Trinity United Methodist Church
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Adult Sunday School

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PLANNING YOUR ESTATE: SOME COMMON QUESTIONS ASKED BY CLIENTS REGARDING WILLS, TRUSTS, AND ESTATE PLANNING

Q. What is the primary purpose of estate planning?

A. To direct distribution of your estate in accordance with your wishes at your death or in the event that you become mentally incompetent during life and to reduce the impact of estate taxes as much as possible.

Q. From a legal perspective what happens if you become mentally incompetent during life?

A. You may designate another person to act for you in the event that you become mentally incompetent. You can do this in either of two ways: (1) execute a power of attorney that designates someone to act for you or (2) create a revocable trust that allows the successor trustee to act for you during the time period when you are mentally incompetent. If you become mentally incompetent and have not designated someone to handle your health care decisions and financial matters, a guardianship of the person and/or the estate can be established under Ohio law. The Probate Court supervises all guardianships.

Q. Does estate planning usually include the drafting of a will?

A. Yes, this is one of the primary requisites of estate planning.

Q. What happens if you die without a will?

A. Many things, some of which may be undesirable to you. In Ohio, your assets pass according to statute, which might not necessarily be in accordance with your own preferences. Under Ohio law, for example, if you

die leaving a surviving spouse and no children or lineal descendants, all of your property passes to your surviving spouse. If you die leaving a surviving spouse and one or more children (or their lineal descendants) and the spouse is the natural/adoptive parent of the children, all of your property passes to the surviving spouse. If you die leaving a surviving spouse and two children and the spouse is ***not*** the natural/adoptive parent of either of the children, the first $20,000 goes to the spouse and the remainder is divided as follows: 1/3 to the spouse and 1/3 to each child.

Another thing that happens when you die without a will is that the administrator of your estate is designated by statute and this administrator is required to post a bond. The amount of the bond is twice the amount of personal property in the estate and the cost is approximately $2.50 per $1,000 for the first $40,000 in bond and $2.00 per $1,000 for the next $160,000 in bond. Thus, the bond for a $50,000 estate would be $220.00.

Q. Why is a will so important in estate planning?

A. Because with a will you can direct where your assets will go after your death and you can dispose of your assets in such a way that certain taxes and expenses are avoided.

Q. What other benefits are there in having a will?

A. Another important benefit is your right to select the Executor who is to administer your estate

Q. Is it possible for a person to make a will himself or herself without legal help?

A. Yes, but it isn't advisable. A minor mistake may result in costs or expenses far exceeding the expense of having a will drawn.

Q. In drawing a will, is it advisable to spell out every single item which you wish to leave to a person?

A. Usually it isn't. The exception is where you have some single specific item you wish to give to a specific person.

Q. What is the residuary clause of a will?

A. The residuary clause is usually the last or nearly the last dispositive clause in a will in which a testator disposes of the bulk of his or her estate to his or her residuary legatee. This is usually described as "all the rest, residue, and remainder of my estate."

Q. If I executed a will in another state and have since moved to Ohio, is the will now invalid?

A. No, but portions of the will may no longer be valid under Ohio law. Usually it is a good idea to have the will reviewed by an Ohio attorney, who can advise you whether any changes are necessary.

Q. How often should a will be revised?

A. Periodically. An individual should think about whether the terms of his or her will should be revised at least every five years. The tax laws change, the financial status of the testator or testatrix changes, and the needs of the proposed beneficiaries change.

Q. What does it cost to have a will drafted?

A. Most lawyers will quote a fee in advance for simple wills. More complicated estate planning may be billed at hourly rates.

Q. Should both spouses have a will?

A. Yes. Even if one spouse has no estate at the time, the other spouse may die first leaving the survivor all of the decedent's estate.

Q. Are wills usually filed or recorded before death?

A. No. However, they can be deposited with the Franklin County Probate Court for a $5.00 charge. Usually they are retained by the testator or the testator's lawyer.

Q. Where should wills be kept?

A. In any secure location such as a safe deposit box, home safe or desk or your own or a lawyer's vault.

Q. Can a will be changed?

A. Yes, but not by merely striking out or interlining. Changes require the same formalities as the making of the will itself.

Q. What is a codicil?

A. A codicil is a formal amendment to a will executed with the same formality as a will. It leaves the original will intact except for the specific change or changes provided in the codicil.

Q. Can a will be revoked?

A. Yes. A will does not speak until the actual moment of death. It can be revised, revoked or destroyed up to the moment of death.

Q. Does a later will usually revoke an earlier will?

A. Not unless it specifically states that it revokes the earlier will. If it does not so state, it revokes the earlier will only to the extent that the provisions of the two wills are inconsistent.

Q. What are the duties of the Executor?

A. Very briefly, he or she is required to: (a) collect the assets; (b) pay the debts; (c) pay Ohio and federal estate and income taxes; and (d) distribute the assets in accordance with the directions of the will.

Q. How do you select an Executor?

A. Usually a husband or wife will appoint the surviving spouse as Executor of his or her estate. Often an adult child is chosen as alternate executor. If the estate is complex and involved or if disagreement is anticipated among beneficiaries, a neutral third party such as a corporate or banking institution might be chosen.

Q. How long does it usually take to settle an estate?

A. The answer, of course, depends upon the size and complexity of the estate. Generally, non-taxable estates should be settled 6 months after they are opened. Taxable estates, however, generally take longer but often can be settled in 9 - 12 months.

Q. Does the court have to approve the settlement of every estate?

A. Yes. In Ohio, the court approves the inventory and accounts. An estate can be closed without filing an account when the sole beneficiary of the estate is also the executor or administrator.

Q. May a safe deposit box be opened by a decedent's family member after the decedent's death?

A. Possibly. Ohio law was changed for decedents who die on or after January 1, 2001. The Ohio Tax Commissioner no longer requires an inventory of the contents of a safe deposit box upon the death of the owner, co-owner or any other person having access to the box. However, many institutions such as banks are requiring documentation that shows an individual is authorized to act for a decedent before permitting access to the decedent's safe deposit box.

Q. What fees do Executors usually charge?

A. Each state has statutes regulating these fees. They are usually based upon a small percentage of the estate. As the estate gets larger, the percentage rate allowed gets smaller. In Ohio, the rates are prescribed by statute and are as follows: (a) on personal property, 4% of the first $100,000; 3% of the property worth $100,000-$400,000; 2% of the property worth more than $400,000; (b) on real estate sold under authority in a will, the same rates as those for personal property apply; (c) 1% of the value of real estate not sold; and (d) 1% of the value of all property not subject to administration that is includable for purposes of computing the Ohio estate tax, except joint and survivorship property.

Q. What fees do lawyers usually charge for handling an estate?

A. According to Ohio law, attorneys must charge "reasonable fees." Generally, these fees are either based on a percentage of the estate or are based on an hourly charge. An attorney can be asked to estimate his or her fee before handling the estate.

Q. What does the word "probate" mean?

A. Essentially the word means "proof." Hence, proof of the validity of a will. Under present day usage it refers to all aspects of the administration of an estate.

Q. Can probate be avoided?

A. By using inter vivos trusts (living trusts) and by holding property in joint and survivorship, payable on death form or transfer on death form, most assets can be diverted from direct probate processes. But this does not mean that the tax effects are eliminated.

Q. What is a trust?

A. A trust is an arrangement whereby one person called the grantor, settlor or donor transfers certain assets to an individual called a trustee with specific directions to manage the assets for the benefit of named beneficiaries.

Q. Can trusts be set up in a will?

A. Yes, testamentary trusts are created in a will and take effect after death. Inter vivos trusts are created while the grantor is alive in a separate document other than a will.

Q. What are the benefits of living and testamentary trusts?

A. They can be used for a wide variety of purposes, such as (a) for the maintenance and education of children; (b) support of indigent relatives; (c) management of the property of an elderly person; and (d) tax savings. Inter vivos or living trusts are often created to avoid probate and to keep information pertaining to the decedent's assets private.

Q. Does the holding of real property in joint and survivorship form eliminate the necessity for probate?

A. Yes, such real estate is not a probate asset but it may well be a part of the estate for federal tax purposes.

Q. What about joint bank accounts?

A. Once again the word "joint" implies the right of the survivor to claim full legal title. However, there is no tax savings. Ohio and federal law presume that joint property was actually owned by the joint tenant who dies first and that 100% of the assets held jointly with rights of survivorship is subject to estate taxes. These taxes can be avoided or minimized by proving what portion, if any, of the joint assets actually belonged to and was contributed by the surviving joint tenant. If there are two joint tenants who are husband and wife, only one half the value of the property held jointly is included in the estate of the decedent for Ohio and federal estate tax purposes.

Q. When do you have to worry about federal estate taxes?

A. Federal estate taxes are due for decedents who die in 2012 if the decedent's taxable estate exceeds $5,120,000. Under current law, federal estate taxes are due for decedents who die in 2013 and thereafter if the decedent's taxable estate exceeds $1,000,000.

Q. When do you have to worry about Ohio estate taxes?

A. In Ohio, for decedents who die on or after January 1, 2002, and prior to January 1, 2013, assets in an estate exceeding $338,333.00 and below $500,000.00 are taxed at a rate of 6%. Assets above $500,000.00 are taxed at a rate of 7%. The Ohio estate tax has been repealed for decedents whose dates of death occur on or after January 1, 2013.

Q. What is the so-called "marital deduction"?

A. The federal and Ohio marital deduction statutes give a spouse the right to leave an unlimited amount of property to the surviving spouse tax-free. The property must be transferred in a form which qualifies for the marital deduction.

Q. Can the use of gifts be employed to reduce the tax impact on one's estate?

A. Yes. Gifts of $13,000.00 per donee per year are not subject to taxes.

Q. If a donor makes a gift of $13,000.00, is it mandatory that he/she file a gift tax return?

A. No, but he/she must be certain that the amount of the gift per donee per year does not exceed $13,000.00.

Q. Are there other ways in which gifts can be used to reduce the estate tax impact on an individual's estate?

A. Yes. While the gift and estate tax rates are unified, if property is given away during a donor's lifetime, its appreciation in value after the date of the gift is removed from taxation in the donor's estate at the donor's death.

Q. Can federal and Ohio estate taxes be saved by leaving a charitable bequest?

A. Yes. The amount given to a qualified charity is deducted from the gross estate and thus passes entirely free of estate taxes.

Additional Resources

1. *Choices, Living Well at the End of Life*

   This pamphlet includes copies of Ohio's Living Will Declaration Form and Ohio's Health Care Power of Attorney Form.

   http://midwestcarealliance.com/aws/MCA/pt/sp/livingwills

2. Website of The American College of Trust and Estate Counsel (ACTEC).

   Numerous links to quality websites. Contact information for ACTEC members in all 50 states for individuals seeking legal counsel.

   www.actec.org

   ACTEC is a national organization of approximately 2600 lawyers, who are elected to membership by their peers based on their demonstration of the highest level of integrity, commitment to the profession, and competence and experience as trust and estate counselors. ACTEC is dedicated to improving the law and the practice of law in the fields of trusts and estates.

3. Ohio State Bar Association Pamphlet on Revocable (Living) Trusts

   http://www.ohiobar.org/Pages/LawFactsPamphletsDetail.aspx?itemID=12