Modern Estate Planning Made Easy

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Typical Estate Planning Goals

- Avoid guardianship in case of incapacity
- Avoid probate in case of death
- Put your chosen representatives in charge
- Defer income taxes on IRAs and other retirement plans
- Plan for the eventuality of having to pay for long-term care expenses
Estate Planning Goals (Cont.)

- Protect children’s and grandchildren’s inheritances from the claims of their creditors, including property division claims in the event of divorce
- Avoid (or at least minimize) state and federal estate taxes
Planning Steps
To Accomplish The Goals

(But first, some tax talk)
Three Types of Transfer Taxes
In The United States

1. **Gift Tax** – a tax on the transfer of property during your lifetime.

2. **Estate Tax** – a tax on the transfer of property upon your death.

3. **Generation-skipping Transfer Tax** – a tax on the transfer of assets, or distributions from trusts you create, to persons who are two or more generations removed from you.
Gift Tax (2011 and 2012)

- All lifetime transfers of wealth in our country are taxable
- From your lifetime taxable transfers, you may:
  - Deduct all qualified transfers to charities
  - Deduct all qualified transfers to your spouse
  - Exclude the first $13,000 gifted to any person in one year
  - Exclude up to $5 million in excess of the annual gifts
- All other lifetime transfers are subject to federal gift tax at a flat rate of 35%
Estate Tax (2011 and 2012)

- All transfers of wealth at death are taxable
- From a person’s death time transfers, you may:
  - Deduct all qualified transfers to charities
  - Deduct all qualified transfers to a spouse
  - Deduct all qualified debts and expenses of administration
  - Exclude other transfers of up to $5 million
- All other transfers at death are subject to federal estate tax at a flat rate of 35%
Generation-skipping Transfer Tax (2011 and 2012)

- GST tax is imposed (in addition to estate tax) on gifts given, or distributions from trusts made, to “skip-persons” (persons who are two or more generations below the donor) to ensure that estate taxes are paid at each generational level
- The first $5 million of GST transfers are excluded from the GST tax
- All GST transfers in excess of $5 million are subject to GST tax at a flat rate of 35%
Back To The Planning Steps To Accomplish The Goals
Durable Power of Attorney for Financial Matters

- Name agent to exercise powers upon incapacity
- Delegate broad or specific powers to agent
Power of Attorney for Health Care

- State-approved form with options
- Name agent to make health care decisions upon incapacity
- Incapacity is defined: requires two physicians or a physician and a psychologist to conclude based on personal examination that person is unable to receive and evaluate information effectively or to communicate decisions about health care
Marital Property Agreement

- Classify ownership of assets as marital property (50-50) or either person’s individual property
- Give surviving spouse new basis in appreciated assets
- Provide for non-probate transfers of assets to fund a revocable trust
Will

- Nominate guardian of minor children
- Nominate personal representative
- Provide for probate transfers of specific assets to named beneficiaries and possibly to fund a revocable trust
Revocable Trust To Receive All Other Assets

- Trust may exist for one person or for a married couple
- Settlor may transfer assets to trust during lifetime
- Agent may transfer assets to trust upon settlor’s incapacity
- Other assets are transferred to trust upon settlor’s death
- Settlor may serve as initial trustee
- Settlor names successor to assume duties upon resignation, incapacity, or death
- Use independent trustee or co-trustee upon settlor’s death if creditor protection is desired
During settlor’s lifetime, assets are administered for settlor.

At settlor’s death, assets are distributed outright or to continuing trusts for beneficiaries.

Special subtrust may be beneficiary of IRAs and other retirement plans.

- Allows for post-death distributions to be paid over a beneficiary’s life expectancy while maintaining the benefits of a trust for asset management and creditor protection purposes.

- Trustee of subtrust will either:
  - Pay minimum required distributions to the beneficiary annually, or
  - Accumulate the minimum required distributions and pay out only those amounts necessary to achieve specified objectives.
Single Person Revocable Trust

Lifetime Transfers

Beneficiary Designations

Probate Under Will

Non-Probate Transfer Under Marital Property Agreement (for married persons only)

Revocable Trust

Pay debts, expenses, and taxes

Satisfy specific gifts

Distribute Balance Outright Or To Trusts For Beneficiaries
Married Couple Revocable Trust

- Lifetime Transfers
- Beneficiary Designations
- Probate Under Will
- Non-Probate Transfers Under Marital Property Agreement

Joint Revocable Trust

- Husband’s Share
- Wife’s Share
Planning Steps Used When Estate Tax Is An Issue

- Use marital deduction
- Use the exemption amounts of both spouses
- Create irrevocable life insurance trust to own insurance policies
- Arrange for discounted value transfers
- Incorporate charitable giving into estate plan:
  - Outright gifts upon death
  - Charitable remainder trust
  - Charitable lead trust
Have We Accomplished The Goals?

- Guardianship avoided upon incapacity with durable power of attorney and health care power of attorney.
- Probate avoided with funded revocable trust (and marital property agreement for married persons).
- Chosen representatives are in charge.
- Transfer taxes avoided or minimized with trust design.
- Income taxes on IRAs and retirement plans deferred by stretching payments over beneficiaries’ life expectancies.
- Orderly distribution of other assets through revocable trust.
- Creditor protection for beneficiaries (if desired).
Beyond The Basics

- Trusts for special needs child
- Trusts to hold vacation property for long-term use and enjoyment of family members
- Asset protection planning
- Long-term care insurance
- Medical assistance eligibility planning