Estate Planning 101 – The Importance of Planning Ahead

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Estate Planning

- What is Estate Planning?
  - Preparation of documents to manage personal matters and assets during your lifetime and after your death.

- Why is it Important?
  - Ensures a solid plan is in place to care for your loved ones if you become incapacitated and/or upon your passing.

Basic Estate Planning Tools

- **Wills**: The cornerstone of any estate plan
- **Revocable Living Trust**: Useful in certain situations
- **Community Property Agreement**: Beneficial for some married couples
- **Powers of Attorney**: For financial/legal & health care decisions
- **Health Care Directives**: Also known as Advanced Directives & Living Wills
- **Beneficiary Designations**: Ensure your assets go to the right people and entities

Who Will Assist You?

- Trusted Individuals:
  - **Guardian**: For your minor children
  - **Personal Representative (Executor)**: To manage your estate
  - **Trustee**: To oversee any trusts
  - **Agent**: To make financial, legal, and health care decisions if needed

- Professional Advisors:
  - **Estate Planning Attorney**
  - **CPA**
  - **Financial Advisor**
  - **Charitable Organizations**
  - **Professional Fiduciary**: If no suitable family member or friend is available

Wills and Probate

Key Components of a Will

- **Clear Intent**: No particular legal language required, just a clear expression of your intent
- **Identification**: You (the "testator") and your family/"next of kin"
- **Executor Nomination**: Appoint a Personal Representative to manage your estate
- **Property Distribution**: Specify how you want your assets divided (specific items, dollar amounts, and/or percentages)
- **Guardian Appointment**: Designate a guardian for minor or incapacitated children
- **Trustee Appointment**: Name a Trustee if any Trusts are created in the Will
- **Additional Writing**: Optionally, include a separate writing outside the Will to distribute tangible personal property

When to Revisit Your Will

- Regular Review: Every 5 years

- Life Events:
  - Death or health issues of a beneficiary or fiduciary
  - Birth of a child or grandchild
  - Children or grandchildren turning 18
  - Marriage or divorce (yours or a beneficiary's)
  - Significant changes in your wealth or health
  - Relocation to a different state or new out-of-state property purchase
  - New legislation affecting your estate
  - Change of mind about executor or beneficiaries

Understanding Probate

- What is Probate?
  - The court process that facilitates transfer of assets from the decedent to their heirs or beneficiaries.
- When is Probate Necessary?
  - Presence of real property;
  - Assets totaling $100,000 or more (excluding those subject to beneficiary designations);
  - Legal issues requiring estate representation (e.g., debts, disputes, lawsuits).
- With a Will:
  - Probate in Washington is usually straightforward.
  - Typically, minimal court intervention in estate administration.
- Without a Will:
  - A court-appointed administrator distributes property according to state law (intestacy).

Community Property: What and Why?

- What is Community Property?
  - Property and income acquired/earned by either or both spouses during marriage, presumed to be owned 50/50
  - Exceptions: separate property, gifts, or inheritance (if maintained as separate).

- Why Does it Matter?
  - Estate Inclusion: Deceased spouse's 50% interest in community property and 100% of their separate property are included in their estate
  - Tax Advantage: Upon a spouse's death, 100% of community property gets a "step up in cost basis" to the date of death value, reducing future capital gains tax liability.

- Community Property Agreement
  - A legally binding document signed by both spouses.
  - Clarifies what is community property and what property remains separate.
  - May also direct the disposition of community property upon the first spouse's death to avoid probate.

Probate Substitutes

- Transfer on Death Deed
  - For real estate
- Small Estate Affidavit
  - Applicable if assets are less than $100K
- Affidavit in Support of Community Property Agreement
  - Used if the married couple had a valid Community Property Agreement at death of the first spouse
- Strategic use of beneficiary designations
  - Ensures assets are transferred according to your wishes

Revocable Living Trusts

Revocable Living Trusts

- What is a Revocable Living Trust?
  - A legal entity created to manage assets during one's lifetime and upon death.

- Key Features:
  - **Asset Management**: Holds title to assets for the benefit of one or more beneficiaries;
  - **Trustee Appointment**: Appoints a Trustee (and Successor Trustee) to manage and distribute assets according to specific provisions;
  - **Probate Avoidance**: Primarily used to avoid probate, especially beneficial if you own real estate in multiple states.

Types of Trusts

- Living Trusts ("Inter Vivos Trusts")
  - **Creation**: Established during your lifetime.
  - **Trustee**: You and your spouse may serve as Trustees (or appoint someone else to serve for/with you).
  - **Asset Transfer**: Assets must be affirmatively transferred into the trust.
  - **Revocability**: Can be either revocable or irrevocable.

- Testamentary Trusts
  - **Creation**: Established upon your death.
  - **Source**: Created by your Will or Trust; funded through probate or trust process.
  - **Administration**: Managed by Trustee(s) named in your Will/Trust.
  - **Common Uses**:
    - Protective trusts for beneficiaries: For minor or adult children)
    - Metered Distributions: Gradual fund distribution for younger beneficiaries
    - Special Needs Trusts: For disabled/incompetent individuals
    - Charitable Remainder Trusts: "Give it Twice" Trust
    - Tax Planning: Trusts designed for tax efficiency

Wills vs. Revocable Living Trusts

Wills vs. Revocable Living Trusts

- Traditional Estate Plan
  - Primary Document: Will
  - Administration: Probate process
- Revocable Living Trust (RLT)
  - Primary Document: Trust
  - Upon Death: Trust becomes irrevocable; assets distributed per Trust.
  - Additional Document: "Pourover Will" (as a backup).
- Common Needs for Both Plans:
  - Powers of Attorney
  - Health Care Directives
- Choosing the Right Plan
  - Depends on the circumstances.
  - No "one size fits all" estate plan.

Wills vs. Revocable Living Trusts

Revocable Living Trusts for Washington Residents

- When Are They Beneficial?
  - Out-of-State Property: Own real property in other states
  - Need a "Helper:" Require an independent Trustee
  - Clarify Ownership: Especially useful in second marriages
  - Privacy: Avoid having your Will filed with the Court

- Cautionary Advice
  - Revocable living trusts are not a panacea
  - No Tax Benefit: Similar tax implications as a Will
  - Administrative Burden: Can be more complex than necessary
  - Probate Avoidance: Only if all property is titled in the trust or has beneficiary designations.
  - Cost Consideration: Probate costs in Washington are often similar to trust administration costs, and establishing a Will-based estate plan is typically cheaper.

Supporting Charitable Causes with Estate Planning

Testamentary gifts can make a lasting impact on charitable causes; remove assets from taxable estate

- Bequests
  - Can be specific dollar amount or percentage of remainder
- Beneficiary Designations
  - Relatively easy to do
  - Transfer to charity outside of probate
  - Charitable organizations receive retirement accounts ***tax-free***
- Retained Life Estate
- Testamentary Charitable Remainder Trust (CRT)
  - "Give it Twice" Trust
  - Can provide income to beneficiary; remainder to charity

A Cautionary Tale . . . part I

A Cautionary Tale . . . part I

- Designated beneficiaries override the terms of your Will.

- Applies to:
  - **Bank accounts:** Joint tenants with right of survivorship or POD/TOD designations
  - **Investment accounts**
  - **Annuities**
  - **Pensions**
  - **Life Insurance**
  - **Retirement accounts**

A Cautionary Tale . . . part II

- Tax Treatment of Retirement Accounts
  - Spousal Beneficiary: Spouse can "roll over" the balance to their own retirement account, deferring income taxes;
  - Non-Spousal Beneficiaries (SECURE Act 2020): must withdraw benefits and pay income tax within 10 years;
  - No Designated Beneficiary: Account must be paid out over a shorter period (typically 5 years), losing the opportunity to defer income tax;
  - Charitable Organizations: Receive gifts from retirement accounts ***tax-free***
  - Important Note: Do NOT name your estate as the beneficiary

Understanding Gift, Estate, and Capital Gains Taxes

- Gift Tax – No Washington gift tax; just a federal gift tax
  - **Federal Gift Tax**: May apply if you give money or assets without fair compensation.
  - **Exemptions**: Gifts to charity or a surviving spouse (unless spouse is not a U.S. citizen).
  - **Annual Exemption**: $18,000 per donor/donee; larger gifts must be reported.
  - **Lifetime Exemption**: $13.61 million combined gift and estate tax exemption for 2024.

- Estate Tax
  - **Federal Estate Tax**: 40% on amounts over $13.61 million lifetime exemption
  - **Washington Estate Tax**: Exemption of $2.193 million; rates vary from 10-20%

- Capital Gains
  - **During Lifetime**: Different tax treatment for appreciated assets gifted during your lifetime.
  - **At Death**: Step up in basis for all assets at death can minimize taxes.
  - **Washington State Capital Gains Tax**: 7% on annual long-term capital gains exceeding $250,000 annually (real estate, retirement accounts, certain other assets are exempt).

- Note: The current federal estate tax exemption is set to sunset at the end of 2025.

Planning for Incapacity
- Powers of Attorney -

Powers of Attorney: Plan Ahead

- Why It's Important:
  - If you become unable to make decisions for yourself, and haven't authorized someone legally, a court may need to appoint a guardian
  - Guardianship proceedings: Can be costly, burdensome, and may not align with your wishes.

- Solution:
  - Plan Ahead: Appoint a trusted agent to make financial and healthcare decisions for you.

Financial Power of Attorney

Durable Power of Attorney for Finances

- What is it?
  - A legal document where you (the "principal") appoint an agent to make legal/financial decisions on your behalf

- Key Features:
  - **Authority**: Allows your agent to "step into your shoes" and assist as described in the document.
  - **Scope**: Can grant broad or limited powers
  - **Retention of Control**: Does not remove your ability to make decisions for yourself
  - **Activation**: Decide if it's effective immediately or only upon a finding of incapacity (usually by a physician).

- Important Consideration:
  - 5-year shelf life: Regularly review and update

Health Care Power of Attorney

- What is it?
  - A legal document that appoints an agent to make health care decisions when you are unable to do so.

- Agent's Responsibilities:
  - **Medical Decisions**: Consent or refuse medical procedures, medications, or treatments.
  - **Doctor Meetings**: Meet with your doctors on your behalf.
  - **Long-Term Care**: Decide on appropriate long-term care options.
  - **Medical Records**: Access your medical records.

- Important Consideration:
  - Discuss your general health care philosophy with your agent before you become incapacitated.

Health Care Directive

- Also known as a "Living Will."

- A health care directive is a legal document that describes your general wishes for end-of-life medical interventions and care.
  - Specifically, the document addresses whether and how you want to be kept alive by medical treatment if you are unable to articulate your own decisions.

Health Care Directive

- In addition to signing the document, it is important to have meaningful conversation with your health care agent to discuss your values and goals as they relate to end of life care. Your agent is your advocate.

- You can also supplement with personalized statements about your values, but a conversation is also recommended so your agent fully understands what you want.

- Remember to provide your agent, your primary care provider, and the hospital with a copy of your directive. PeaceHealth is our local repository for these documents.

The Importance of Estate Planning

- Protect Your Assets
- Provide for Loved Ones and Causes
- Simplify the Transfer of Assets
- Health Care Directives
- Peace of Mind

Questions?

Please let us know if we can assist you with any of the matters we discussed today.

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