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Branch Manager

RETIREMENT INVESTING

SPECIALIZING IN INVESTMENT MANAGEMENT AND ASSET PROTECTION

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Estate Planning

Identifying and defining your goals is the starting point of the Estate Planning process. Just as you would not build a house without goals and blueprints, developing specific goals is the first step toward accomplishing what you want to do in Estate Planning.

Everyone's situation is unique, and everyone will have different goals. However, most people have some of the following in common:

1. To maximize the value of their assets-How can you plan to avoid unnecessary fees? What can you do to ensure that your estate's assets will keep their value?
2. To provide for their loved ones-Do you have a plan to provide for adequate income for your family so they do not incur a financial burden?
3. To name responsible guardians for their children or dependents-Who will look after your children in the event that both you and your spouse die? Do you have dependents that need special care?
4. To name an executor for their estate-Who will serve as the executor of your estate? Are they capable, and responsible? Are they willing to fulfill this obligation?
5. To distribute assets according to their wishes-How do you want your assets to be managed and distributed? Do you want to leave money to a charity?
6. To ensure that there is sufficient liquidity in the estate to pay taxes and liabilities-Will some assets need to be sold in order to pay these debts?

As you plan your goals, one of the best ways to ensure that nothing is overlooked is with the use of a checklist and an asset inventory form. It is particularly helpful to list such assets as your home, vacation cottage, business properties, and life insurance. Also, those special items such as a coin collection or rare antique furniture should not be forgotten.

It is important to realize that some goals may be unobtainable because a person may simply lack sufficient resources or because the achievement of one goal will prevent the attainment of another one. Therefore, it is good to have alternate goals and strategies available to help you.

Once the goals are in place, you can then proceed with your attorney or estate planner to begin the next steps of estate planning: gathering the data, evaluate whether these goals are do-able, developing strategies, implementing the plan, and reviewing your plan.

If you already have an estate plan in place, it makes sense to review it or update it from time to time. You would want to revise your goals whenever there are major changes in your family situation, such as a marriage, divorce, new baby, recent inheritance, etc. Similarly, changes in the tax laws should also warrant your review to make sure that the plan is not out-of-date. We are here to help.

What Is Probate?

Many people have heard the word "Probate", in connection with Estate Planning. What is probate? What does it mean? What role does it play in a person's estate?

The word probate in Latin means, "*to prove*". Probate is the legal process of administering an estate. The probate process encompasses the deceased's probate estate, which is all property that will pass to other people either through a will, or through "intestate succession", that is, through the laws of the state. Intestate succession can occur through total intestacy, such as when there is no will, or through partial intestacy. Partial intestacy can cause some property that is not being passed through a will, or a will substitute, to be passed along through the state laws of intestate succession.

One of the first steps in the probate process occurs when the Executor, the person named in the will to administer the estate, brings the will to the judge at Probate Court. What is actually being "proved", when a will is entered into probate? It proves that this document was intended to be a will, that the person is deceased, that it is their last will, and that the document is properly executed and valid in the state.

If however, there is no will, or the will does not name an executor, then the court must appoint someone, usually a close relative, to administer the estate. The person who has filed a “letter of appointment” with the court, is known as the Administrator. In addition to entering the will into probate, some other probate process functions include: taking an inventory and assessing the value of all the property, locating and identifying heirs, identifying and settling outstanding liabilities and creditors, settling conflicts that can arise between the estate and other parties, completing and filing tax returns, distributing all the estate property.

Are there advantages to probate? Since the process is overseen by a judge, it is an orderly, unbiased, and strict one. Anyone with an interest in the estate has the assurance that all matters will be done correctly, because there is an established procedure in place.

Are there disadvantages to probate? The probate process can be a fairly costly one. Attorney’s fees, court fees, accountant’s fees, appraiser’s fees, and executor’s fees, all can deplete the value of the estate. Probate is a long process. Depending on the size and complexity of an estate, it is not unusual to take a year before the assets will be distributed to the beneficiaries. Probate is also a public process, the general public can view a person’s probate files should they wish to do so.

Should probate be avoided, and how can it be done? There are a number of ways to avoid keeping property from passing through probate.

A “will substitute” is a term for several methods that transfer a person’s estate outside of probate. Every time someone completes a beneficiary designation on an insurance policy, pension plan, or an IRA, and names a person who will receive their death benefits, that person is using a form of a will substitute. This property will pass directly to the beneficiary and avoid probate. Other forms of will substitutes which use a beneficiary designation include government savings bonds, deeds, P.O.D. (Payable On Death) accounts, bank account trusts (“Totten Trusts”), revocable living trusts, and T.O.D. (Transfer On Death) accounts.

Property owned jointly with a spouse or someone else, is titled as “Joint Tenants With Rights Of Survivorship”, automatically passes to the survivor at the first parties death, and bypasses probate is another type of will substitute. Since these interests pass automatically and do not go through probate, these interests transfer by what is known as “Operation Of Law”. Another way to transfer property among joint owners, include “Joint Tenancy By The Entirety” which can only be established between husband and wife.

Since probate’s disadvantages usually outweigh the advantages, it is generally a good idea that your estate plan avoid probate as much as possible.

Where There’s A Will... There’s Estate Planning

Almost everyone will be involved in estate planning at some point, and understanding the basic components of a will is always a good idea. A valid will is needed to dispose of one’s property at death. Without a valid will, (dying intestate), the state decides who gets your property, and that priceless antique you promised to your granddaughter may never go to her.

Requirements For A Valid Will

There are certain requirements that must be met in order to write a valid will. The required minimum age to make a valid will is usually 18 or 19 years old, and this age requirement will vary from state to state. A person who makes a will is called a testator (male), and testatrix (female). They must provide proof to their state that they have testamentary capacity, which means that: they understand what they are signing, that they understand what type and how much property they own, that they understand who are the “*natural objects of his or her bounty*”, and that they must know who are the members of their family.

The will must be in a form that is valid in the state where it is executed. There are three basic types of will forms. The first is the Typewritten or Witnessed Will, and is the most common will prepared and executed, and recognized in all states. The second is the Holographic Will, and is a handwritten document written by the will maker and does not require witnesses or notarization, and is recognized by some states. Finally, the Nuncupative Will is an Oral Will, recognized by only a few states. Since it was originally set-up orally by the testator, the state may require a written accompanying document. This will requires that there be at least one witness.

Requirements For Execution

The testator (testatrix) must be able to sign (execute) the will. If unable to sign, an appointed proxy will sign on their behalf. Witnesses must be present to sign, and to verify the testator’s signature and testamentary capacity. Most states require only two witnesses. Finally, the witnessed will must be signed in front of a notary public, who also signs and places their notary seal on the document.

Types Of Wills

The Simple Will is most common type, a single document executed by one person. The Joint Will is a single document executed by multiple people, usually husband and wife. A single or multiple document which is executed by two or more people is known as a Mutual Will. The people involved contract with each other to leave property in a certain manner. A "Sweetheart" or "I Love You" Will is known as a Reciprocal Will, in which one person names the other to receive their property.

Clauses Of Wills

Here's a description of the most common type of clause found in wills. All wills should begin with what is known as the Introductory or Exordium Clause; *"I, John Smith, being of sound mind, declare this to be my last will and testament..."*

The Death Tax Clause directs how the estate, inheritance, and other taxes will be paid.

The clause, which clarifies who the maker's family, is, to avoid repetition of names is known as the Family Statement Clause. *"My husband's name is John Smith. Any references in my will to my husband are to him..."*

A Tangible Personal Property Clause disposes of personal property that can be seen or touched, such as a car, furniture, clothing and the like. *"I give all my tangible personal property to..."*

An Intangible Personal Property Clause disposes of personal property that can't be seen or touched, such as stocks, investments, insurance, etc. Property such as houses, buildings, real estate, would be disposed of with by means of the Real Property Clause; *"I give all my real property, including my residence, to..."*

Any remaining property not previously mentioned is disposed of with the Residuary Clause; *"I give all the rest, residue, and remainder of my estate to..."*

The Fiduciary Appointment Clause applies to the person who is appointed by the will maker to administer the estate assets; *"I appoint my wife as the personal representative of my estate, the guardian and conservator of any minor children..."*. In addition, the Fiduciary Powers Clause can be added to allow the will maker to customize the powers of the fiduciary.

At the end of the will is where you will find the Testator's Signature or Testamonium Clause. This will re-affirm that the document is the last will, that it has met the statutory signature requirements, and that it has been signed. *"I, John Doe, sign my name, date on this document as my last will and testament..."*

The Attestation of Statement of Witness Clause will show that the witnesses saw the will maker sign the will, and that he or she signed it willingly. A Self-Proving Clause allows the will to be probated without requiring that the witnesses appear to testify. A No-Contest Clause can be added to penalize any disinherited family member who contests the will.

Revoking A Will

Wills can be revoked at any time during the will maker's life. They can be disposed of by shredding, tearing, being tossed into the roaring fireplace to be burned, the will maker can also write "cancelled" or "revoked", on the document, and sign and date this if wishing to do so.

Updating A Will

Finally, wills can also be amended during the will maker's life by use of a codicil, which carries the same formalities as the original will. This is where changes can be made by inserting such phrases as *"I add, delete, revoke, update, etc"*, which will make the affected changes without the need for an entirely new document.

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