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WILLS, TRUSTS AND ESTATES PC LLO

ESTATE PLANNING OVERVIEW

WHAT IS AN ESTATE?

An estate is all property owned by an individual, or in which the individual has some interest.

WHAT IS ESTATE PLANNING?

Estate planning is planning for the management and distribution of one's estate during life while disabled and at death. Planning includes arranging property during a person's lifetime for passage at death and attempting to minimize the impact and facilitate use during one's remaining life. As such, estate planning can be a complex study covering many areas, including: wills, trusts, durable powers of attorney for asset management and health care, living wills, insurance, accounting, business continuation, and estate, inheritance, gift and income taxes.

WHAT ARE SOME OF THE ADVANTAGES OF ESTATE PLANNING?

- You can maximize the distribution of your assets to your family and designated charity.
- You can plan so that you are assured that your family will have adequate support after your death.
- You can make sure you and your family will be provided for in an efficient manner if you become incapacitated.
- There may also be lifetime benefits to you, since a review of your assets could increase your efficiency in dealing with those assets during your lifetime.
- You can plan for the liquidity needed to pay your debts, taxes and administrative expenses.

HOW DO I GO ABOUT MAKING MY ESTATE PLAN?

- Make a list of information concerning your family and others you wish to benefit, with ages and addresses, and a description of any special circumstances.
- Make a list of your assets, liabilities, insurance and pension/profit sharing plans, indicating how such assets are titled and indicating any beneficiary designation.
- Outline how you would like your estate distributed.
- Consult with your attorney, accountant, insurance agent and financial advisor.

WHAT HAPPENS IF A PERSON DIES WITHOUT A WILL?

State statutes provide a plan for distributing the property of individuals who die without a Will (intestate). Many people, however, want their estate to pass differently than the state's statutory plan would provide. Examples:

- Do not want property to pass outright to children at the bare age of majority, age 19, but want the property to be managed for some period of time.
- May want a trust to prevent taxation of property in the surviving spouse's estate.
- May want to make special disposition of or provisions for certain assets, such as a family-owned business and family memorabilia items.
- May want to designate who should administer the estate, who should care for minor children, and who should manage assets for the children to avoid conflicts between family members with equal priority.
- May want to make charitable gifts.

WHERE SHOULD A PERSON KEEP A WILL?

The original Will should be kept in a safe deposit box or fire-proof safe. The nominated Personal Representative or successor Personal Representative likely to survive should have access to it upon death. For example, for a bank safe deposit box another signatory should be designated who will have access to the box (not necessarily a co-owner), or the attorney may maintain a safe deposit box to hold original estate planning documents for clients. If the original will is needed for probate and cannot be found, at a minimum, complicated issues result that substantially increase the administrative cost to administer the estate, and the worst case scenario is that the will could be considered invalid, leaving an intestate estate. We cannot overemphasize the importance of having your nominated fiduciary locate the original documents upon death or disability.

WHAT CAN'T A WILL DO?

- A Will cannot pass property that is owned in joint tenancy with right of survivorship; such property automatically passes to the surviving joint tenant by operation of law, and will ultimately pass in accordance with the last surviving joint tenant's Will or by intestacy in the last surviving joint tenant's estate.
- A Will cannot pass property that has a named beneficiary, such as life insurance, annuity, pension or profit-sharing plan, or an individual retirement account (IRA) unless the designated beneficiary is the estate of the person making the Will.
- The Will should not contain directions concerning the funeral or authorizing anatomical donations, because often the Will is not examined until after funeral arrangements have already been made and nearly always too late to make anatomical gifts.

DO I NEED A NEW WILL IF I MOVE TO ANOTHER STATE?

All states will recognize a Will that has been validly executed while you were domiciled in another state. However, since each state's statutes regarding Wills and probate are different, you should have a local attorney review your Will after moving to another state to see if any changes would be recommended under the law of the new state.

WHAT IS A CODICIL?

A Codicil is an amendment to a Will. A Codicil is generally used if an amendment to a Will is not extensive and if the Testator does not object to persons seeing the old Will before the change. If more extensive changes are to be made to a Will, it is generally advisable to execute a new Will incorporating such changes.

WHAT IS PROBATE?

Probate is the act or process of proving the validity of a Will. However, the term has been expanded in its general use to include the administration and distribution of a decedent's assets according to the terms of the Will or in accordance with intestacy statutes, as well as determining the final debts and expenses which must be paid by a decedent's estate.

WHAT RIGHTS DOES A SPOUSE HAVE IN THE PROPERTY OF HIS/HER DECEASED SPOUSE?

If a married person domiciled in Nebraska dies, the surviving spouse has a right of election to take, in lieu of what he/she is entitled to under a Will, an elective share in any fraction, not in excess of one-half of the augmented estate of the decedent. Nebraska statutes set forth a detailed definition of what is included in the augmented estate so as to take into consideration property passing to the spouse or others prior to death by gift, and other such property not actually in the decedent's estate. Spouses may give up the right to each other's property by executing an agreement extinguishing such rights, either before or after marriage. The law of most states make some similar provision protecting the right of a surviving spouse to a portion of a decedent spouse's estate even if the spouse is omitted from a decedent's Will.

1. INTRODUCTION

a. OBJECTIVES OF ESTATE PLANNING

- i. To enable the client to transfer property to desired recipients, either during lifetime or at death, with a minimum of shrinkage from taxes and other transfer costs.
- ii. To provide for the client in the event of incapacity or health problems.
- iii. To secure maximum benefits to the client during his/her lifetime.
- iv. To properly arrange assets to meet liquidity concerns to provide appropriate assets to pay estate settlement costs, and to meet cash flow concerns to provide income to care for loved ones left behind.

b. SOME PRIMARY ESTATE PLANNING GOALS

- i. Minimize income, gift, and estate taxes.
- ii. Avoid or reduce property transfer costs.
- iii. Conserve and enhance property, both before and after death.
- iv. Make sure distributions are in a form to best provide for the beneficiaries.

c. INFORMATION NEEDED BY THE ATTORNEY TO BEGIN ESTATE PLANNING

- i. Full and complete understanding of the client's:
 1. Estate planning objectives
 2. Assets and liabilities
 3. Family situation
- ii. An estate plan should be reviewed periodically and amended as necessary to accommodate changes in family and financial circumstances, as well as changes in the law and applicable tax provisions. Clients should review their estate planning documents annually and have their attorney review the plan every three to five years at a minimum. In addition, clients should have their plan reviewed when there is a significant change in death tax laws at the federal or state level.

SOME PERTINENT TERMS AND CONCEPTS

d. TYPES OF PROPERTY

- i. *Real Property* - land and permanent improvements attached to the land
- ii. *Personal Property* - everything which is not real property
 1. *tangible personal property* - personal property you can touch (i.e., household goods, automobiles and jewelry)
 2. *intangible personal property* - personal property you cannot touch or which is represented by a document (i.e. money, stocks and bonds, a debt owed to you, or a contract right such as is created by an insurance policy)

e. COMMON METHODS OF OWNING PROPERTY

- i. *Fee simple* - i.e. titled in the name of "John Smith"
 1. Solely owned by the owner
 2. On the death of the owner, the owner's heirs inherit the property as determined and transferred in the probate process
 3. Property is taxed in the estate of the owner
- ii. *Joint tenancy with right of survivorship* - i.e. titled in the name of "John Smith and Mary Smith JTWROS"
 1. Each owner has an undivided equal interest in the property
 2. On the death of one owner, the other owner owns the entire property
 3. No probate required - in fact a Will cannot vary the disposition of the property
 4. The value of the decedent's ownership interest is taxed as a part of his/her estate
 5. This is a commonly used method of owning property by spouses - it is useful where the exposure to federal estate tax is improbable (i.e. the combined assets of the spouses are valued at less than the unified credit) and the spouses wish the survivor to own the asset
 6. The creation of a joint tenancy can result in a taxable gift, although a joint tenancy created solely between spouses is not taxable due to the unlimited marital deduction

7. Joint tenancy should not be regarded as a complete substitute for a Will because it does not provide for distribution upon the death of the survivor, which could occur in a joint accident
 8. The first owner to die cannot control who ultimately gets the property - the property becomes the sole property of the surviving joint property which could ultimately go to a second spouse or someone other than the persons which the deceased joint owner would have wanted
- iii. *Tenancy in common* - i.e. titled in the name of "John Smith and Mary Smith as tenants in common"
1. Each owner has an undivided equal interest in the property
 2. On death of one owner, the owner's heirs inherit his/her interest in the property
 3. The value of the decedent's ownership interest is taxed as a part of his/her estate
 4. Useful to balance the estates between spouses, notwithstanding which spouse dies first

f. TRANSFER OF OWNERSHIP OF BANK ACCOUNTS & SECURITIES

i. *Single Party Accounts.*

1. During lifetime of the party (owner), only the party or his designated agent may access the contents of the account.
2. At the death of the party, the ownership of the contents of the account passes as part of the party's probate estate.
3. *Single Party Account with Pay on Death ("POD") Designation* - At the death of the party, ownership of the contents of the account pass to the designated POD beneficiary named on the account, and not as part of the probate estate of the deceased party.

ii. *Multiple Party Accounts* - Accounts having more than one party (owner).

1. During the lifetime of the parties, the institution owning the account may, on request, dispose of sums or property on deposit in accordance with the instructions of any one or more of the parties, or an agent designated by all parties. As between the parties, the depositing party is entitled to the deposited asset, and if withdrawn by the other party the depositing party may recover it from the withdrawing party; failing to do so may result in a gift from the depositing party to the withdrawing party.

2. At the death of one of the parties, ownership of the contents of the account pass automatically to the surviving parties unless the account is specifically designated to be *without* right of survivorship. At the death of the last surviving party, the contents of the account pass as part of the surviving party's probate estate.
 3. *Multiple Party Account with POD Designation* - Upon the death of the last surviving party, the contents of the account pass to the designated POD beneficiary named on the account, and not as part of the probate estate of the deceased party. A POD designation on a multiple party account *without* right of survivorship is not effective.
- iii. *Securities* - includes stocks, bonds, and security accounts held by brokerages.
1. A security may be registered in *beneficiary form*, i.e., including a designation of beneficiary to take the ownership at the death of the owner or the death of all multiple owners.
 2. Registration in beneficiary form may be shown by the words "Transfer on Death" or the abbreviation "TOD", or by the words "Pay on Death" or the abbreviation "POD" after the name of the registered owner and before the name of the beneficiary. The registration in beneficiary form has no effect on ownership of the security until the owner's death, and may be changed at any time by the owner without the consent of the beneficiary.

2. TAXES APPLICABLE TO ESTATE PLANNING

a. FEDERAL TAXES

i. *Federal Estate Tax*

1. For deaths occurring in 2018, a federal estate tax return must be filed if the value of the gross estate of the decedent exceeds \$11.2 million. The exemption is indexed for inflation. In 2010, the exemption was made "portable" which means that the unused portion of the \$11.2 million exemption can be transferred to a surviving spouse so that collectively, a married couple can shield \$22.4 million of their assets from the federal estate tax. ***Please note: The legislation that enacted the federal estate tax exemption of \$11.2 million has a sunset date of December 31, 2025.***
2. The gross estate includes the fair market value of all property owned by the decedent at death, such as:
 - a. real estate,
 - b. stocks and bonds,
 - c. mortgages, notes, and cash,
 - d. life insurance owned by the decedent,
 - e. one-half the value of joint property owned with spouse,
 - f. annuities,
 - g. powers of appointment and
 - h. other miscellaneous property.

The gross estate also includes gifts made by the decedent if a life interest is retained, and revocable gifts made by a decedent.

3. Deductions from the gross estate include:
 - a. Funeral and administrative expenses
 - b. Claims against the estate (i.e. debts, mortgages and liens)
 - c. Net losses during administration (i.e. casualty losses)
 - d. Devises to charity
 - e. The *marital deduction* for all property included in the gross estate which passes to a surviving spouse. In addition, it is available, if elected, for certain qualifying arrangements where the surviving spouse is given a life income from property held in trust (i.e. QTIP property), which allows the decedent to designate who receives the property after the surviving spouse's death.
4. Generally, under current law, each individual can transfer \$11.2 million, by gift or at death, without transfer tax. This is referred to as the *unified credit* (the applicable exclusion amount), which is the amount that is subtracted from the taxpayer's gift or estate liability. For the year 2018, the gift tax applicable exclusion amount is also \$11.2 million. Estates exceeding the applicable exclusion amount are taxed at a flat rate of 40% for gifts or deaths occurring in 2018.
5. For deaths occurring in 2018, the federal estate tax begins at the rate of 40% for the amount of the taxable estate over \$11.2 million (assuming none of the unified credit has been applied against federal gift tax).

ii. *Federal Gift Tax*

1. Tax imposed by federal government on transfers of property for less than adequate consideration to any person.
2. The unified credit can be applied to gifts made during lifetime to avoid the payment of gift taxes. The applicable exclusion amount tied to the unified credit is \$11.2 million for gifts made in 2018. Gifts exceeding the annual exclusion amount and applicable exclusion amount are taxed at a flat rate of 40% for 2018.
3. There is an annual exclusion from gift tax in the amount of \$15,000 for each person to whom the donor makes a gift (i.e., **no** gift tax return is required if no more than \$15,000 is given annually to any person). To qualify for this exclusion, however, the gift must be a *present interest* which the donee can use immediately.

iii. *Federal Generation Skipping Tax*

1. Tax paid to federal government in connection with generation skipping transfers, i.e., a transfer directly or in trust to a person two or more generations younger than the transferor.

2. All generation-skipping transfers are subject to tax at a flat rate equal to the product of their maximum estate tax rate of 40% and the inclusion ratio.
3. Each person is allowed a generation skipping tax exemption amount of \$11.2 million.

b. STATE TAXES.

- i. Until recently, Nebraska had an estate tax and an inheritance tax and was only one of three states that had both taxes. The Nebraska estate and generation-skipping tax was repealed retroactive for deaths occurring after January 1, 2007. Provided however, Nebraska has retained its inheritance tax. The Nebraska inheritance tax creates revenue for the operation of the County government for counties across the State of Nebraska. For larger counties it is an important revenue producer of up to 5 percent of the overall county budget and in medium-sized and smaller counties, the revenue generated from state inheritance tax paid to the county ranges from 15-35 percent of the county's total budget. This tax is much different than the federal estate tax and should be discussed in greater detail.
 1. Class I Beneficiary: father, mother, son, daughter, brother, sister, grandfather, grandmother and spouses: 1% on excess of \$40,000 (per beneficiary)
 2. Class II Beneficiary: uncle, aunt, nephew, niece and their lineal descendants and spouses: 13% on excess of \$15,000 (per beneficiary)
 3. Class III Beneficiary: all other beneficiaries: 18% on excess of \$10,000 (per beneficiary)
 4. Charities: exempt

3. SOME COMMON ESTATE PLANNING TOOLS

a. POWER OF ATTORNEY

- i. A Power of Attorney is a document in which a person (the *Principal*) grants to another person (the *Agent*) the authority to do certain things or sign the Principal's name on legal documents. The things the Principal authorizes the Agent to do may be either specifically defined in the Power of Attorney, or the Power of Attorney may contain a general grant of power to the Agent to do on behalf of the Principal all things the Principal could do.
- ii. *Durable Power of Attorney*: Normally, an Agent has no more authority than does the Principal; therefore when the Principal dies or becomes incapacitated the legal authority of the Agent to act on behalf of the Principal terminates. The Power of Attorney can be made to be *durable* so that it survives incapacity, i.e., the Agent has the authority to continue to act for the Principal even though the Principal has become incapacitated. Even a durable power of attorney lapses upon the death of the Principal, however.

1. A durable power of attorney is especially useful for persons who are going to be hospitalized, or persons who, because of their age, may need assistance in paying bills or managing property.
2. A durable power of attorney may eliminate the need to ask a court to appoint a *conservator* to manage one's property when the person becomes incapacitated because of health, age, or other reasons.
3. A durable power of attorney may also be helpful for a person who does a lot of traveling, allowing that person to designate another to pay bills or manage property while absent.

b. HEALTH CARE – ADVANCED CARE DIRECTIVES

- i. *Living Will*: A document signed by a person declaring such person's wishes regarding medical treatment (or the withholding or withdrawal thereof) in the event of an incurable or irreversible terminal condition with no reasonable expectation of recovery. The Living Will is generally applicable only in very limited circumstances.
- ii. *Durable Power of Attorney for Health Care or Health Care Proxy*: A durable power of attorney designed specifically to cover medical and health care decisions. The Principal appoints an Agent to make health care decisions when the Principal is unable to make such decisions. This document usually contains language similar to a Living Will regarding withdrawal or refusal of life-sustaining procedures or artificially administered nutrition and hydration if the Principal is in an irreversible terminal condition. This document tells a hospital or doctor who they should consult regarding your health care if the patient is not able to make decisions concerning himself.

c. PARENTAL AUTHORITY

- i. A parent is considered the *natural guardian* of his/her minor children. As such the parent has the right and duty to make certain decisions regarding the child, including the consent to health care, to entering into contracts affecting the minor, and to the marriage of the minor.
- ii. If the parent is going to be absent from the child, the parent can execute a *Parental Power of Attorney* in which the parent delegates to another the authority to make parental decisions concerning the minor for a specified period of time, usually which may not exceed 6 months. This is very useful if the parent is going on a vacation without the child and leaving the child in the care of a relative or babysitter, or if the child is going on a trip without the parents.
- iii. The parents in a Will can designate who they would like to serve as the *testamentary guardian* for their minor children in the event the children are left without a living parent. This designation will ordinarily be honored by the court, even if the persons nominated are not related, unless the court finds such persons designated are not suitable.

d. WILL

i. *Definition:* A Will is a legal document that transfers a person's probate estate upon his or her death.

ii. *Reasons you should have a Will include:*

1. To assure property will be distributed as you direct, not according to state intestacy statutes
2. To assure the family will get the most practical and economical distribution of your estate
3. If the estate is large enough to be taxable, to minimize the tax which is payable, leaving more for the beneficiaries you choose
4. To designate who should be in charge of the administration of your estate and to waive the necessity of posting a bond
5. To designate who should be in charge of the rearing of minor children
6. To avoid the delay, expense, legal uncertainties, and dissention that can occur when there is no Will
7. To authorize or direct the sale of certain assets during the probate administration
8. To authorize or direct the continuation of a business during the probate administration
9. To defer distribution to minors until the minors reach an appropriate age

iii. Some common clauses that may be included in a Will are:

1. Provisions for the payment of all debts, claims, funeral expenses and costs of administration. The Will should designate if such expenses should be paid from a specific portion of the estate or be shared by all beneficiaries.
2. Provision for distribution of tangible personal property (i.e., jewelry, household goods, automobiles, collectibles, etc.). This is commonly handled by a list separate from the Will which is referred to in the Will.
3. Provision for cash gifts or gifts of specified property to designated persons or charities.

4. Provisions regarding distribution of income to certain beneficiaries; provisions to protect the interests of young or immature beneficiaries or beneficiaries that may need assistance in managing the assets; provisions to protect the interests of adult beneficiaries. Distribution of property may be made in installments over a specified time or may be delayed until a particular age, or property may be held and managed for the beneficiary for his or her lifetime.
5. Naming a *Personal Representative* (also sometimes called the executor or executrix, the person or trust company who is to administer your estate) and the naming of a *Trustee* (the person or trust company who is to manage property placed in trust and make determinations as to distributions during the term of any Trust which is to be created).
6. Naming a *Testamentary Guardian* (the person who is to exercise parental control over minor children until they reach the age of majority).

e. TRUSTS

- i. *Definition:* A contractual arrangement which creates a special duty of care (fiduciary duty) whereby one person (the *Trustee*) owns property for the benefit of another person (the *Beneficiary*).
- ii. Two broad categories of trusts are:
 1. *Testamentary Trusts:* created by a Will, taking effect only upon the death of the creator of the trust.
 2. *Living Trust or Inter Vivos Trust:* created by a separate trust agreement during the lifetime of the creator of the trust (the *Grantor*).
 - a. A Living Trust may be *revocable* which allows the Grantor to amend or terminate the trust at any time, or to cause the assets to be returned to the Grantor at any time.
 - i. Assets transferred to a revocable living trust during lifetime generally are not subject to probate at his/her death, although they *are* still subject to income tax, federal estate tax, and state death tax.
 - ii. The trust is usually accompanied by a "pour-over" Will which transfers to it any assets which are not placed in the trust during life. The trust can also be made the beneficiary of life insurance policies or death benefits under pension plans.
 - iii. Often a revocable living trust is used to provide management of assets which the owner no longer desires to manage or may become unable to manage due to incapacity.

- b. A Living Trust may be *irrevocable* which cannot be amended after it is created.
 - i. Assets transferred to an irrevocable living trust during lifetime may be subject to federal gift tax, and the assets are not subject to probate at his/her death. The property in the trust *is* still subject to income tax, but normally is *not* subject to federal estate tax or state death tax.
 - ii. Often, irrevocable living trusts are used to own life insurance or are used to hold gifts made to children or grandchildren until they attain an appropriate age.
- iii. Some reasons for creating trusts include:
 - 1. Estate tax savings.
 - 2. Conservation and management of property; to obtain investment management; providing for immediate management of assets upon the disability of the Grantor.
 - 3. Protect the Grantor or Beneficiaries against their own tendency for mismanagement, misuse or waste of assets, or incompetency.
 - 4. Free the Grantor or Beneficiaries from the burden of management of property.
 - 5. Avoidance of probate, allowing uninterrupted management of assets after death and allowing greater privacy and confidentiality regarding assets. (Unlike a Will, a Living Trust may not be required to be filed in the public records of the probate court.)
- f. TYPES OF WILLS/TRUSTS. There are many varieties of Wills and Trusts which may be used to fit the needs of each individual. A few of the more common types are listed below.
- i. *Basic Will:* A basic or simple Will generally gives everything outright to the surviving spouse, children or other heirs. A Will which leaves everything to the surviving spouse is sometimes called an “I Love You” Will.
 - ii. *Will with Contingent Trust:* Frequently married couples with minor children will pass everything to their spouse, if living, and if not then to a Trust for the minor children until they become an appropriate age.
 - iii. *Pour-Over Will:* Generally used in conjunction with a Living Trust. It picks up any assets which were not transferred to the Trust during the person’s lifetime and “pours” them into the Trust upon death.
 - iv. *Tax-Saving Will:* A Will may be used to create a testamentary Credit Shelter Trust, which provides lifetime benefits to the surviving spouse, without having the assets in the Trust includible in his or her estate upon their subsequent death.

- v. *Living Trust without Tax Planning:* Generally, the surviving spouse has full control of the principal and income of this type of Trust. Its main purpose is to avoid probate and perhaps manage the assets for beneficiaries who are not yet ready to inherit the assets outright, because they still lack experience in financial and investment matters.
- vi. *Will or Living Trust with Credit Shelter Trust:* This type of Trust avoids probate and also makes certain that both spouses use their Unified Credit. For the year 2018, estates up to \$11.2 million can be passed to children or other heirs without probate expense or death tax by a married couple using this type of Trust.
- vii. *Will or Living Trust With Credit Shelter and QTIP Trust:* By adding another Trust to the Credit Shelter Trust discussed above, the first spouse to die can determine the beneficiaries of all of his/her estate, including the portion of his/her estate left for the benefit of the surviving spouse and qualifying for the marital deduction. For example, the income earned on assets in the QTIP Trust must be given to the surviving spouse for his or her lifetime, but can then pass to the children of a prior marriage of the first spouse to die.
- viii. *Qualified Domestic Trust:* Transfers to a non-citizen spouse will not qualify for the marital deduction unless the assets pass to a Qualified Domestic Trust (QDOT), which requires a U.S. Trustee and other measures to help ensure collection of a death tax at the death of the surviving spouse.

g. LIFETIME GIFTS

- i. *Definition:* The gratuitous transfer or delivery of property which divests the donor of all control, dominion and title over the property, and the property must be accepted by the donee.
- ii. A gift should *never* be made unless the donor is certain he/she will never again need the gifted property.
- iii. Tax Implications:
 - 1. A federal gift tax is imposed on the fair market value of gifts at the same rate as the federal estate tax.
 - 2. Present interest gifts of \$15,000 or less per year per donee do not require the filing of a federal gift tax return and no gift tax is imposed for gifts occurring in 2018.
 - 3. The gifted property (including the future appreciation of the property) is normally removed from the estate of the donor, and income earned by the property is normally taxed to the donee. The donee assumes the tax basis of the donor (whereas inherited property has a basis equal to fair market value at the time of death); therefore, if an elderly person has low-basis, highly appreciated property, in some instances it may be advisable to pass the property by Will rather than by gift in order to give the recipient the higher tax basis.

4. The gift tax marital deduction is available for all gifts to spouses; therefore, no gift tax is imposed on gifts to a spouse.
5. The Uniform Transfers to Minors Act provides that a person may make a gift to a minor by having the gifted property registered in the name of, and delivering it to, another adult or trust company as custodian for the minor. The custodianship terminates and the property must be distributed to the child when he/she attains the age of 21 years.

h. DISCLAIMER OR RENUNCIATION

- i. *Definition:* An unqualified refusal by a potential beneficiary to accept benefits given through a testamentary or lifetime transfer of property. Most often, a disclaimer or renunciation refers to the refusal by a beneficiary to accept a devise made to him/her under the terms of a Will. If property is disclaimed or renounced, it passes as though the disclaimant had predeceased.
- ii. A disclaimer may be appropriate when an individual with children and a large estate in his or her own right is the beneficiary of a devise by another individual and this devise would only compound his or her potential estate tax problems, a disclaimer may be appropriate so as to pass the property on to his/her children without being considered a gift.
- iii. The disclaimer process is really one of complication and should only be attempted with the assistance of an attorney as soon as possible after death. The period to disclaim expires nine (9) months after death or sooner if a beneficiary accepts the benefits of an asset transferred at death.

i. RETIREMENT PLANS

- i. Qualified retirement plans (IRA's, pension and profit-sharing plans, 401(k) plans, etc.) are becoming a major asset of many persons.
- ii. Such plans are generally included in the gross estate of the participant for federal estate tax purposes.
- iii. The beneficiary designations of such plans should be carefully reviewed with your accountant to verify that they conform to the estate planning objectives of the participant.

j. LIFE INSURANCE

- i. Life insurance is a unique asset which is used to solve some of life's perplexing financial problems. It is useful in certain situations due to its potentially high yield and its tax-favored benefits.
- ii. In estate planning, life insurance can be used to:
 1. *Create an estate* - where time or other circumstances have kept the estate owner from accumulating sufficient assets to care for loved ones.

2. *Pay death taxes* - these costs can vary from nothing to in excess of 50% of the estate.
 3. *Fund a business transfer* - surviving owners often agree to buy a deceased owner's share of a business from the deceased owner's estate after death.
 4. *College fund for children or grandchildren.*
 5. Pay off the home mortgage.
 6. Protect a business from the loss of a key employee - to attempt to compensate for the severe financial hardship caused the business.
 7. *Create a retirement fund* - with competitive returns, some policies may be a prudent way of accumulating necessary funds for retirement years.
 8. *Replace a charitable gift* - the charitable gift may provide tax benefits, and life insurance can replace the value to the donor's estate.
 9. *Equalize inheritances* - when the family business passes to children who are active in it, life insurance can provide an equal value to the other children.
- iii. *Ownership:* Since life insurance proceeds are taxed in the estate of the deceased if he or she has any "incidents of ownership" in the policy, ownership by adult children or an irrevocable life insurance trust should be considered if there is an estate tax problem. This will have an effect on who is responsible for paying the premium.
- iv. *Irrevocable Life Insurance Trust:* One of the uses of life insurance is to provide funds with which to pay estate tax. If this is the purpose of the life insurance, it generally is best that the life insurance proceeds themselves not be subject to estate tax so that *all* the proceeds can be used to pay the tax. One of the primary ways of avoiding the payment of estate tax on insurance benefits is to have the life insurance owned by adult children of the insured or an Irrevocable Insurance Trust.
1. The Trust must be irrevocable, which means that the grantor/insured cannot get property or benefits out once put into the Trust.
 2. The Trust may be "funded" (with assets which produce the funds necessary to pay the premiums) or "unfunded" (which generally require annual gifts to provide funds to pay the necessary premiums).
 3. In order to qualify gifts to the Trust for the \$15,000 annual gift tax exclusion, the beneficiaries (usually children or grandchildren) must be granted a right to withdraw gifts made into the Trust for a limited period of time after the gift is made.
 4. If an existing policy is placed into the Trust by the insured and the insured dies within three years, the policy proceeds will nevertheless be included in his gross estate, so it may be necessary to pay estate tax on the policy

proceeds. This three year rule does not apply to new policies which are originally owned by the Trust.

5. “Second to Die” or “Survivor” life insurance policies do not pay benefits until both spouses are deceased, which is when the estate tax normally is incurred on the estates of a husband and wife. Such policies, therefore, are well suited to provide funds for payment of estate tax, but usually such policies should be owned either by adult children or by an Irrevocable Life Insurance Trust so the policy proceeds do not increase the estate tax burden.

k. PROPERTY AND CASUALTY INSURANCE

- i. Property and Casualty Insurance, which is an important component of your overall estate plan, is often overlooked. Should you have inadequate insurance to cover your assets to be left to your heirs, your assets would be at risk of loss to creditors of the estate. Our recommendation is to have sufficient levels of insurance coverage to protect your assets and further recommend the purchase of “umbrella insurance” coverage. The cost of such coverage is an economical solution to alleviate the risk of loss to the estate and subsequently, your heirs.

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