ESTATE PLANNING BASICS

Information Everyone Should Have

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INTRODUCTION

The attorneys of the Beck Elder Law Firm, focus their practice to the areas of estate planning, elder law, and asset protection issues. This focus allows our clients to receive a high degree of expertise and confidence that their issues are being handled in the best possible manner, leading to a greater peace of mind. Our goal is to address each client's individual needs and make sure that we understand their objectives before preparing any type of estate or business planning document, whether it be a Living Trust, Durable Power of Attorney, Living Will, Last Will and Testament, Irrevocable Insurance Trust, Family Limited Partnership, Charitable Remainder Trust, Private Annuity Agreement, Buy-Sell Agreement, or any other documentation that may be necessary to complete this very important process for our clients. Further, we are committed to keeping the process understandable by drafting documents that deliberately keep the "legalese" down to a minimum.

This particular handout focuses on estate planning, and in the next several pages, you will read explanations of some of the more confusing terminology that is utilized as part of the estate planning process, and you will read a brief summary concerning some of the more commonly used documents often used to complete the estate planning process. Also, you will learn a little about the estate tax system, how to avoid probate, and how to retain total control of all of your assets while accomplishing these objectives.

The most important concept you will learn from these materials will be how to best assure that your property passes at your death in accordance with your intentions. After all, no one knows better than you how you wish to see your estate distributed upon your death. Please keep in mind that we believe that making sure your property is distributed in the way you feel most comfortable is the primary objective. Then, we will focus your attention on analyzing what steps can be taken that will save estate taxes while at the same time assuring that the distribution of your property is handled the way you most desire.

You never again have to feel intimidated by the legal process regarding estate planning. You need the experience of highly qualified professionals, and only an attorney experienced in this very technical area can prepare the documents you need with regard to your estate tax planning. Remember, when you know that you have approached the process of estate planning thoroughly and professionally, you will also have something that money cannot buy - peace of mind in knowing that you have provided for those you care about in the best manner possible.

BASIC DOCUMENTS USED IN THE

ESTATE PLANNING PROCESS

Last Will and Testament

You will often hear estate planning attorneys and financial planners say that the ground floor of any basic estate plan is to have a Last Will and Testament, often called a "simple will." We agree. However, for reasons that will be explained below, we also feel that in many cases, a Will may not be enough, and, as you may have guessed, things are not very "simple" any more. Throughout the rest of this discussion, we will refer to the Last Will and Testament as a "Will."

The purpose of a Will is to see to it that your wishes are followed with regard to who is to receive your property after your death, and when they are to receive it. However, you must also remember that just because you have a Will your estate will not avoid probate. Unfortunately, many people are under the misconception that by having a Will their estate will not go through probate. This is not true. In order for any Will to be valid, it must go through the probate process, and while that process is time consuming (12 to 18 months on average), and can be costly (perhaps up to 7% or 8% of the value of your assets), having a Will is better than not having one.

Remember, if you don't have a Will, and you die owning property in your name alone, the laws of the state where you live will spell out who gets what after your death. This process is called "intestate administration." For example, in Missouri, if you are survived by a spouse and children born to both of you (not a second marriage), then your spouse does not get the whole thing, but he or she would be entitled to the first $20,000 in value, and one-half of the rest. The other one-half would be split equally among the children. And, if the children are minors (under 18), a conservatorship (what used to be called a guardianship estate) would have to be established through probate court in order to oversee the management of assets for the children until they reach the age of majority.

A Will is also very important because this is the only document in which you can name the person or persons you want to appoint to act as guardians for your minor children. Unlike the "conservator" that is appointed to handle the assets that are given to a minor child, the "guardian" is the person appointed by the probate court to oversee the personal upbringing of a child. Of course, the same person can be appointed to act as both the "conservator" and the "guardian" for any minor child.

Finally, many states now allow you to prepare a list to designate certain items of property to go to certain people. However, in order to be considered binding, the list must be referred to in a validly drafted Will.

Also, please understand that even if you decide that a Living Trust is appropriate for you, a Will is still going to be a part of your estate planning documents. This will be explained in more detail below.

Durable Power of Attorney

The importance of a well drafted Durable Power of Attorney document cannot be over emphasized. Basically, a Durable Power of Attorney allows you to appoint someone else to handle your affairs for you when you become unable to do so yourself. The range of power that may be given to someone is quite extensive, so you must be very careful in who you select, and what powers you choose to give that person.

Further, a Durable Power of Attorney may also be used to give another person decision making power concerning medical treatment. In response to the Nancy Cruzan and Christine Busalacchi cases, the Missouri legislature revised the statutes in order to permit the holder of a Durable Power of Attorney For Health Care to decide to either prohibit or withdraw life support, and even to withhold or withdraw food and water by tube feeding. Obviously, you must choose the person very carefully.

Often, a person will decide to combine the financial powers with medical care powers in the same Durable Power of Attorney document. This most often occurs in the case of a parent appointing one or more children to act as their Durable Power of Attorney.

Living Will

This document is your own statement as to what you want done by way of medical treatment. If there is no one that holds a Durable Power of Attorney For Health Care, then a Living Will is vital. Without it, Missouri law requires that a doctor maintain providing water and food by tube even though there is no brain wave activity. While many of us think the law will change in this area, this is the law for the time being.

Living Trust

More and more people have decided that a Living Trust is preferable as a way to avoid probate and control the assets for those you care about after your death. And for many people, a Living Trust is the right decision. A following section of this handout goes into the many different aspects of a Living Trust.

"Pay On Death" and "Transfer On Death"

These are two terms which mean the same thing. Both stand for the proposition of having a particular asset, such as a bank account, certificate of deposit, stocks and bonds, transferred to the person you designate immediately after your death. While this method does not deal with what takes place if the person you name dies before you, it is far preferable than putting someone down as a joint owner. Remember, joint ownership means they actually own the asset with you, while using a P.O.D. or T.O.D. designation does not transfer any ownership until your death.

Federal Estate Tax

We have yet to find any of our clients who feel that the Federal Estate Tax is fair or just. Simply put, the Federal Estate Tax is a tax the government imposes on your assets at your death. There are no assets that escape being subject to this tax if you own or control the use of the asset at the time of your death.

Even life insurance proceeds do not escape this tax. While life insurance proceeds are not subject to income tax to the beneficiary when paid to a person as beneficiary, the total value of the proceeds is subject to estate tax in the estate of the person who died.

Fortunately, the current "Unified Credit" of $3,500,000 still allows the majority of people in the United States to avoid paying estate taxes at death. However, as the value of personal residences grows, along with the value of IRA's, pension and profit sharing plans, plus the value of automobiles and personal savings, plus the face value of life insurance, more and more people are learning that their estates will be subject to tax. As the law now stands, the Federal Estate Tax is set to be reduced to $1,000,000 in 2011 if the law stays as written.

We can help keep your hard earned assets in the hands of those you care about instead of allowing Uncle Sam to be a silent partner with your loved ones.

Other Techniques

We often help people through drafting Charitable Trusts and Irrevocable Life Insurance Trusts. For our clients with sufficient assets to make these techniques appropriate to consider, these devices can truly be a "wealth saver" and in many cases, even a "wealth builder" for their family. Since each of these techniques is somewhat complex, we will not attempt an explanation in this summary.

LIVING TRUSTS

INTRODUCTION

The goal of good estate planning is to design and implement a plan which helps assure that assets pass at death in accordance with intent while at the same time reducing or eliminating estate taxes. One of the more important and widely used tools available to accomplish this is through the use of trusts.

In general, there are two types of trusts. The first of these is the testamentary trust. A testamentary trust is one which is created in one's Last Will and Testament. At death, the Will becomes effective and the testamentary trust(s) created in the Will is established and becomes operative.

The other type of trust is the living trust. This trust is established and becomes operational during one's lifetime. The terms of the trust are set out in a separate trust document rather than being part of a Will. Living Trusts are discussed below.

REVOCABLE LIVING TRUSTS

ADVANTAGES

Revocable living trusts provide a great number of advantages and have important characteristics, some of which are discussed as follows:

1. **AVOIDANCE OF PROBATE**

    a. **Death Probate**: The probate process, which does serve a valid function, can be quite costly and time consuming. Costs involved in probating an estate include the personal representative's (executor's) fee, attorney's fees and court costs. When assets have been properly transferred to a revocable living trust, probate is avoided at death as the successor trustee or trustees, in effect, replace the probate court regarding the disposition of the deceased's property. Use of a living trust provides for continuity in the management of the deceased's assets and avoids probate in all states in which he or she may have owned assets. In addition, avoiding probate by use of the revocable living trust helps retain a large degree of privacy for the deceased and his or her family as property in a living trust is not a matter of public record.

b. **Living Probate (Disability Protection)**. This type of probate is encountered by someone who is alive but has a disability which affects one's ability to manage one's own financial matters. Someone must prove to the court's satisfaction that the person is legally incompetent. Thereafter, a conservator is appointed by the court for the incompetent person. The conservator is required to handle all financial affairs of the person and must make frequent and detailed reports to the court. Additionally, a conservator may have to post a bond with the court. Establishing a living trust avoids the need for having a court-appointed conservator. The trustees of the trust, in effect, serve as conservator as they are the legal owners of the assets that comprise the trust. If you were the initial trustee of your trust, the successor trustee(s) would become responsible for the management of the assets in your trust. By establishing a living trust you, rather than the court, choose who will manage your financial affairs.

2. **RETAIN TOTAL CONTROL**. When someone (known as a "grantor"), establishes a living trust, he or she retains total control over assets within the trust whether or not he or she is a trustee. This control is retained by the grantor until either his or her death or legal incapacity. The trust is extremely flexible as it can be easily amended or revoked. Correspondingly, assets can readily be transferred into or from the trust as the grantor wishes. Because of this flexibility, a grantor can change the terms of the trust, including beneficiaries and trustees.

3. **WILL SUBSTITUTE**. Frequently, a living trust is referred to as a Will substitute. The living trust can serve as the main device through which a person disposes of his or her assets to individual and charitable beneficiaries. However, even though the living trust can serve as a Will substitute, it does not eliminate the need to have a Will. Therefore, an individual establishing a living trust still needs a Will, but it will be very short and straight-forward as the Will simply "pours over" any assets not in the trust into the trust. In other words, an individual may own assets at death which were not part of the trust. The Will addresses the disposition of these assets by simply stating that they are to become part of the trust at death and Will be governed by the provisions for disposition in the trust. A Will written in conjunction with a living trust is typically called a "pour over" Will.

4. **RELIEVES PERSON OF ADMINISTRATIVE DUTIES**. When a grantor chooses a corporate entity (bank/financial institution) to serve as sole trustee or co-trustee, he/she may be relieved of various administrative duties with regard to the safekeeping and record keeping of trust assets. The corporate trustee, as one of its paid duties, will be responsible for the safekeeping and related reporting to the grantor. Further, corporate trustees consolidate record keeping for tax preparation purposes. They summarize all tax aspects of an account's activity and present this information to the grantor in a concise form which helps the grantor efficiently prepare his or her income tax return. Although corporate trustees charge fees for their services, they provide great benefit to the grantor. Additionally, corporate trustees are often chosen by grantors due to the fact that corporate trustees are neutral parties. This frequently avoids potential family friction that might occur because one relative was chosen as a trustee over another. Corporate trustees' fees may be, at least in part, tax-deductible.

5. **INVESTMENT MANAGEMENT**. Living Trusts serve as excellent devices through which to obtain investment management of assets. A grantor can choose a trustee or co-trustee, such as a bank trust department, that can provide investment management which corresponds with the grantor's risk posture and financial needs. Further, a grantor can bestow upon a trustee the power to hire investment managers. Of course, this feature is only of benefit to the grantor who will not be responsible for investment of trust assets for him or herself.

6. **AVOIDS PITFALLS OF JOINT OWNERSHIP**. In addition to the living trust, another common way of avoiding death probate is to own assets as a joint tenant with right of survivorship with another person. Joint ownership has many drawbacks, such as:

    a. Avoidance of probate with respect to the first to die, but nonavoidance at the death of the joint owner.

    b. At death, assets pass to the joint owner. This may have the effect of bypassing other individuals or charities that one may have wished to receive part of these jointly held assets.

    c. A joint owner has equal control over assets so owned.

These drawbacks, as well as others, can be avoided through the use of a living trust.

DISADVANTAGES

We believe that people perceive more disadvantages to Living trusts than what truly exist. However, it is only right to share with you the two most commonly perceived. As you will probably agree, these "disadvantages" are relatively minor when compared to the significant benefits.

1. **ASSET REGISTRATION (Retitling)**. In order to obtain benefits from the use of a living trust, assets must be placed into the trust. If this is not done, one will not obtain these benefits. Registration or retitling simply requires that the ownership to assets be placed into the trust be changed from an individual's name to the name of the trustee of the living trust. As one can see, this is more of an inconvenience than a drawback. Registration is often simple. As in the case of a certificate of deposit (C.D.), you will generally have to take the C.D., along with a signed copy of certain parts of his/her trust, to the financial institution that issued the C.D. and ask them to change the registration. Often, this is done in a matter of minutes while you wait. If real estate is placed in a trust, a new deed is prepared and recorded in the county of proper jurisdiction. Normally, registration of assets is no more complicated than this.

2. **POTENTIALLY HIGHER ATTORNEY FEES**. Trusts are usually more complicated and time-consuming for attorneys to prepare. Correspondingly, as an attorney may spend more time with regard to the preparation of a trust document, in conjunction with the pour-over Will, his or her fees may be higher than if that attorney had prepared only a Will. Often, this additional fee paid to an attorney for the preparation of a living trust and pour-over Will, rather than a Will alone, is nominal. Remember that when probate is avoided by use of the living trust, one saves executor fees, court costs and attorney fees. This savings will pay for additional attorney costs due to the preparation of a living trust many times over.

PREPARING TO PREPARE YOUR ESTATE PLAN

Since you know the importance of having an updated and current estate plan (to save estate taxes and help assure that property passes at your death in accordance with your intentions), you need to proceed in a manner that will best expedite the updating of your plan.

In the preparation of your estate plan (Will, trust, etc.), you may be dealing with a number of professionals, including your attorney, accountant, insurance agent and bank trust officer, depending on your particular estate planning needs. It is important to contact your professionals as they can be of great assistance in the preparation and follow-up of your plan.

Prior to meeting with your estate planning professionals, you should perform some preliminary activities to help make those meetings as productive as possible. The greater the amount of information you can gather for your meetings, the more beneficial those meetings will be and the greater the chances that your specialists can prepare a plan which will best meet your needs.

Following is a discussion of some helpful pre-meeting activities:

1. Prepare a complete list of assets and sources of income, including

    a. cost of assets and current value along with complete description, location and date of acquisition;

    b. how assets are titled (joint tenancy, tenants in common, etc.);

    c. life insurance policies, including ownership, beneficiaries and policy numbers;

    d. social security received or expected, terms of retirement plans and annuities and value of Individual Retirement Accounts (IRA's);

    e. assets you expect to receive through gifts or inheritances;

    f. personal effects, including household furnishings, jewelry, automobiles, special collections, etc.; and

    g. money or other property owed to you or your spouse.

2. Correspondingly, you should assemble a complete list of liabilities and debts which you are obligated to pay.

3. Gather the names, addresses and social security numbers of all family members, whether immediate or remote.

4. List names, addresses, relationships and social security numbers of those individuals you wish to receive your assets, along with the specifics of distribution. This should include bequests of specific items ("my gold ring to my daughter, Jane") as well as general bequests ("the remainder of my estate to my wife"). In conjunction with this, you should give thought to, and be ready to discuss with your professionals, the way in which you would like beneficiaries to receive your property (outright bequests, in trust for a certain number of years or life, etc.) Additionally, consider to whom assets should pass if your initial intended beneficiary dies prior to you. Finally, be aware that, should you intend to bequeath assets to charitable organizations, you must do so through your estate plan as property cannot pass to charities if you die without a Will or trust.

5. Consider which individuals and/or entities you would like to have involved with the administration of your estate plan. This includes the choosing of guardians for minor children should you and your spouse die prior to their reaching the age of majority, choosing individual and/or corporate (bank) trustees of trusts you have created as well as choosing individuals and/or corporate entities you would like to have serve as personal representative (executor) of your estate. Also, give thought to choosing successor-guardians, trustees and/or personal representatives in the event that your first choice is unwilling or unable to serve in their appointed capacity.

6. Compile a detailed list of the locations of C.D.'s and bank accounts, with account numbers, safe deposit boxes and locations of keys (in addition to names of individuals on the safe deposit signature card).

7. Initiate the assembling of various asset appraisals if and when applicable (for jewelry, works of art and collections).

8. Have available all documents which may have a bearing on your estate plan, including previously executed Wills and trusts, copies of any trusts set up by someone other than yourself of which you are a current or future beneficiary, previously signed living wills (that document which expresses your desire not to be kept alive by artificial means if your poor physical condition is irreversible), life insurance policies and documents pertaining to any pre-paid funeral arrangements. You should also tell your professionals the location of original documents.

9. Be prepared to discuss with your professionals other relevant estate planning matters in addition to a Will and trust, including the appropriateness of durable power of attorney, living wills and pre-nuptial agreements if an upcoming marriage is pending.

10. Think about your willingness to distribute some assets while you are alive through a gift giving program as this may be an important estate planning device, especially with regard to estates of $3,500,000 or more. A contemplated program of gift giving would include gifts to charitable organizations as well as to individuals.

11. Prepare a list of all taxable gifts previously made by you and/or your spouse.

The above discussion is not intended to be complete. Rather, its purpose is to provide some guidelines to assist you in preparing for discussions with your various estate planning specialists. Adequate pre-meeting preparation may also serve to save you money because of the reduced time spent with professionals whose fees are time-based.

It is to your benefit to be prepared for your meetings as this will help the professionals do the best possible job for you and your family's estate plan.

WILLS vs. LIVING TRUSTS

COMPARING ADVANTAGES AND DISADVANTAGES

Factors to ***<u>Consider</u>***	***WILLS*** ***<u>Probate is required</u>***	***LIVING TRUST*** ***<u>Probate may be Avoided</u>***
Cost to survivors at second death:	5% to 6% of assets	Based on actual time spent, not a percentage of the estate.
Time delay:	12 to 18 months	0 to 6 months
Incompetency:	Must establish conservatorship over assets. This is a Probate proceeding. Yearly fees and constant paperwork result. Must obtain approval of Court in order to sell or transfer assets.	Life goes on! The successor Trustee takes over the asset management. No Court supervision. No delays.
Privacy:	**NONE -** All records are part of public record. Anyone can find out how much a family member receives -- even though it really is none of their business.	**TOTAL -** No one knows but your beneficiaries and your Trustee.
Cost to Create:	The cost will vary depending on client needs, such as trust for children, special tax-saving provisions, clauses for running a business, and so on.	Cost varies because of same factors for a Will – but costs will be greater due to additional requirements of utilizing a Living Trust.

FREQUENTLY ASKED QUESTIONS ABOUT
REVOCABLE LIVING TRUSTS

If I transfer real estate into my Revocable Living Trust, will my property taxes go up?

No. Transfers into the Revocable Living Trust have no effect on your property taxes.

If I am only a part owner of property, can I transfer my share into a Trust?

Yes. Your share can go into the Trust without changing the shares owned by others.

Can I name Trustees and Beneficiaries who live out of state?

Yes. There is no limitation on where your Trustees or Beneficiaries reside.

Will I have to consult an attorney every time I buy new assets?

No. Once your current assets are transferred into your Revocable Living Trust, you take title to all new assets in the name of the Trust and they will automatically be owned by your Trust.

Does my Revocable Living Trust need to be registered or recorded anywhere?

No. The Revocable Living Trust is a private document which is not recorded. However, if you own any interest in real estate, the new deeds showing Trust ownership will be recorded.

Can I sell assets owned by my Revocable Living Trust without complications?

Yes. You sell assets in the same way you currently do. You will, however, add the word "Trustee" after your signature.

Can I change the terms of the Trust?

Yes. While you are alive and competent, you can alter the Trust or even revoke it without penalty at any time.

Can I transfer real estate into my Revocable Living Trust?

Yes. In fact, all real estate should be transferred in your Family Trust. Otherwise, upon your death, there will be a Probate in every state where you own real property. When it is owned by your Revocable Living Trust, there is no Probate anywhere.

Is the Revocable Living Trust just a tax loophole that the government will close down?

No. The use of trusts has been authorized by the law for centuries. Neither the State or Federal government has any interest in making you go through Probate or a Conservatorship. Those proceedings only clog up the Court system. There is no push at either the State or Federal level to do away with the usefulness of the Revocable Living Trust.

Is it difficult to transfer assets to my Trust?

No. All your assets except IRA and pension benefits can actually be owned by your Revocable Living Trust. We transfer your real estate and all your personal property for you. The only assets you need to transfer are your stock, bonds, and bank accounts, and in most cases, there is no fee for changing title to those assets.

Can I transfer my separate property as well as my community property in to Revocable Living Trust?

Yes. All your assets, both separate and community, are transferred in your Revocable Living Trust but they are not commingled. Separate property assets retain their separate property character while in your Trust. If there is a divorce or dissolution of marriage, all assets come out of your Revocable Living Trust in the same way they went in: Community property is divided between the parties and separate property is returned to the party who originally owned it.

If I move to another state, is the Trust still valid?

Yes. The Revocable Living Trust is valid in all 50 states, regardless of the state where it was originally created.

Is a Revocable Living Trust only for the rich?

No. A Revocable Living Trust can help anyone who wants to protect his or her family from unnecessary Probate Fees, attorney's fees, court costs, and estate taxes. In fact, if your total estate is greater than $150,000, a Revocable Living Trust offers substantial protection for your estate and much greater convenience for your heirs.

Is a Revocable Living Trust a good idea for a single person?

Yes. If you are widowed, divorced, or unmarried, a Revocable Living Trust offers protection for your estate as well. It completely eliminates Probate and Conservatorship, and you can pass $3,500,000 Estate Tax free as of 2009. As the law now stands, the Federal Estate Tax is set to be reduced to $1,000,000 in 2011 if the law stays as written.

Are there any disadvantages to a Revocable Living Trust?

Not Really. As you have seen earlier in this handout, the primary disadvantage in creating a Revocable Living Trust has to do with taking the steps necessary to get your property transferred into the trust. But, once this is done, the "disadvantages" go away. We believe that the slight inconvenience required to transfer assets is greatly outweighed by the advantages. Because you have complete control of all assets in your Trust, you are free to manage your Trust in any way. Also, because your Trust is revocable, you have the right to make any changes in it while you are alive and competent, so you are free to change your mind as often as you wish. And, of course, the probate process will be avoided.