy, should you die without a will.

Examples of some non-probate assets are those of your assets that:

* pass by beneficiary designation, such as bank accounts or C.D.s;
* pass by beneficiary designation, such as life insurance proceeds, IRAs, or pensions;
* pass by contract, such as under a buy-sell agreement;
* pass by operation of law, such as property held in joint tenancy or as survivorship marital property;
* assets you transfer during your lifetime to a "living trust" that sets out terms for management and ultimate distribution of trust assets upon your death;
* pass by transfer of death deed for real estate you own at time of your death.

There is often confusion between taxable estate assets and probate assets, but the distinction can be extremely important. Assets that will be included in your estate for death tax purposes include many assets you may not think of when considering your personal net worth, such as the proceeds of life insurance policies, amounts payable under pension, profit-sharing and other retirement plans, deferred income, and interests in trusts created by others. It is, therefore, essential that you coordinate the beneficiary designations of your non-probate assets with your overall estate plan.

It is also important that you coordinate the terms of your Will with assets that pass outside of probate. For example, you may set up a Testamentary Trust so that a named Trustee handles the funds for your children up to a certain age, like 23. If you name your children as the beneficiary on the life insurance policy, it goes into a guardianship and may become available to children at age 18 regardless of what the Will provisions state.

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