Estate Planning

Essentials 2018

Estate planning is the process of creating a legacy by arranging for the disposal of property at death. Estate planning focuses on creating certainty for the legal transition of property through the orchestrated use of trusts, wills, beneficiary designations, and ownership structures. Effective estate planning will typically maximize the value of the estate passed on at death by reducing taxes and other expenses.

While there may be a temptation to focus only on the economics of estate planning, ultimately estate planning is about creating a structure that will allow an individual to determine who will receive certain property, when they will receive it, and how they will receive it. When a client has strong ideas about those details, then those ideas will dictate how the plan is implemented.

How Estate Planning Works

- The Last Will and Testament is the foundational estate planning document. Unlike trusts that only govern what they own, a will catches everything that the deceased owned that wasn't already accounted for through another ownership structure. The will is submitted to probate court where an estate is opened and a judge presides over the proceedings, making sure that all property changes hands legally. Courts charge a fee for probate that is typically a small percentage of the overall estate value. While trusts may be designed to last for multiple generations, probate estates are typically closed within a year. In cases where a will is the correct estate planning document, but ongoing supervision is required, a will may have language that creates a trust, a "Testamentary Trust." When no will has been created or located, then the state where the deceased lived has a default estate plan for their citizens, known as "intestacy."
- Revocable trusts are often created to simplify the estate planning process by creating specific terms for how property will transition to others, with the option of having the supervision of a probate court. These trusts may continue after the death of the creator if the terms of the trust dictate – making trusts popular vehicles to provide ongoing protection for minors, special needs individuals, as well as individuals who may need protection from their own decisions.
- Irrevocable trusts are commonly designed to reduce estate taxes at death. For wealthy individuals, an irrevocable trust may be created to own a life insurance policy to create liquidity for the estate while not being taxes as an asset of the estate. When done correctly, these proceeds can be used to provide liquidity to pay estate taxes, fund a guy-sell agreement between beneficiaries, or equalize the estate.
- Beneficiary Designations are considered operations of law – meaning that at the point a death occurs, the property passes automatically to the beneficiary. For some assets, this creates an ideal outcome; in other cases, the beneficiary designation has the potential to derail good trust or will provisions since the beneficiary designation operation of law occurs before a trust or will provision is implemented.
- Ownership also affects the estate plan. Jointly owned property with rights of survivorship (JTROS) causes the deceased's interest in property to transfer automatically at death to any surviving owners. People who own property as Tenants in Common (TIC) pass their

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ownership interest according to their will, if created. The ownership of the property will play a role in determining how that property will pass at death.

Considerations

- Estate tax planning is sometimes mistaken for estate planning. In estate planning, anybody who owns an asset that will exist after their death will need some form of estate plan – either one they customize or the state's intestacy laws. Estate tax planning occurs when an estate is large enough to incur federal estate taxes. Estate tax planning uses more extensive use of trusts, gifts, and ownership structures in order to reduce the amount tax owed so that a greater percentage of the estate reaches its desired location.
- The probate process provides supervision for the transfer of assets at a cost. While many clients do not like the idea of paying extra fees (and time) to the courts, the oversight of a probate court can prevent mistakes and mismanagement from occurring that cost the estate valuable time and assets. The probate court typically ensures that the client's wishes are fulfilled.

Essentially

Estate planning is the process of preparing to legally move assets from someone after their death to the people or organizations they care about. This process can be simple or complex depending on the estate, the goals of the individual planning, and the desire to create efficiency in the post-death transfer process.

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