PLANNING FOR YOUR FAMILY'S FUTURE

IMPORTANT SINGLE DOCUMENT
YOU SIGN IN YOUR LIFETIME.

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ESTATE PLANNING

WHY A WILL?

Your will may be the most important single document you will sign in your lifetime. Among the sound reasons the Research Institute of America lists for having a valid will are:

1. To dispose of your belongings to those whom you wish in the proportions that you choose.

2. To provide for your loved ones in the best possible way.

3. To let all interested relatives and/or friends know your wishes.

4. To make it easier for the recipients of your bounty to obtain and use what you left and to avoid disputes and irritations.

5. To reveal aspects of your financial affairs that may be unknown to anybody else.

6. To ease the task of whomever is going to take care of minor children and influence the choice of any guardian.

7. To save many types of expense. As just one illustration, if there are children under eighteen and there is no will, the law requires the appointment of a guardian to protect these children. The guardian would be paid a fee, and that fee would come from the family's assets. A will could save that expense.

8. To avoid the problems of dying "intestate."

If you die without leaving a will you are said to have died "intestate." In this case, your property would be distributed according to Oregon law. The law assumes that most of us intend to pass our property on to members of our immediate families.

Moreover, the law of intestacy is rigid and does not allow for unusual situations. You may, for instance, have a handicapped child, or you may be supporting a widowed daughter. The court cannot give a larger share of your estate to these offspring than to any of your other children.

The only way to make certain that your wishes are carried out and that each member of your family is fairly protected is to leave a will stating exactly who is to get what and when.

WIDESPREAD MISUNDERSTANDINGS

When you are writing your will, you do not need to make an itemized statement of your assets, nor do you need to go through the process of disposing of your property item by item.

Any time you wish, and as often as you wish you may change your will, reflecting changes in your assets, changes in your desires, changes in your choice of beneficiaries.

Your will is not usually recorded prior to death, and no one needs to know you even made one.

The existence of your will does not affect in any way whatsoever your ability to sell or otherwise dispose of your property.

You need not put your business into good shape in order to write your will. An excellent reason for making a will, in fact, might be that your business is in bad shape.

ASSETS WHICH CANNOT BE WILLED

Another major misconception you may have is that you may distribute everything you own via your will. You cannot.

You generally do not dispose of such assets as your life insurance, your pension benefits, or your U.S. Savings Bonds through your will. Why not? Because, assuming you already have named the beneficiaries for these assets, you already have disposed of the assets.

You could name your estate as the beneficiary of your life insurance policy, thereby guaranteeing that the proceeds will be distributed as your will dictates. However, since probate costs are based on the gross value of your estate, you will increase the costs of administering your estate by including a large sum of insurance. Usually you will find it easier, faster, and less expensive to have the proceeds of your life insurance go directly to the beneficiaries you designate, particularly if life insurance is the bulk of your estate. You can eliminate any tax if you divest yourself of ownership and control.

THE BASICS OF YOUR WILL

What kind of instructions and information should your will contain? You are not legally required to draw your will in any particular form, but there are certain standard ingredients which turn up in most wills.

1. Your will must be written clearly enough to permit a court to determine your real intent.

2. The opening paragraph of your will should identify you, the "testator," by name, and state that you are knowingly making your will. Generally, included in this opening statement is a clause that makes it clear that you are revoking any previous wills or codicils (additions or "amendments" to your will) you may have made. When you make a will, it ordinarily remains valid until you revoke it.

3. Next you would generally write a statement that directs the prompt payment of

your burial expenses and all your just debts, taxes, and costs of administration. These are the first claims against your estate. Unless you specify otherwise, all the assets in your estate are regarded as a single pool of money from which these first-claim expenses are to be paid, and your personal representative must charge each beneficiary with a proportionate share of the cost.

4. Then comes the core of your will- the provision for the distribution of your assets.

Other major parts of your will include:

1. The name of one or more personal representatives who will manage and settle your estate according to your instructions. A personal representative should be someone whose competence, judgment and integrity you trust, and who has the interests of your family at heart.

2. Provisions for some type of trust for your spouse, children, or others if you feel such protection is necessary to keep your estate from being dissipated by financially inexperienced or irresponsible heirs.

3. The name of a trustee, if your will provides for a trust, to manage and invest your Estate for its beneficiaries. Your trustee can be an individual, your bank, or a local trust company. The advantage of an institution is that it is sure to outlive you, it stays in one place, it can carry out any business, and it fully understands all the tax laws.

4. The name of a guardian for your minor children to take care of them and their property. If you fail to name a guardian (or guardians) in your will, this responsibility falls on the court.

5. Provisions for gifts from your estate of cash or other property to a school, church, charity, some other organization, or other people outside your family. Many people bequeath specific portions of their estates to favorite charities.

6. Witnesses are an essential part of a will. At the end of your will is a section containing your signature, the date of your signature, followed by an "attestation clause." This clause contains the signatures of your witnesses and a statement properly certifying that they saw you sign the will. The witnesses must sign in your presence and also in the presence of each other.

HOW TO HELP US - AND YOUR FAMILY

Before we can draft a will that meets your needs and desires, we must have a personal "who-what-when-how" about yourself, a breakdown of all your assets and where they are located and a list of personal information about yourself, your family, and others to whom you plan to give part of your estate.

This information about your personal affairs will help us in drawing your will as well as

being extremely useful to your survivors and the personal representative of your estate. It will also give you the vital information to figure out the size and status of your estate.

JOINTLY OWNED PROPERTY

It is not uncommon to be befuddled by the tax aspect of jointly owned property and are in doubt about how to handle it.

To begin, it is vitally important that we determine whether the property you own jointly is held as:

1. "Tenants by the Entirety;"

2. "Tenants in Common;"

3. "Joint Tenants" with only a lifetime interest in the property and the survivor taking all;

4. "Community Property."

To illustrate: If the names of both husband and the wife appear on the deed to their home, they are said to own the house as "Tenants by the Entirety." When one spouse dies, the other becomes the sole owner. Only real estate can be held this way and it can be held this way only by a husband and wife.

However, let's say the husband and a friend purchase a piece of property with the idea of building vacation cottages on it. Title to the property is held in both names. This constitutes a "Tenancy in Common." In this case, each man owns an undivided one-half interest in the property, and either may sell his interest or dispose of it in whatever manner he chooses when he dies. The other partner keeps only his share of the property, which, in this example, is one-half. The balance will then go into the estate of the tenant in common who died, to be distributed according to the terms of his will.

Real estate and other assets (i.e.: joint bank accounts, stocks, and bonds) can be held in "Joint Tenancy" and passed along outside the will. In this type of arrangement, two or more persons own a given property as joint tenants. If one of them dies, his interest in the property passes outside his will directly to the other tenant or tenants (survivor or survivors).

Do not fall into the widespread misconception that this type of ownership always frees property from estate taxes. It does no such thing.

WHAT IS A TRUST?

A trust is an agreement whereby the person who establishes the trust gives property to a trustee to invest and manage for the advantage of the beneficiary. It is a highly flexible device that enables you to have a say in the use of your money after you have died as well as during your lifetime. Most trusts are established for the benefit of a surviving spouse and children and

remain in effect for some years.

A typical provision is that only the income from the trust may go to the beneficiary. At the same time, many such trust agreements contain an emergency clause which permits the trustee to invade the principal or part of it, if necessary, to provide for the education of the children, or for other unforeseen needs such as major medical expenses.

Frequently a trust is used as a means of protecting beneficiaries against their own inexperience in managing financial assets. You may, for instance, want your spouse to have the income from your property during his or her lifetime and your children to get the property later. Or, if you are a widow or widower with children, you may want them to receive only the income from your property until they reach a given age and then to receive the principal outright.

Or a trust can be used to permit a desired standard of living for your family:

(1) To educate a minor child;

(2) To cover unexpected financial emergencies;

(3) To provide a lifetime income for a spouse or child or other relative;

(4) To give a child his inheritance in installments to keep him from squandering it;

(5) To provide for a favorite charity;

(6) To achieve almost any type of personal or financial objective.

The organization, purpose, administration, duration, and eventual disposition of the principal of the trust are subject to any laws, and are consequently tailored to the individual estate.

LIFE INSURANCE

If you own a considerable amount of life insurance you can create a life insurance trust and direct to whom and in what manner the policies are to be paid. The danger here is that by creating a trust, or by making the insurance policy payable to your estate, you might increase the expense of distributing these assets.

As an alternative, you can have the proceeds of your life insurance paid promptly upon your death simply by naming the beneficiary to the policy. And you can direct your insurance company to pay the proceeds in the way you want. For instance, you can authorize the insurance company to make specific payments to your wife or children, including both the income and part of the principal for a specific period of time. A caution, however, should you direct those payments be made to your children and should you die while they are minors, a guardian may have to be appointed by the probate court to handle these proceeds.

Although all life insurance proceeds must be included in computing the gross value of your estate for purposes of taxation, these proceeds must be included in the estate only if the policy was owned and paid for by the person whose life was insured, or if he had control of the policy. It is entirely possible for a man's life to be insured by his wife. Thus, if a wife takes out an insurance policy on her husband's life and has it registered in her name as owner, the policy will not have to be listed as an asset in the husband's estate and the wife will not have to share the proceeds with the tax collector.

WHAT IS A REVOCABLE LIVING TRUST?

Revocable means that it can be revoked or amended at any time. "Living" means that it is established and operational during life, as contrasted with a Testamentary Trust which is set up by one's Will and is operational only after death. A trust it is a document resembling a Will (but usually longer). It is a legal agreement between the person setting up the trust (Trustor) and the person managing the trust assets (Trustee). The Trustee need not be a bank unless so desired. A person may be the Trustor, Trustee, and Beneficiary of his own trust if desired. The Revocable Living Trust (to the extent of the assets in the Trust) avoids probate entirely.

WHY AVOID PROBATE?

Probate is a court-supervised procedure for transferring assets from a decedent to his beneficiaries. The process often involves lengthy delays and substantial expenses, including legal fees. The court records are open for public inspection and fully disclose ones assets, debts, financial worth, and testamentary intent. The Revocable Living Trust is entirely a private matter. Trust assets distribution are not subject to any delay.

OTHER REASONS FOR HAVING A REVOCABLE LIVING TRUST

1. Disability - The Revocable Living Trust can eliminate incompetency proceeding in court and is a private alternative to court appointed guardianship of the property.

2. Less subject to attack than a Will - The privacy of a Revocable Living Trust as well as the fact that it does not need to be executed with the same legal formalities as a Will make it less susceptible to attack by dissatisfied heirs.

3. Income for family - The flow of income for family members is not interrupted on the death or disability of the Trustor.

4. Property in Several States - Multi-State probate can be avoided.

5. Selecting State Law - Provides more flexibility in selecting the state law that is to govern, than does a Will.

6. Receptacle for Death Benefits - It may receive death benefits from qualified employee benefit plans and insurance on the Trustor's life, both of which need not

go through probate.

7. Business Continuity - Enables a going business to continue without interruption.

8. Operation of Trust - Trustor has the opportunity to observe an independent Trustee operating the Living Trust and to make any desired changes.

9. State Death Taxes - Reduces possibility of multiple state death taxes.

10. Amendable - It is easier to amend than a Will. The formalities of Will execution are not required.

11. Flexible - Can provide for "over-all" estate plan during life, upon death, and after death.

OPERATION OF THE REVOCABLE LIVING TRUST

Typically, in a "one-party" Trust, the Trustor manages his own assets as Trustee for his own lifetime. In a husband/wife situation, they both can manage their assets (the same as before) as Co-trustees until the death of the first spouse. The trust then continues to be managed for the survivor's lifetime by either the surviving spouse, by a Successor Trustee, or by both serving as Co-trustees. Upon death of the survivor, distribution can be made immediately to the designated beneficiaries.

WHEN TO USE A POWER OF ATTORNEY

What exactly is a "Power of Attorney?" In essence, it simply is a means of giving another person the legal authority to act on your behalf. This is somewhat like a letter to the world saying "I authorize you to deal with this person as if he or she were me."

Since a General Power of Attorney gives such a wide latitude to the holder, it has traditionally been subject to strict limits. Ordinarily, such a power would not be granted without discussing the potential consequences with an attorney. In addition, since your legal power to act ends when you die or become incompetent, powers of attorney frequently have terminated upon either happening.

A Durable Power of Attorney is somewhat different, in that it does not terminate upon your incompetence. In fact, it may not even take effect unless you become incompetent.

A Durable Power of Attorney survives the incompetency of the person granting the power. It can take effect immediately and remain in effect during incompetence or only become effective upon incompetence. The latter type is called a Springing Power of Attorney.

A Springing Power of Attorney can be triggered in several ways. The most common method is to have the power become effective upon the written certification of a family doctor that the person giving the power is incapacitated. This enables the person holding the power to act on his or her behalf.

Why would you need a Durable Power of Attorney? It enables a trusted family member, friend or advisor to manage the affairs of someone who is incapacitated without having to go to court to have the person declared incompetent. This not only saves the cost and hassle of a court proceeding; it saves the family embarrassment.

This is a simple, yet powerful, estate planning device which can avoid a potential financial catastrophe. However, it is not a replacement for a will. Be sure to coordinate a Durable Power of Attorney with an existing will or one that you plan to have drafted.

In conclusion, estate planning will provide you with peace of mind. You are assured that those who survive you will be provided for. You also know that your assets and possessions will be fairly distributed to those you feel are deserving. And you can live the rest of your life confident that your estate is in order.