Sleeping Well At Night

Estate Planning

Hosted by Williams, Caliri, Miller & Otley, PC

Basic Estate Planning Documents

- Durable Power of Attorney
- Advanced Medical Directive
- Will
- Revocable Living Trust
- Trusts

Durable Power of Attorney

- Allows designated person to make financial decisions
- Avoids guardianship proceeding
- Springing vs. currently exercisable

Advanced Medical Directive

- Allows designated person to make medical treatment decisions
- Gives instructions regarding heroic medical care in the event of a terminal or permanently unconscious condition
- Allows designated person access to health records
- Avoids court proceeding concerning medical treatment

What is a Will?

- Written instrument directing how your assets will pass on death
- Executed in accordance with state law
- State laws generally require that a Will be signed by the person making the Will and by two witnesses
- Person making Will must be competent
- Person making Will must not be acting under duress or the undue influence another

Why Should I Have A Will?

- Determine how your assets will be distributed
- Use of trusts for delayed distribution or asset protection
- Appoint guardian for minor children
- Minimize estate taxes

What is an Executor?

- Upon probate, the executor will have the authority to act as your estate's legal representative
- Duties include collecting your assets, paying valid debts (including any estate taxes), investing estate funds and ultimately distributing your assets in accordance with the terms of your Will
- Can have co-executors
- Can be individual or bank
- Entitled to a commission as set by state statute, or as provided in the Will

What Assets Will Pass Under My Will?

- Probate assets are assets that pass under a will. Generally, assets that are in your sole name
- Non probate assets will not pass under your will
- Non probate assets include jointly owned assets with rights of survivorship, life insurance, IRA, pension, 401(k), annuity
- Non probate assets pass by survivorship (joint) or by beneficiary designation (insurance)

What Happens If I Die Without a Will?

- If you die without a will, your probate assets will be distributed in accordance with a state statute – intestacy laws
- As a general rule, your spouse and/or children will receive your property

Federal Estate Tax

- Tax based on the privilege of leaving property to others following death
- Based on fair market value of assets
- Tax due 9 months following death

Exempt Amount

- 2003 $1,000,000
- 2004 & 2005 $1,500,000
- 2006, 2007 & 2008 $2,000,000
- 2009 $3,500,000
- **2010 REPEAL**
- 2011 $5,000,000
- 2012 $5,000,000
- 2013 ?

Reduction in the Tax Rate

Top federal estate tax rate reduced from 55% to:

- 50% in 2002
- 49% in 2003
- 48% in 2004
- 47% in 2005
- 46% in 2006
- 45% in 2007 – 2009
- 35% in 2010 – 2012
- ? in 2013

Assets Subject To Tax

- Personal property
- Real estate
- Financial assets
- Retirement accounts
- Life insurance

Tax-Free Transfers

- $5,000,000 estate tax exemption
- Spouse – Unlimited marital deduction – allows deferral of estate taxes until death of surviving spouse
- Charity - Unlimited

Additional Gift Tax Exemptions

- $12,000 annual exclusion
- Medical expenses paid directly
- Tuition expenses paid directly
- $5,000,000 lifetime exemption

Simple Wills May Be Expensive

- H & W own $2,000,000 each
- Simple wills, joint ownership
- H died in 2007
- W dies in 2008
- No taxes at H's death
- $1,054,220 taxes at W's death
- Children receive $2,945,780

Wills With Credit Shelter Trust Can Save Taxes

- Same facts except wills create credit shelter trust
- No federal taxes on H's death $99,600 NJ estate tax
- No federal estate taxes on W's death. $99,600 on W's death
- Children receive $3,800,800

Coordination of Ownership of Assets

- Unequal asset ownership can waste estate tax exemption
- Each spouse should own assets equal to estate tax exemption
- Coordinate ownership of assets
- Joint ownership can frustrate planning

Basic Estate Planning

- Credit shelter trusts
- Lifetime annual exclusion gifts
- Payment of medical and educational expenses
- Section 529 accounts
- Irrevocable life insurance trust

More Advanced Planning

- Qualified personal residence trust
- Family limited partnership
- Grantor retained annuity trust
- Charitable trust
- Charitable foundation

Planning for the Cost of a Nursing Home

Facts

- 43% of the population age 65 will spend time in a nursing home
- Population is aging - **13% over 65**
- Cost of health care is increasing
- Government programs are being cut
- Median cost of nursing home in New Jersey is **$100,000**

Sources of Payment

- Private pay **23%**
- Medicare **8%**
- Medicaid **68%**
- Veterans Administration
- Long-term care insurance

Medicaid

- Administered by state and funded by both federal and state government
- In New Jersey administered by county welfare boards
- Must be a US citizen and resident of New Jersey
- Must be 65 years of age or older, unless blind or disabled
- Must be eligible from a medical standpoint

Qualification for Medicaid

Resources (assets) cannot exceed **$2,000** for unmarried applicant

Excluded Assets

Principal residence is excluded if occupied by

- community spouse
- sibling with an equity interest in the home who has resided there for at least one year, unmarried child under 21, or a blind or disabled child
- child who has resided in the home of the parent for at least two years and provided a level of care sufficient to keep the parent out of a nursing home for two years

Excluded Assets

- Automobile
- Personal effects and household goods
- Wedding ring and engagement ring
- Medical equipment
- Burial fund
- Term life insurance
- Whole life insurance with a maximum face value of $1,500

Pooling of Resources

Resources owned individually by the institutionalized spouse and the community spouse are pooled together to determine Medicaid eligibility

Community Spouse Resource Allowance

- Provides community spouse with a minimum amount of resources without affecting the institutionalized spouse's eligibility for Medicaid (CSRA)
- The greater of $21,912 or one-half of the couple's non-exempt resources not to exceed $109,560
- If the couple's non-exempt resources are $300,000, CSRA is $109,560. Excess assets of $190,440 have to be spent down
- If the couple's non-exempt resources are $100,000, CSRA is $50,000

Look Back Rule

- There is currently a 60 month look-back period for transfers
- Transfers made during the look-back period result in a period of ineligibility for Medicaid
- Penalty rate is currently $7,282. Transfer of $100,000 during look-back period results in a period of ineligibility of 13.73 months
- Transfers made beyond the look-back period do not result in a penalty period

Start of Penalty Period

When individual transferring assets would otherwise be eligible for Medicaid. **The penalty period does not begin until the nursing home resident is out of funds and continues for the penalty term**

Start of Penalty Period (continued)

- Nursing homes will be flooded with individuals that need care but have no way to pay for it??
- Flood of litigation between nursing homes and children??
- Trap for the unwary – common transfers may cause a period of ineligibility
  - **Help your grandchildren pay for college**
  - **Give your grandchild a wedding gift**
  - **Help your child with a medical bill**
  - **Transfer assets to favorite charity**

Start of Penalty Period (continued)

Example of how the new law works

- In 2006 Sally Mature gives $10,000 to her granddaughter to help her with college costs and $5,000 to her grandson as a wedding gift.
- In 2010 Sally is in a nursing home. She spends down all her remaining assets on her care. Sally applies for Medicaid.
- Sally ineligible for Medicaid for 2.05 months
- Who will pay for her care?

Exempt Transfers

Certain transfers do not result in a penalty period:

- Principal residence transferred to:
  - Child under 21, blind or disabled
  - Community spouse
  - Child who has resided in the house for at least two years, and who has provided care for the parent, allowing the parent to stay at home
  - Sibling with an ownership in the house, and who has resided in the home for at least one year

Spend Down

Spend down does not necessarily mean using resources for care

- Pay off mortgage
- Home improvements and repairs
- Buy a more expensive house
- Prepay funeral
- Buy car

Transfer Planning

- Transfer assets 60 months prior to applying for Medicaid
- Transfers assets, retaining sufficient assets to private pay for 5 years
- Long term care insurance with a 5 year benefit period
- Transfer home to permitted transferees
- Transfer residence retaining a life estate and retaining sufficient assets to private pay for 5 years
- Divorce. Amount received by community spouse in divorce may exceed CSRA
- Family care agreements. Must be in writing, for future services, reasonable

Failing to Plan Is Planning to Fail

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