The Basics of Estate Planning

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Two Different Phases of Estate Planning

- Planning in the event of your incapacity (you are still living)
- Planning for your death

Documents Commonly Used In Planning for Incapacity

- Financial/Durable Power of Attorney
- Health Care Power of Attorney
- Living Will

Financial Powers of Attorney

- Authorizes another to act on your behalf with regard to property
- Effective immediately vs. effective upon incapacity
- Required to be recorded with Register of Deeds before transferring real estate or in event of incapacity
- Should appoint successors
- Needs to be coordinated with other estate planning documents
- General Power of Attorney vs. Limited Power of Attorney

Health Care Power of Attorney

- Allows you to appoint another person to make health care decisions for you if you are incapacitated
- Grants broad decision making capabilities, including life support, burial and anatomical gift decisions
- HIPAA release should be in a separate document
- Effective only if principal is unable to make decisions
- NC requires two unrelated witnesses and notary

Living Will

- Expresses your wishes regarding the withholding of artificial means of life support and artificial food and hydration
- Statutory form in North Carolina

Estate Planning in the Event of Death

Four Ways to Pass on Property

- Beneficiary Designation
- Joint Ownership With Right of Survivorship
- Probate
- Trust

Beneficiary Designations

- IRAs, 401(k)s, life insurance policies, annuities, transfer on death accounts etc.
- Non-Probate Asset unless Estate is beneficiary
- Takes precedence over Last Will and Testament and Trust
- Review every three years at a minimum to ensure consistency with overall estate plan and to avoid unnecessary income taxes for beneficiaries

Types of Joint Ownership

- Right of Survivorship vs. Tenants in Common
- Real property owned by Husband and Wife as Tenants by the Entirety has right of survivorship

Joint Ownership with Right of Survivorship

- Non-Probate asset at death of first joint owner
- Takes precedence over Last Will and Testament or Trust
- Beware of unintentional disinheriting
- May expose asset to creditors of the other joint owner (except for tenants by the entirety property)
- Can trigger gift tax if add non-spouse joint owner

Probate

- Probate: refers to court supervised process of managing and/or distributing assets of a minor, incompetent or deceased person
- Public Process
- Requires payment of court fees and frequently attorney fees at hourly rates
- NC court fees are $4 per $1,000 of probate assets up to a maximum fee of $6,000
- If a person owns probate assets at death, probate is required with or without a Will

Testate vs. Intestate

- Testate: when a person dies with a valid Last Will and Testament
  - Terms of Last Will and Testament control distribution of probate assets
- Intestate: when a person dies without a valid Last Will and Testament
  - Intestacy laws of state of domicile control distribution of probate assets

Last Will and Testament

- Name recipients of property
- Name guardian for minor children
- Name Executor of estate
- Unless a trust is created for minors, property passes to beneficiaries at age 18
- Does not come into effect until death of testator

Reasons to review a Will

- Change in family circumstances
- Death of a spouse or child
- Divorce
- Birth of new child or grandchild
- Marriage
- Move to different state
- Changes in property

Reasons to review Will (cont.)

- Substantial increase or decrease in assets
- Sale or purchase of a business
- Tax law changes

What is a trust?

- Written set of instructions directing management of property for the benefit of someone or something

Trust Terminology

- Grantor/Settlor: person who establishes trust
- Trustee: person or entity who manages trust property
- Beneficiary: person or entity for whom trust property is being managed
- Corpus/Principal: property owned by the trust

Different Types of Trusts

- Revocable Trust vs. Irrevocable Trust
- Living Trust vs. Testamentary Trust

Revocable Living Trusts

- Used to avoid Probate at death and during lifetime.
- Privacy
- Grantor re-titles assets into the name of the Revocable Trust during lifetime
- Grantor is commonly the beneficiary and Trustee of the trust during lifetime
- Assets owned by the Trust at the time of the Grantor’s death pass outside of the probate process

Trusts Also Used To Control Inheritance

- Revocable, Irrevocable, Living or Testamentary
- Trust allows Grantor to control distributions beyond the age of 18-Age of Majority in NC
- Can distribute income or principal over a term of years or the lifetime of a Beneficiary
- Beneficiary can still receive distributions for education, health care, support etc. with approval of Trustee

Specialized Trust Provisions

- Dollar distributed for a dollar earned
- Achievement distributions/rewards
- Drug and alcohol testing
- Supplemental Needs of a disabled beneficiary to avoid disqualification of benefits
- Generation Skipping Trusts

Asset Protection Basics

- Ownership of Property
  - Tenancy by the Entirety
  - Ownership by non-working spouse
  - Marital/Separate Property

Asset Protection Basics (cont.)

- Other Techniques
  - Life Insurance
  - Family Limited Partnerships
  - Qualified Retirement Accounts and IRAs
  - Limited Liability Companies
  - Offshore Trusts

Estate Taxes

- Estate Taxes are separate from income taxes
- Estate Taxes are assessed on assets in excess of exemption amount
- Your estate includes everything you own or control at time of death including life insurance

Estate Taxes (cont.)

- Currently no Federal or North Carolina estate tax (as of 1/1/2010)
- In 2011, Federal and North Carolina estate tax will be reinstated (if not sooner)
- In absence of new legislation in 2010, exemption will default to $1.0 million in 2011

Estate Tax

- Trusts can be established to minimize estate taxes
- Husband and Wife can create trusts that will enable them to combine their exemptions and pass $2,000,000 to their beneficiaries (or more if higher exemption created by future legislation)

The "I Love You" Will

- There is an unlimited Marital Deduction for property passing to a surviving spouse
- Example:

  Bill and Mary:

  Combined Taxable Estate: $2 Million

  Estate Taxes Due Upon Bill's Death: $0

"I Love You" Will continued...

Upon Mary's Subsequent Death:

Mary's Taxable Estate:	$2,000,000
Mary's Estate Tax Exemption:	-$1,000,000
Net Taxable Estate	$1,000,000
Total Estate Tax Due	$435,000

Credit Shelter Trusts

Bill and Mary

Total Estate = $2 Million

Bill Dies First

Mary Dies Second

Bill's Trust

For the benefit of Mary (and issue) during Mary's lifetime

$1,000,000 Bill's Estate

-$1,000,000 Exemption

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$0 Taxable Estate

Mary's Trust

Property passes at Mary's death to beneficiaries or held in trust for the benefit of named beneficiaries

$1,000,000 Mary's Estate

-$1,000,000 Exemption

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$0 Taxable Estate

Irrevocable Trusts

- May be used to remove assets from a person's estate for estate tax, Medicaid or asset protection purposes
- May involve giving up control and use of assets to achieve the objectives described above
- May have to file separate income tax return
- Used commonly with Life Insurance policies to remove death benefit from the Decedent's estate

Gift Tax

- No federal gift tax on transfers between husband and wife (different rules apply for non-citizen spouses) and gifts to charity
- Can make tax-free gifts of up to $13,000 per year to an unlimited number of beneficiaries
- Medical and educational expenses paid directly to the provider are also gift tax free
- For gifts in excess of those discussed above, there is a Federal lifetime gift tax exemption of $1,000,000
- North Carolina gift tax repealed 1/1/ 2009

Charitable Gifts

- Unlimited charitable gift tax deduction on lifetime gifts to 501(c)(3) organizations.
- Unlimited charitable estate tax deduction for charitable gifts at death.
- Income Tax deduction for lifetime gifts.
- Outright gifts vs. split interest charitable gifts.
- Charitable Gift Annuities and Charitable Remainder Trusts are examples of split interest charitable gifts.

Charitable Gift Annuities

- Asset will be transferred to charity in exchange for annuity payments.
- No capital gains upon sale of assets by charity. This also alleviates lack of diversification risk for Donor.
- Income Tax deduction for Donor based on value of gift minus Donor’s retained annuity interest.
- Potential increase in income for Donor.

Charitable Gift Annuities cont.

- **EXAMPLE:** $1,000,000 of Exxon Stock: Cost Basis $100,000; yields $16,000 of annual income.
- Post CGA Income – $71,000 (7.1% charitable gift annuity payout)
- Income Tax Charitable Deduction – $415,470 (donor age 75)
- Capital gains tax savings on sale of stock
  - $900,000 LT Cap Gain avoided (or deferred)
  - $135,000 Fed Cap Gains tax savings (plus applicable state taxes)
- Reduced portfolio concentration

Charitable Remainder Trusts

- Similar to a Charitable Gift Annuity except assets transferred to a Trust rather than directly to a charity.
- Trust pays Donor either an Annuity or a Unitrust amount each year.
- Trust term can be based on the the life of the Donor or the lives of others chosen by Donor, or can be a term of years.

Charitable Remainder Trust (continued)

- At the end of the trust term, balance passes to charity.
- Donor can reserve the right to change the charitable remainder beneficiaries during the term of the CRT.

Charitable Remainder Trust (continued)

- No capital gains upon sale of assets by Trustee.
- Donor gets an income tax deduction based on present value of the charitable remainder interest.
- Donor's income may increase as a result of the CRT.

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