

ESTATE PLANNING SEMINAR

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6:30 P.M.

Documents for Personal Planning Consideration

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Background

I

Personal Planning for the Older Adult

Questions Posed:

- What are your important legal documents?
- Do you and/or your spouse know where all of the legal documents are located?
- Will your children know where the legal documents are located if you become disabled?

Family Discussions / Documents Needed:

- Business Power of Attorney / Alternative to Guardianship
- Living Will Declaration and Health Care Power of Attorney
- Last Will and Testament

Documents Needed For Hospitals / Nursing Homes:

- Social Security Information / Medicare Card
- Insurance Cards
- Living Will Declaration and Health Care Power of Attorney
- List of Current Medications

Documents Needed After Death:

- Death Certificate
- Will
- Federal Income Tax Return
- List of all assets

II

How are Assets Owned:

- Sole ownership
- Joint ownership (fractional ownership), tenants in common

Non-Probate Assets:

- Joint and Survivorship
- Payable on Death
- Transfer on Death
- Beneficiary Designation
 - Life Insurance
 - Retirement Plans

III

Administration of the Estate:

What is Probate?

Do all Estates Require Administration?

What is the role of an Executor/Administrator?

- Collect assets
- Pay debts / taxes
- Distribute property

IV

Estate Tax Concepts:

- Marital Deduction – All assets that pass to a surviving spouse pass tax free
- Asset Exclusion under Ohio Law / \$338,000 (without a spouse) and marital deduction – After December 31, 2012 – no Ohio Estate Tax
- Asset Exclusion under Federal Law / \$5,000,000 (without a spouse) and marital deduction
- In 1966 I began practice / \$60,000 Federal threshold filing requirement – Exemptions in Ohio increased from \$20,000 - \$30,000 - \$60,000 as the years passed
- Current Ohio Estate Tax Rate – 7%
- Current Federal Estate Tax Rate – 35%

V

Questions:

DOCUMENTS – LOCATION OF DOCUMENTS – AND MISCELLANEOUS INFORMATION AND SUGGESTIONS

1. Last Will and Testament

A Will allows you to dictate who will inherit your assets and, if your children are under age, to nominate their guardians subject to court approval. Dying without a Will means losing control of how your assets are distributed. Instead, State Law will determine how the assets are distributed.

Wills are subject to probate – legal proceedings that take inventory, make appraisals of property, settle outstanding debt and distribute the remaining assets to the persons set forth in the Will.

In the event the original Will cannot be located, Ohio law provides for the filing of a copy of the Will under certain circumstances.

Wills have formal execution requirements. Therefore, great care needs to be taken to assure that the document is completed in accordance with the laws of the state where the Will is signed.

2. Durable Power of Attorney For Business

A financial Power of Attorney authorizes another person to transact business on behalf of the person who has granted the Power of Attorney. This document does not dilute the ability of the person signing the Power of Attorney to transact business.

The Power of Attorney provides “back-up assistance” in the event a person becomes disabled and unable to transact their business.

3. Living Will Declaration and Health Care Power of Attorney

These are very important documents. The Living Will Declaration authorizes competent adults to execute a written document that sets forth in advance the patient’s wishes regarding health care treatment in the event the patient lapses into a permanently unconscious state or a terminal condition.

The Health Care Power of Attorney, on the other hand, authorizes a person chosen by the patient to carry out his or her wishes for all their medical care when the patient cannot act for themselves.

4. Revocable Trust Agreements

In addition to a Will, many persons are very comfortable with placing their assets into a Revocable Trust. Trusts are much more private than a Will. A Revocable Trust can be changed anytime during a person’s lifetime. After assets are transferred to the trust, you can serve as trustee on behalf of the beneficiaries you designate.

5. Deeds to Home – Other Real Estate

The original Deed needs to be placed in a safe vault and the Deeds to the home and other real estate need to be copied and placed in a safe location known by family members. Although a certified copy of Deeds can always be secured from the local Recorder's Office, having the Deeds ready at hand is preferable and less expensive.

6. Stock Certificates – Evidence of Ownership in Various Companies

These important documents evidence ownership in private or public companies. The owner of the stock certificate is the individual who owns the fractional interest of the company represented by the stock certificate.

CAUTION: The cost to replace a lost stock certificate is generally 2% of the value of the asset (stock certificate replaced)

7. Cost Basis

Cost basis is merely the acquisition cost of an asset. This cost basis can be adjusted if the person inherits stock from an estate. For example, if I buy 100 shares of Exxon-Mobil common stock for \$50 a share and the value of the stock raises to \$100 a share, my cost basis remains the same, \$50 a share. In the event, however, a person passes away and the stock is valued at \$100 a share, the cost basis in the stock becomes \$100 a share.

8. Life Insurance Policies and Retirement Benefits

Life Insurance and retirement accounts are among the very most important documents for the family. Family members need to know the name of the life insurance carrier(s), the policy number and the agent associated with the life insurance policy. Often life insurance policies are granted by an employer upon retirement.

401(k) and IRA accounts are untaxed monies that have been set aside for retirement and the location and the amount needs to be appropriately recorded and have specific distribution requirements. After attaining the age of 70 ½, the owner of the account is required to make annual withdrawals.

9. Charitable Withdrawal

Current tax law permits direct transfer to charities from retirement accounts.

10. Medical List – Biographical Data – Surgeries – Medical

Health Insurance cards and a medical list which contains biographical data, surgeries and current medications is very helpful to doctors and hospital personnel. A copy of this form, similar to which my wife has prepared for each of us is attached.

11. Pre-need Funeral Arrangements

Many persons contact the funeral home of choice to make funeral and burial arrangements prior to illness. By having these decisions in place, it assists the family greatly at the time of passing, avoids a lot of stress, concern and confusion. When the pre-need funeral arrangements are made, the cemetery lot needs to be identified.

12. Lock Box – Key to Lock Box

Safety Deposit Box – many persons keep assets in their safety deposit box. It is important that the family know which financial institution maintains the safety deposit box. Family members also need to know where the keys to the safety deposit box are located!!

13. Automobile Titles

Automobile titles may be transferred, particularly to a surviving spouse, very smoothly. In the event the original title is misplaced, upon presentation of an Affidavit of Lost Title to the Clerk of the Common Pleas Court, a new title will be issued and can be transferred by the owner. If the lost title is located, it needs to be surrendered to the Clerk of the Common Pleas Court.

14. Loans – What Banks

Mortgage, Miscellaneous Loans and Credit Cards – What banks and who is the loan officer that worked with the family member on the creation of the loans.

15. Income Tax Returns

A copy of the most recent income tax return provide a great road map for assets owned by a person either during or after death. Several years' returns should be kept in a safe location. The name of the person who prepared the Income Tax Returns for the family should be maintained and known by family members.

16. Miscellaneous Personal Documents

Documents which may be needed from time-to-time are the following:

- a. Birth Certificate
- b. Marriage License
- c. Divorce Decree
- d. Antenuptial Agreement
- e. Social Security Card
- f. Health Insurance Cards

17. Brokerage Accounts

Many people prefer to hold their assets in a brokerage account as opposed to placing the stock certificates in a safety deposit box. Each month, the brokerage house will forward a statement showing the activity for the month and the current balance to the account holder. Others may be designated by the owner to receive a copy of the account.

18. Series E Bonds – Series HH Bonds

Over the years, many persons have held government bonds denominated in this fashion. These are, of course, assets that are includable in an estate and need to be located, valued and distributed.

19. Bank Accounts

A listing of the banks in which a person has accounts is helpful and will provide assistance to the family on where to check for assets.

20. Financial Statement – Annual Statement / Assets and Liabilities / Net Worth

Each year a person should prepare a financial statement disclosing assets, liabilities, and determine their net worth. As assets increase, it may dictate more comprehensive estate planning.

21. Annual Personal Audit / Wishes Change / People pass away

Once a year, a person should examine all of their legal documents to be sure that they are current. Has someone moved out of the area? Is someone deceased? Have your charitable wishes changed? Are there additional needs for your family not contemplated previously? Need to change Executor?

22. Ancillary Administration

When a person passes away, owning real estate in another state or territory, these proceedings are filed in the state where the real estate is located. For example, we recently had ancillary administration in Shelby County for a man who owned real estate here and was a resident of Alaska.

23. Tax Situs For Estate Taxation

Real estate is always taxed at its location while intangible personal property is taxed at the domicile of the decedent. If real estate is owned in an entity (corporation/LLC), it becomes intangible personal property and is taxed at the domicile of the decedent.

24. Gold – Silver – Coin Collections and Stamp Collections.

These assets, due to their intrinsic and increased value need to be carefully maintained in a safe, dry location.

25. Antiques and Collectibles

Many persons have an antique table, bookcase, chairs, silver, jewelry, glassware or other items that have been in the family for several generations. Care should be given before sale to a third party.

A Hummel collection, quilts, firearms and primitive items are special to many people and collected by many.