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**ESTATE PLANNING BASICS.**

**What if I die without a Will or other estate planning documents?**

- If you have no estate plan at the time of your death, then your estate will be transferred according to a "plan" that the State of Utah has prescribed by law. This plan may or may not be what you would have desired, and it will guarantee the involvement of the courts, require more time and will almost certainly be more costly than would have otherwise been necessary.

**What does a Will accomplish?**

- *Direct Assets to Desired Beneficiaries:* A will is a written document that becomes effective upon death and disposes of the property of the deceased individual according to its terms.
- *A Personal Representative:* Wills can determine who will act for you after your death (your "executor"). This person will have many duties to perform. The most important duties include the administration of your estate, distribution of assets to beneficiaries, payment of debts, filing income tax returns, filing estate tax returns, payment of taxes and expenses, and the collection of life insurance proceeds and retirement benefits.
- *Guardianship:* One of the most important aspects of a will is the naming of a guardian or guardians for minor children. Most people assume that family members will automatically be allowed to function as guardians for their children. However, without a will, ultimately a judge whom the parents have never met will decide who will be the guardians for their children. Moreover, if family members disagree as to whom the guardians should be, the process can become lengthy, expensive and highly stressful. Problems can be avoided by naming specific guardians in your will. Additionally, the selection of these individuals can be easily changed if desired.

**I understand that having a will is much better than not having a will, but if I have a will does my estate still have to "go through probate"? Yes.**

**What are the actual functions of probate?**

- Appoint an estate administrator, if there is no will.

- Inventory and value all property.
- Locate and identify heirs.
- Identify creditors and settle outstanding liabilities.
- Resolve conflicts between the estate and other parties.
- Complete and file various tax returns.
- Distribute all property.

**I have often heard that a person should avoid probate, what are the disadvantages of probate?**

- Probate can be very costly.
- Probate can prolong the settlement of an estate.
- Probate proceedings are public.

**How can I avoid probate?**

- Use what is called a “revocable living trust” and transfer the title of all your assets to the trust, unless you have a beneficiary on the asset, like a 401(k) or life insurance policy.

**What are the advantages of using a Revocable Living Trust instead of just a Will?**

- Living trusts can hold title to assets before death.
- Living trusts can have a trustee to act in your behalf during your lifetime.
- Assets held by living trusts are not subject to probate which can save a great deal of time and money.
- Living trusts can split into additional trusts for children or grandchildren upon your death.

**What are the advantages and disadvantages of placing my home in “joint tenancy” with my child?**

Advantages:

- Property is quickly and easily transferred to the co-owner.

Disadvantages:

- Potential litigation could put the property at risk.
- Potential gift tax costs at both the creation and severance of a joint tenancy.
- You cannot specify any limitations or restrictions on the survivor.
- You lose the stepped-up basis on the asset resulting in capital gains tax.
- Does not avoid probate if joint owners die simultaneously.

### **What is a General Durable Power of Attorney?**

- A power of attorney is a legal authorization by one individual (the "principal") to another (the "agent") to act on the principal's behalf for various business or personal matters. A power of attorney may authorize the agent to make financial decisions on behalf of the principal. A "durable" power of attorney becomes effective immediately upon execution and remains effective when the principal becomes disabled or incapacitated.

### **What is an Advance Health Care Directive?**

- It allows an individual to designate an agent to make medical decisions and obtain medical information, on his or her behalf.
- It also contains a Living Will, which is a statement directed to your physician regarding the application of artificial life support and end-of-life care.

### **Will my estate have to pay taxes when I die?**

- If the net value of your property at death exceeds \$11,580,000 (in 2020), your estate may have an estate tax liability. Up to this amount, the unified credit is applied so that no estate taxes are due.

### **Typical Estate Planning Package for each Individual**

- Will
- Living Trust
- General Assignment
- Written Statement Disposing of Tangible Personal Property
- General Durable Power of Attorney
- Advance Health Care Directive

\*\* In addition, establishing a Living Trust requires that assets be transferred to such trust.