

ESTATE PLANNING IN AN “UNSETTLED” MARKET

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OBJECTIVES

- ◆ Quick reaction time.
- ◆ Right decision maker.
- ◆ Property safe.
- ◆ Minimize Expenses.
- ◆ Maximize assets.

OPTIONS

- ◆ Do nothing.
- ◆ Have a will.
- ◆ Joint tenancy.
- ◆ Advanced estate plan.
 - Revocable Trust
 - Powers of Attorney

DO NOTHING

- ◆ Probate
- ◆ Court supervises the transfer of your assets after your death.
- ◆ When is a probate required?
- ◆ Advantage: Resolves disputes and debts. Orderly procedure.
- ◆ Disadvantages: Lengthy - usually 1 year or more;
 - 2 months for appointment;
 - Administratively more complicated.
 - Financially more expensive.

INTESTATE

- ◆ Dying without a Will.
- ◆ Your assets will be probated and distributed according to state law.
- ◆ Common terms:
 - Community Property to spouse.
 - Separate Property means divided between spouse and children.
 - Look back if no children; no will.
 - Second marriage. Spouse and children of prior marriage.

WILL

- ◆ A writing which controls who receives your assets through probate, upon your death.
- ◆ You choose the executor of the will. The executor can either be a person or institution.
- ◆ The executor manages and disposes of your asset as you directed in your will.
- ◆ In your will you may name the guardian of your minor children.
- ◆ Technicalities must be followed.
- ◆ Vagueness creates cost / lack of effect.

JOINT-TENANCY ALTERNATIVE

- ◆ Often used for land, and bank accounts.
- ◆ Problems:
 - Creditors can take property jointly held property.
 - Income tax disadvantages.

ADVANCED ESTATE PLAN - REVOCABLE TRUST

- ◆ It is a contract with yourself.
- ◆ Other names are: "revocable inter vivos trust", "living will", "family trust", and "living trust".
- ◆ Trustor
- ◆ Revocable and amendable, if Trustor is competent.
- ◆ Trustee: Manages the assets pursuant to the trust document.
- ◆ Trust does not die.
- ◆ No probate of trust assets; hence, private.

PROPERTY RIGHTS OF THE TRUST

- ◆ Trust owns the assets.
- ◆ Trustee manages the property.
- ◆ Trustor retains power to use property.

DIVISION OF TRUST ESTATE

- ◆ Easy because court approval is not required.
- ◆ Trustees can sign deeds.
- ◆ Flexible to make gifts, if properly drafted.
- ◆ Easier to tax plan due to flexibility.

DISTRIBUTION OF TRUST PROPERTY

- ◆ Usually, after the death of the surviving spouse, the beneficiaries receive assets.
- ◆ Tax return 9 months after death of surviving spouse.

INCAPACITY OF SPOUSE AFFECTING THE TRUST

- ◆ Successor trustees for incapacitated trustee spouse.
- ◆ No conservator necessary for incapacitated spouse as to trust assets.

TRUSTEES OF TRUSTS

- ◆ Can be the trustor or a third party individual or institution.
- ◆ The trustee owes fiduciary duties of care and loyalty to the trust.
- ◆ The trustee is held to a high standard of conduct.
- ◆ The trustee can be sued for misconduct.

MARRIAGE & DIVORCE AFFECTING THE TRUST

- ◆ Some protection from “Community Property” claim.
- ◆ On death, spouse intestate share unless action.

RETIREMENT PLANS AND TRUSTS / A BONANZA POTENTIAL

- ◆ Trust cannot own a retirement plan.
 - (Retirement plans are held by people).
- ◆ Spouse should be the beneficiary of the other spouse's retirement plan and if no such spouse then trust can be the alternate beneficiary.

TRUST DISTRIBUTIONS TO CHILDREN OR GRANDCHILDREN (INCLUDING 529 COLLEGE SAVINGS PLAN)

- ◆ Gifting to heirs is possible, if properly drafted.

CONCLUSION – TRUST SATISFIES MORE OBJECTIVES

ADDITIONAL DOCUMENTS POWERS OF ATTORNEY

- ◆ Health care.
- ◆ Directive to physician.
- ◆ Estate.

EXCUSES FOR NOT HAVING AN ADVANCED ESTATE PLAN

- ◆ Trusts are too complicated.
- ◆ Trusts are too expensive.
- ◆ I'm too busy.
- ◆ Let the kids worry about my estate after I'm gone.
- ◆ Lawyer will be involved; I don't like lawyers.