ACLU – ESTATE PLANNING OUTLINE

8/8/13

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A. What Every Estate Planning Package Should Include

1. Will
2. Financial Durable Power of Attorney
3. Medical Durable Power of Attorney
4. Health Care Directive (Living Will)
5. Disposition of Remains/Funeral Instructions (optional)

B. Will (probate) vs. Revocable Living Trust

1. Probate in Washington
2. Reasons for a revocable living trust
   a. Avoid probate on out-of-state real property
   b. Privacy
   c. Ease in helping children administer elderly parent's estate
3. Pros and Cons

C. The Ten Most Common Estate Planning Mistakes

1. <u>"Do it Yourself" Planning</u>
   a. Difficult to do correctly; any mistakes not known until after you are dead unlike "do it yourself" plumbing repair
   b. Internet documents
   c. Penny wise, pound foolish; can cause major rifts among loved ones
2. <u>Failure to Create or Update Powers of Attorney</u>
   a. Perils of Guardianship
      (1) Cost
      (2) Emotional to start
      (3) Ongoing court supervision
      (4) Could wind up with guardian you wouldn't have selected
   b. Types: health and finances; don't have to name the same person for both
   c. Advantages

   - **(1)** Allows another person to speak for you when you cannot speak
   - **(2)** Effective *immediately* on signing OR effective *only* when you are incapacitated
   - **(3)** Can be revoked anytime
   - **(4)** Does not expire when you become incapacitated
   - **(5)** Can be enforced in a court proceeding

3. <u>Failure to Take Advantage of Estate Tax Planning Benefits</u>
   - **a.** Married couples nearing $2m in net assets (including retirement accounts and life insurance death benefits) should include potential for tax planning to shelter up to $4m from *state* estate tax
   - **b.** Tax laws and asset values change
   - **c.** Although you can currently exempt a total of $10.5m from *federal* estate tax, there are pitfalls of "portability" that may make relying on "portability" not the optimal plan

4. <u>Failure to Name the Best Person to Serve as Fiduciary</u>
   - **a.** "Fiduciary"—executor of will, trustee of trusts, "attorney in fact" or "agent" in durable powers of attorney
   - **b.** Consider professional fiduciaries—not necessarily doing your relatives any favors by naming; potentially puts them in the cross-hairs
   - **c.** Pick the person who will do the best job, not the person you like most or whom you feel will be mad if they are not named
   - **d.** Individuals: trustworthy, organized, smart, gets along with beneficiaries, smart—and *smart enough to get help!*

5. <u>Failure of Unmarried People to Create an Estate Plan</u>
   - **a.** May not like the statutory defaults of who can make your health care decisions (example, long-term partner has no say)
   - **b.** Washington law creates your will

6. <u>Failure to Consider Second Family Issues</u>
   - **a.** Her kids, his kids, our kids
   - **b.** Tax reasons to leave most of assets to spouse or trust for spouse; but what if spouse is close to the ages of your kids from first marriage?
   - **c.** Potential for surviving spouse to cut out deceased spouse's kids
   - **d.** Techniques to avoid family drama/court action
     - **(1)** Give something to deceased spouse's kids so they don't have to wait until step-parent dies (*e.g.* non-probate assets, like IRAs or life insurance)
     - **(2)** Set up trusts properly for surviving spouse—consider using professional trustee as co-trustee
     - **(3)** Make gifts of part that can be excluded for estate tax to kids during lifetime

7. <u>Failure to Update Beneficiary Designations</u>
   - **a.** On retirement plans, could trigger income tax sooner than is optimal

b. Unintended results: *example*: have two children, split 50/50, one child predeceases, but has children, default in form may be that surviving child gets all and deceased child's children are out

c. Not naming a beneficiary: default is often to the estate

(1) Subjects life insurance and retirement assets to decedent's creditors, where otherwise exempt

(2) Speeds up distributions from retirement plans to income tax is payable earlier, and can push beneficiary's income level to highest bracket

8. <u>Failure to Properly Coordinate Account Titling</u>

a. Joint tenants with Right of Survivorship:

(1) Potential claim of co-owner child, when he/she is only on account for convenience; create litigation, bad feelings

(2) Can frustrate estate tax planning

b. Tenants in Common: can lose advantageous capital gains basis adjustments if the property is community property

c. Pay on Death accounts:

(1) Forgetting to update when overall estate plan changes

(2) Can frustrate estate tax planning

9. <u>Failure to Consider Possibility of Special Needs Beneficiaries</u>

a. Can keep a beneficiary from receive public (*e.g.* Medicaid) or private benefits

b. Can be avoided by establishment of a special type of trust within your will or revocable trust

10. <u>Failure to Consider Charity or Properly Consider Certain Tax-Advantaged Charitable Giving Tools</u>

a. Improperly naming the charity

b. Naming charity as beneficiary of retirement accounts; using percentages, not cash amounts, consider separating IRAs so one is for charity and others are for individual beneficiaries

c. Utilizing other tax-savings tools

(1) Establishing trust during lifetime (or upon death) that will give your beneficiaries access to net income/specific amount each year, but leave the remainder to charity after period of time (charitable remainder trust)

(2) Establishing trust that gives income/specific amount to charity each year, but leaves remainder to your beneficiaries (charitable lead trust)

(3) Take advantages of ways to saving taxes if you anticipate selling a business and you have a low basis

(4) Establish ways to teach kids/grandkids about philanthropy and get tax advantages at the same time