

***RE: Issues to Consider in Estate Planning***

Dear Client,

In preparation for our meeting, you should consider the following issues. For each issue you are free to do as you please. The purpose of this letter is to help you better understand and begin thinking about some of the common issues and approaches that will be discussed during our meeting. This is not an exhaustive discussion of all the issues, but is merely intended to give you an overview.

**Guardian.** As a parent, the choice of guardians is perhaps the most important and difficult decision. This is the person or persons who, in the event of your death, will be responsible for caring for your children. A guardian has the same rights and duties as a parent and will raise your children until the age of 18. You should name both a first and second choice. When asking yourself who should fill that role, you should take into consideration the parenting skills and values of that person or persons.

**Conservator.** This is the person who manages your child's financial affairs in the event of your death and if your children have assets of their own, for example, wrongful death settlement proceeds. This Conservator is not responsible for your personal assets because your assets will be held in a trust for your children. Generally, clients select the person they have chosen as guardian to their children or the person they chose to be trustee, but are by no means the only options.

**Personal Representative.** This is the person who is responsible for handling your affairs after your death. The personal representative's primary role is to collect your assets, pay your creditors, and transfer your property to whomever you indicate in your will (typically the trustee of your trust). This is primarily a short-term job (a few months to a couple of years depending in large part on whether an estate tax return is necessary). You should select both a first and second choice. A typical first choice is your spouse.

**Trustee.** The trustee's roll is similar to that of the personal representative, but more long term. The trustee's responsibilities include holding the assets for your spouse and children, using the assets for their



benefit as you direct, and ultimately distributing the assets, according to the terms of your will, to your children at the ages you select. You should choose an estate trustee carefully, and select both a first and second choice.

**Trusts for Children.** You need to decide how the assets will be held for your children. Typically, there are two models for doing this, A) Separate Trusts or B) Single Trust. (a/k/a Pot Trust.)

Under the Separate Trust model, after your death, your assets are divided into separate trusts of equal value, one for each of your children. The assets are then held in a trust for each child. You can specify essentially any rules you want about your child's rights in his or her trust. However, clients generally provide that the trust funds are available for the child's health, education, maintenance, and support. In addition, you can give the trustee the ability to distribute funds to the child to purchase a home or start a business at a specific age, for example when a child turns 21. You can also determine the age you wish the child to start receiving all of the income (dividends and interest but not capital gains) from his or her trust. When a child reaches a predetermined age(s), the child may withdraw funds from his or her trust. A typical model is to stagger the withdrawal so the child can withdraw 1/3rd at 25, 1/3rd at 30 and the balance at 35 (or a similar pattern). However, you can use any method you like here (e.g. withdraw the entire amount at age \_\_\_\_, or 1/2 at age \_\_\_\_ and the balance at \_\_\_\_). When the funds in a child's trust are gone, that child does not have rights to any other child's trust.

Under the Single Trust model, after your death, your assets are held in a single trust for your children and used for all of their benefit. When the youngest child reaches a predetermined age (typically 22 to 25, but there are no restrictions here) the assets remaining in the trust are then divided into separate trusts of equal value, one for each of your children (see above). Again, you can specify essentially any rules you want, but it is common to provide that a child's separate trust is not reduced for distributions from the Single Trust made for ordinary health, maintenance and education expenses. However, if you like, you can permit the Trustee to make distributions to a child to purchase a home or start a business, but require the trustee to count those distributions against the child's share when the Single Trust is ultimately divided. The perceived advantage of this model is that it aggregates the assets into a single fund so that if one child goes to Harvard and the other child goes to an in-state public university sufficient assets are available to cover the Harvard education. Also, under this model additional funds are available if one child suffers from a disability.

There is no right or wrong answer here. It is purely a matter of personal preference.

If you choose the Separate Trust model, you need to let me know at what age(s) you want a child to be able to withdraw his trust. If you choose the Single Trust model, you need to let me know at what age you want to divide the Single Trust and after the trust divides what age(s) do you want the children to be able to withdraw assets from their separate trusts.

**Financial Power of Attorney.** This person is responsible for handling your financial affairs in the event of your death or incapacity. You will need to determine whether the power is immediately effective or a springing power, which only takes effect upon your disability. Typically, the agent is a family member or friend whom you trust to manage your financial affairs with the same due diligence as you would yourself. You should name both a first and second choice. A typical model is to name your spouse as your agent and provide that your spouse may act immediately, and that your alternate can only act if you are disabled.

**Medical Power of Attorney.** This person is responsible for handling your medical decisions. This person will have the authority to make life and death decisions for you according to your wishes. It is best to choose at least one back-up agent; in case the first person is not available when needed.

**HIPAA Authorization.** You need to decide who is authorized to receive medical information about you. Typically, these are the persons you name as trustee, and the agents under your financial and medical powers of attorney. You may also want to name other close family members who are not necessarily your agents.

Please feel free to contact me if you have any further questions or concerns.

Very truly yours,

*Michael L. Rutkowski*

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MLR/th