Frequently Asked Questions

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What Is Estate Planning?

Basically, estate planning is the process by which you direct who is to receive your property upon your death. Contrary to popular belief, estate planning is not something limited to "rich" people, but rather is something that everyone needs to consider regardless of the size of his/her estate. If the value of your estate exceeds certain amounts, you may need additional tax planning assistance, but no matter how large or small your estate is, you need to "plan" that estate. Married couples, single individuals, elderly individuals and young couples with small children all need to have some form of estate plan in place. Failure to properly plan your estate may result in additional costs and expenses after your death, as well as having the courts and State of Arkansas step in to administer and dictate what happens with your property.

What Property Makes Up My Estate?

Your estate includes your home, farm, cash, bank accounts, investments, retirement accounts, pension benefits, business interests, certain trusts, life insurance policies, jointly owned property, personal property (e.g., cars, boats, RVs, household furnishings) and many other assets. To compute the value of your estate, determine the total value of all your assets and subtract your debts.

How Does Property Pass On Death?

There are essentially three (3) key ways: (i) by Will (i.e., probate), (ii) through joint ownership and (iii) by contract (i.e., life insurance, annuities, revocable living trust, retirement plans, etc). Property can pass by any combination of these three methods.

What is Probate?

Probate is a legal process in which a Will is submitted to the court and the court determines whether the Will is valid and legal, and if so, ensures that your outstanding debts are paid and your assets are distributed according to the provisions in the Will. Probate is generally necessary to effect a change in the title to assets at your death (e.g., home, cars, real estate, securities, etc.) when those assets are held in your individual name. Generally, all actions to be performed, such as selling assets, writing checks and transferring title to assets may only be done with approval from the probate court. Unless otherwise waived, there are requirements that the personal representative prepare an inventory of your assets and submit accountings of his or her actions to the court during the probate process.

The probate process can become expensive and is often cumbersome, especially when you own numerous different types of assets. The probate court, not your family, has control over the administration of your estate and controls how your Will is interpreted. Probate is a time consuming process, taking on average a minimum of nine (9) months to complete. Again, if your estate is significant or comprised of different types of property, the process can take much longer. Finally, the probate of a Will is a public record. Once a Will is filed for probate, anyone can go to the probate clerk's office and read your Will, find out who your beneficiaries are and what property the beneficiaries will be receiving.

What Is The Difference Between A Will And A Revocable Trust?

Basically, a Will and a Revocable Trust are instruments that direct where and to whom you want your property to pass upon your death. The key difference between the two is not so much the mechanics of how they are drafted to pass property, but the manner in which they operate to effect such transfers. The biggest difference between these instruments is that property owned by and passing under the terms of a Revocable Trust will not be subject to the probate process.

Thus, there is not the expense, time nor complexity of probate to worry about. In addition, a Revocable Trust is private. A Will does not take effect until you die, whereas a Revocable Trust is effective immediately after being signed. The Revocable Trust thus allows for much more flexibility during your lifetime than does a Will, particularly with regard to a subsequent determination of your incapacity.

A Word About Joint Ownership.

Jointly held property will not be subject to probate at the time of your death because such property passes to the other joint owner automatically.

It is important to understand that jointly held property is not controlled by your Will or Revocable Trust, and thus there are instances where joint ownership can present estate planning problems. There are income tax, gift taxes and estate tax issues that must be addressed with jointly held property.

Also, problems may arise with creditors of your co-owners and co-owners who become incapacitated. If you own property jointly with another individual, you should consult a tax and estate planning attorney to ensure that your goals are being accomplished.

At What Point Will My Estate Become Subject to Estate Taxes?

Generally, your estate may become subject to estate taxes at your death if the value of your assets exceeds a certain amount, commonly referred to as the "applicable credit amount". This credit is allowed by the IRS and is applied against the total estate tax due. Every individual has this credit, and thus married couples have the benefit of both credits. The credit is in effect an exemption equal to a specific dollar amount to be applied against the total value of your estate. For 2018, the credit is equivalent to $11.2 million. As a result, if you were to die in 2018 with an estate valued at $11.2 million or less, generally you should not have an estate tax liability. Married couples dying in 2018 who have the proper estate plan in place, with a combined estate of $22.4 million or less, should not have an estate tax liability. While current estate tax law affords a portability feature, in which a surviving spouse can potentially inherit any unused exemption of a deceased spouse, most tax/estate planning attorneys caution against relying on this feature due to its uncertain permanence (not to mention missing out on the benefits of a bypass/credit shelter trust).

If My Estate Exceeds The Applicable Credit Amount Are There Ways to Reduce Potential Estate Taxes?

The first way to reduce potential estate tax liability is for married couples to fully utilize both applicable credit amounts. Since every individual is entitled to this credit, married couples can shelter $22.4 million from estate tax liability. Another method for reducing potential estate taxes is to remove assets from your estate. This can be accomplished by a number of means, including gifts, certain trusts, family limited partnerships and limited liability companies. A third method, which does not truly reduce the size of your estate but works to pay for anticipated estate taxes, is to purchase life insurance, the proceeds of which will be used to pay the estate taxes or supplement the assets that would have passed to beneficiaries but were used to pay estate taxes. Finally, charitable giving can help reduce or eliminate a potential estate tax liability.

Should I Use A Will Or A Revocable Trust?

Whether you elect to use a Will or a Revocable Trust is purely up to you. Generally, your estate planning goals can be accomplished with either one. The Revocable Trust is a more flexible tool from an overall planning aspect, it will reduce or eliminate probate costs and expenses upon your death and it is a private document. A Will is less flexible since it will only take effect upon your death and it will be subject to probate, which can be expensive. You should discuss these issues in detail with your estate planning attorney so that you can make an informed decision which instrument is best for your individual situation.

Important Estate and Tax Planning Issues.

As stated earlier in this pamphlet, estate planning is something everyone needs to consider, regardless of the size and value of his/her estate. For single individuals whose estate is valued at $11.2 million or more, you must consult with a tax and estate planning attorney who has the specialized knowledge and experience to provide you with tax planning advice. As with single individuals, it is very important for married couples with a combined estate valued at $22.4 million or more to consult with a tax and estate planning attorney. Couples who fall within this category are susceptible to incurring estate tax liability despite the fact that they each have an applicable credit amount available to them and thus should theoretically not incur any estate taxes. Certain tax and estate planning options must be utilized to ensure that estate taxes are avoided. Most attorneys simply do not have the knowledge and experience to provide the tax planning assistance that is needed for couples in this situation and I strongly recommend that you seek the assistance of an experienced tax attorney.

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