Estate Planning Workshop

Presented By

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Some of Our Topics:

- The legal terminology and default rules associated with inheritance
- Some general concepts governing wills and trusts
- Identifying probate and non-probate assets and distribution
- Advance directives, including living wills, health care powers of attorney, and financial powers of attorney
Basic Estate Planning Documents:

- Wills
- (Trusts, both revocable and irrevocable)
- Financial powers of attorney
- Health care powers of attorney
- Living wills
Planning in contemplation of death?
Some Questions:

- Who should receive your property?
- In what form?
  - Outright
  - In trust (over time)
- Who should be responsible for collecting, administering, and distributing the property?
- What if you become incapacitated?
What property does a will cover?

**Probate Property**
- In Decedent’s Name (sole or as TIC)
- Passes through Probate by Will or Intestacy

**Non-Probate Property**
- Life Insurance
- Joint Property (JT or TIE)
- Retirement Benefits (IRAs or Pensions)
- Property in Trusts
- P.O.D. Accounts
Probate Property: Tangibles, Real Estate
Probate Property: Cash, stocks, bonds and other intangibles
Non-probate transfers
Five minute writing exercise:

YOUR LEGACY

(LAST PAGE OF HANDOUT)
What does it mean to die “testate”?

What is a will: P.A. C.S.A. § 102

- “Will.” Means a written will, codicil or other testamentary writing.
- Executed with certain formalities.
Death = The last taboo
What if you do not have a will?

“Intestate”

Why no will?
- Did not get around to it
- Did not want to face mortality
- Did not want to spend $ or time
- Could not decide

Howard Hughes – draft will donating wealth to medical research
What happens to your probate property?

Default rules apply – look at what average decedent would want.

Priority:
- Spouse
- “descendants”
- other relatives (collaterals, cut off at great grandparent level)
- “laughing” heirs
Some issues when you die intestate:

- Who is a spouse?
- Who are descendants?
- Who “survives” you?
- Family wipe-out rules?
- Charities?
- Tax apportionment?
- Need?
- Relationship?
What can’t your will do?

- Can’t direct what happens to non-probate property.
- Important to examine and update your beneficiary designations, account titles, deeds regularly so they do what you want!
What is a trust?

"[T]he normal private trust is essentially a gift, projected on the plane of time and so subjected to a management regime."

- Bernard Rudden
Types of trusts:

- Private:
  - Testamentary
  - Revocable (a.k.a. living or inter vivos)
  - Irrevocable

- Charitable

- Business
Trusts

Settlor

Trust Property

Beneficiary

Trustee
A typical estate plan:

Nonprobate Transfers

Beneficiary: Trustee of T's Revocable Trust

Transfer of Assets

Revocable Trust

Pour-Over Will

Residuary Beneficiary: Trustee of T's Revocable Trust

Franklin Mint Federal Credit Union
The Credit Union of Choice!
Some Advantages of Trusts

- Control over WHEN your beneficiary inherits.
- Creditor Protection.
- Lifetime management of property.
- Possible tax planning.
- Complete probate avoidance, even if no successors named.

Unified bucket for assets

An overarching statement of how you want your estate to pass. E.g. if I name my son as beneficiary of an investment account currently worth 10% of my estate, what happens if the account's value increases to 50% of my estate (or 2% of my estate) by the time I die?
What are advance directives?

- Living will
- Health care power of attorney
- Financial power of attorney
How often should you update your plan?

- Any major change in life:
  - Divorce
  - Marriage
  - New child (birth, adoption, ART)

- Otherwise, every 3-5 years for review
How do you get started?

- Who do you involve?
- What other information might you be asked to provide?
Information about the beneficiaries

- Names and relationships
- Special considerations for children/descendants:
  - Adopted/adopted-out/non-marital/step-children
  - Special needs/addictions/relationships/spending patterns/other personal habits
- Personal information
  - Ages (guardian, trust, education)
  - Elderly (planning for incompetence)
- Contingent beneficiaries ("giftover")
Information about Fiduciaries

It turns out “fiduciary” means you have to give it back.
Fiduciaries

**Positions:**
- Who will serve as “executor”?
- Trustee?
- Guardian of minor children?

**Characteristics:**
- Individual
- Corporate or professional – Fees?
Information about Property

- Accurate descriptions, including
  - How title is held
  - Value
  - Form (insurance, retirement assets, employee benefits, stock, real property, personal property)
  - Characteristics ("community" or separate)
- Debts/liabilities
- Expectancies
Goals

What do you wish to accomplish?

- Create a legacy
- Care for family
- Avoid taxes
- Promote certain behavior
- Timing/cost
Hiring an EP Attorney: Some Questions to Ask

- Is the attorney's primary focus on estate planning?
- How many years of experience does the attorney have?
- Does the attorney assist clients with properly funding their assets into a revocable living trust?
- Does the attorney have a formal updating and maintenance program?
- Does the attorney charge a flat fee or an hourly rate for providing estate planning services?
- Ask yourself: "Can I see myself working closely with this attorney?"
- ACTEC as a source
Questions?