Estate Planning Basics

While nobody wants to think about death or disability, establishing an estate plan is one of the most important steps you can take to protect yourself and your loved ones. Proper estate planning not only puts you in charge of your finances, it can also spare your loved ones the expense, delay and frustration associated with managing your affairs when you pass away or become disabled.

Providing for Incapacity

If you become incapacitated, you won't be able to manage your own financial affairs. Many are under the mistaken impression that their spouse or adult children can automatically take over for them in case they become incapacitated. The truth is that in order for others to be able to manage your finances, they must petition a court to declare you legally incompetent. This process can be lengthy, costly and stressful. Even if the court appoints the person you would have chosen, they may have to come back to the court every year and show how they are spending and investing each and every penny. If you want your family to be able to immediately take over for you, you must designate a person or persons that you trust in proper legal documents so that they will have the authority to withdraw money from your accounts, pay bills, take distributions from your IRAs, sell stocks, and refinance your home. A will does not take effect until you die and a power of attorney may be insufficient.

Planning for Health Care During Incapacity

In addition to planning for the financial aspect of your affairs during incapacity, you should establish a plan for your medical care. The law allows you to appoint someone you trust - for example, a family member or close friend to make decisions on your behalf about medical treatment options if you lose the ability to decide for yourself. You can do this by using a durable power of attorney for health care where you designate the person to make such decisions. In addition to a power of attorney for health care, you should also have a living will which informs others of your preferred medical treatments such as the use of extraordinary measures should you become permanently unconscious or terminally ill.

Avoiding Probate

If you leave your estate to your loved ones using a will, everything you own will pass through probate. The process is expensive, time-consuming and open to the public. The probate court is in control of the process until the estate has been settled and distributed. If you are married and have children, you want to make certain that your surviving family has immediate access to cash to pay for living expenses while your estate is being settled. It is not unusual for the probate courts to freeze assets for weeks or even months while trying to determine the proper disposition of the estate. Your surviving spouse may be forced to apply to the probate court for needed cash to pay current living expenses. You can imagine how stressful this process can be. With proper planning, your assets can pass on to your loved ones without undergoing probate, in a manner that is quick, inexpensive and private.

Providing for Minor Children

It is important that your estate plan address issues regarding the upbringing of your children. If your children are young, you may want to consider implementing a plan that will allow your surviving spouse devote more attention to your children, without the burden of work obligations. You may also want to provide for special counseling and resources for your spouse if you believe they lack the experience or ability to handle financial and legal matters. You should also discuss with your attorney the possibility of both you and your spouse dying simultaneously, or within a short duration of time. A contingency plan should provide for persons you'd like to manage your assets as well as the guardian you'd like to nominate for the upbringing of your children. The person, or trustee in charge of the finances need not be the same person as the guardian. In fact, in many situations, you may want to purposely designate different persons to maintain a system of checks and balances. Otherwise, the decision as to who will manage your finances and raise your children will be left to a court of law. Even if you are lucky enough to have the person or persons you would have wanted selected by the court, they may have undue burdens and restrictions placed on them by the court, such as having to provide annual accounting.

Other issues to consider in this respect is whether you'd like your beneficiaries to receive your assets directly, or whether you'd prefer to have the assets placed in trust and distributed based a number of factors which you designate, such as age, need and even incentives based on behavior and education. All too often, children receive substantial assets before they are mature enough to handle them properly, with devastating results.

You should give careful thought to your choice of guardian, ensuring that he or she shares the values you want instilled in your children. You will also want to give consideration to the age and financial condition of a potential guardian. Some guardians may lack child-rearing skills you feel are necessary. Make sure that your plan does not create an additional financial burden for the guardian.

Planning for Death Taxes

The IRS will want to review your estate at death to ensure you don't owe them that one final tax: the federal estate tax. Whether there will be any tax to pay depends on the size of your estate and how your estate plan works. Many states have their own separate estate and inheritance taxes that you need to be aware of. There are many effective strategies that can be implemented to reduce or eliminate death taxes, but you must start planning process early in order to implement many of these plans.

Charitable Bequests – Planned Giving

Do you want to benefit a charitable organization or cause? Your estate plan can provide for such organizations in a variety of ways, either during your lifetime or at your death. Depending on how your planned giving plan is set up, it may also let you receive a stream of income for life, earn higher investment yield, or reduce your capital gains or estate taxes.

A well-crafted estate plan should provide for your loved ones in an effective and efficient manner by avoiding guardianship during your lifetime, probate at death, estate taxes and unnecessary delays. You should consult a qualified estate planning attorney to review your family and financial situation, your goals and explain the various options available to you. Once your estate plan is in place, you will have peace of mind knowing that you have provided for yourself and your family in case the worst happens.

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