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Tax, Estate Planning & Probate Law Update

Securing Your Success: An Introduction to Estate Planning

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An estate plan is an arrangement for the use, conservation and transfer of one's wealth. The following article provides an overview of key considerations when developing or modifying one's estate plan.

Objectives of Good Estate Planning

Lifetime Objectives. A good estate plan should provide for the best utilization of the owner's assets during his/her lifetime.

- Funds for Children's Education;
- Income for Retirement;
- Replacement of Income in the Event of Disability;
- Management of the Estate in the Event of Incapacity.

Death Transfer Objectives. A good estate plan should provide for the disposition of assets on death in such a way that the estate being passed on is being maximized and is left in accordance with the wishes of the decedent and the needs of his/her family.

One of the best ways for the estate owner to avoid probate and still retain maximum flexibility in disposing of his/her estate is to use a funded revocable living trust.

Planning a Small Family Estate

Are Wills Necessary? The first question that arises in a small estate is whether each spouse needs a Will to pass his or her estate in an outright manner to the survivor. If either spouse dies without a Will, that portion of such spouse's estate which is not held in joint tenancy or is not payable by contract, such as a life insurance policy, will be disposed of under the laws of intestacy. In California, community property under the laws of intestacy goes entirely to the surviving spouse. However, at least a portion of the decedent spouse's separate property will go to the children. Hence, in many instances the entire estate will not go to the surviving spouse.

Advantages of Having a Will.

• Under a Will, the estate owner may designate the persons or entities that he/she wishes to act in a fiduciary capacity after his/her death, such as the executor of his/her estate.

• The Will may waive a bond for the fiduciary if the estate owner so wishes.

• The estate owner can plan funeral arrangements in the Will.

• If there are minor children, the estate owner can indicate a preference for guardian of the surviving children.

• Under a Will, the estate owner can provide for the management and conservation of the children's property. Minors are restricted by law in their ability to deal with property. As a practical matter, children, even young adults, frequently do not have the necessary knowledge and sophistication to handle their financial affairs. Therefore, arrangements should be made for a fiduciary to manage the children's estates upon the death of their parents.

Advantages of Having a Will (Cont.)

• Control Disposition of Assets.

• Gifts to Charity or Friends.

• Minimize Estate Taxes.

Avoiding Probate – Using a Revocable Living Trust

Purpose of Probate. Probate is a court proceeding which has one major, yet simple, purpose; mainly, to clear title to property passing from the decedent to those persons named in the Will or entitled to take under the laws of intestacy.

An asset may be included in the decedent's estate for death tax purposes, but not includable in his/her probate estate. For example, the decedent's assets held in joint tenancy, in a bank account trust, or in a funded revocable living trust will all be included in the decedent's estate for tax purposes, but are not subject to probate.

Disadvantages of Probate.

- Costs;
- Delay;
- Publicity.

Funded Revocable Living Trust. One of the best ways for the estate owner to avoid probate and still retain maximum flexibility in disposing of his/her estate is to use a funded revocable living trust. The essence of this device is that the estate owner, during his/her lifetime, transfers assets to a trust reserving to himself/herself during his/her lifetime all of the beneficial rights in the trust, including the right to revoke. Upon the grantor's death, the trust becomes irrevocable and the trust assets are administered and distributed in accordance with the provisions of the trust. Because legal title to the assets is held by the Trustee, who may be the grantor, these assets need not be probated.

Where taxes are an important consideration, the use of a funded revocable living trust is frequently the only way of avoiding probate and at the same time saving taxes. The dispositive provisions taking effect after the grantor's death can be drafted in such a way as to reduce both estate and income taxes to the beneficiaries.

In addition to utilizing a funded revocable living trust as a probate avoidance tool, such a trust has at least two other uses:

- Where the grantor desires to have all or a portion of his/her estate managed for him/her during his/her lifetime, but does not desire to irrevocably give up control, he/she may create a funded revocable living trust and provide for an outside Trustee to manage the estate subject to the grantor's retention of all beneficial rights, including the right to revoke during his/her lifetime.

- The funded revocable living trust may serve as a vehicle for the management and control of the grantor's assets in the event of his/her legal incapacity. Since the title to these assets is in the Trustee, no guardianship or conservatorship proceedings will have to be instituted to deal with the grantor's assets.

Creating a revocable living trust in itself has no substantive tax effects during the grantor's lifetime. Ordinary income and capital gain of a revocable trust are taxed to the grantor, whether the income is accumulated or distributed to the grantor, because of the grantor's preserved power to amend or revoke the trust. Holding assets in a revocable living trust instead of outright does not directly affect the estate tax due on the grantor's death. However, death tax planning can be accomplished in a revocable living trust through the use of marital deduction and bypass trust provisions.

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