

OVERVIEW OF ESTATE PLANNING OPTIONS

An Estate Plan is a method for, among other things, disposing of a person's assets during their lifetime and after their death. Estate Plans can be simple or complex. Usually complex Estate Plans are appropriate if the value of the Estate is high, or if there are complex legal issues that need to be dealt with, such as multiple marriages, disabled children, or a disabled spouse. The purpose of this overview is to familiarize you with simple estate planning techniques and to offer my assistance if you so desire.

The first thing to know is what comprises an Estate. An Estate is all of your real and personal property, wherever situated. Real property includes your home(s), vacation home(s) and rental properties. Personal property includes your bank accounts, stock accounts, retirement plans, insurance, jewelry, silver, furniture, collectibles, clothes, motor home and all vehicles, boats and trailers. Simply stated, an Estate is everything that you own.

After determining what your Estate is, the first question is: Why do I need any plan at all? If you are married, you may suppose that your spouse automatically will be legally entitled to all of your Estate at the time of your death. If you are not married but have children, you may think your Estate automatically goes to your children. In fact, this may not happen. There are numerous factors involved. Is it a first wife? Are children involved? Are there children from more than one relationship? How is the property in question owned, i.e., with right of survivorship or as tenants in common? The proper way to ensure that your property is distributed as you wish is to plan for a change of ownership upon your death and your spouse's death. A proper Estate Plan is also useful in managing your affairs when and if you are unable to, because of illness, old age, injury or Alzheimer's.

It is not the purpose of this overview to enumerate all the issues and the possible solutions that can come up during one's life. However, if you do not have a plan in place, then you are relying on the Oregon court system and the State legislature to determine who will take care of you in your old age, who will manage your financial affairs if you are unable, even who will raise your children. In addition, they will determine who receives your Estate and how much each beneficiary receives. If you are alive, that means guardianships for your health care, and a conservatorship for your financial affairs. Unless you have a plan, these managers may be strangers or corporations. If custody and care of your minor children is an issue, then the courts, unless a plan is in place, will determine who will care for and raise your children. If you are dead, and do not have a plan, then your Estate is distributed by what is known as the laws of intestate succession. The laws of intestate succession are the State of Oregon's legislative scheme for how it thinks your property should be disbursed if you have no plan. This imposed scheme is subject to periodic change by the state legislature.

For the purpose of this overview, the simplest plan is an old fashioned Will. A Will says who will administer your Estate when you are unable to, and who will receive it after your death. A proper simple Will names a personal representative, usually a spouse, children if old enough, or a family friend. If you have minor children, it will name who you want to raise your children and most likely will contain a simple health, education and welfare trust to see that the children's (and grandchildren's) financial needs are taken care of, while seeing that their inheritance is not squandered. Ultimately, the Will directs who is to get your Estate. It is your choice and not the State of Oregon's.

A Will is administered through probate. Probate is the State sanctioned change of ownership when there is no other plan or mechanism for the change of ownership. An example of the latter is a house owned by a husband and wife with a right of survivorship. That means, on the death of one, the survivor owns it all. That is probably good estate planning, depending on your circumstances. However, if you take it to the next logical step, the spouse dies, so the surviving spouse then puts the children on the deed with a right of survivorship. This is bad planning from almost every aspect; it is bad tax planning, in that it is potentially harmful to the children, and it is bad from the surviving spouse's perspective, in that their children can alienate ownership in

the marital home through, for example, bankruptcy or tax liens. The same problems exist with bank accounts that, after the death of one spouse, are placed in the names of the surviving spouse and children.

Probate works, and it works every time, in the change of ownership of assets. However, most people want to avoid probate. It has significant costs and is lengthy (it can last from 4 months to several years). Probate for smaller Estates typically costs anywhere from \$2,500 to \$5,000 for lawyer costs per year, this is in addition to filing and court costs. It is also a public record – anyone can go to the court and review the probate record.

A Revocable Family Trust permits the person(s) who set it up (the Trustor(s)) to control their Estate as if no Estate Plan were in place until they, if husband and wife, both die. Then the Estate is divided, as they direct, by their successor Trustee. A successor Trustee is like a personal representative and is usually an adult child, a trusted friend or a family professional, such as CPA or lawyer. The distribution to the beneficiaries is accomplished without the cost or protection of probate. It can also be much faster than probate, because there is no state mandated period of time for notice, etc. It should be cheaper, in that lawyers do not have to play as big a part. The Trust document, called a Declaration, also names Guardians and Trustees for minor children. In a properly executed Trust, there is no need for a conservatorship for a disabled Trustor(s), because the successor Trustee acts, without the guidance of the Court, to fulfil this function.

This overview is not intended to replace the need for consultation with a lawyer. While some components may be similar, each Estate Plan is different, because each individual has different needs, wants and desires. For your protection, do not try to do an Estate Plan from a kit or computer software program. Lawyers make far more money fixing these mistakes than they charge in setting up a simple Estate Plan.