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ESTATE PLANNING

What is an Estate Plan?

An estate plan is a written plan of how you want your assets to be owned, managed and preserved during your lifetime and how you want them disposed of upon your death. Your attorney often designs an estate plan to incur the least possible taxes and other costs.

How is an Estate Plan Created?

To put together an estate plan your attorney carefully looks at your assets and how they are owned (real estate, securities, business interests, life insurance, retirement plan benefits and other property) and other instruments that may meet your needs. Your attorney will want to discuss wills, trusts, business interests, life insurance, Social Security benefits, long-term care, charitable giving, special needs for disabled or elderly, taxes, estate administration expenses, etc. By looking at all of these issues, you may be able to minimize various taxes, the costs of administering your estate upon your death and ensure the welfare of your family and the education of your children.

Many of the subjects involve legal and tax questions of great importance to you. Your decisions should be made with the confidential advice of your attorney, aided in many cases by an accountant, trust officer, insurance adviser or investment counselor.

Transfer of Property at Death

At death, assets are transferred in three primary ways:

1. Through the probate of a will;
2. If you die without a will, through the court and Colorado statutes; or
3. Through a contract agreement, such as a living trust, beneficiary designation, or joint tenancy ownership.

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

Many estate plans incorporate a combination of the ways that your property can pass to your beneficiaries, but in order to figure out the best way to structure the ownership of your assets, the attorney will need to get a thorough understanding of what you currently own and how your assets are titled. The way that property is owned (in your individual name, in joint tenancy, etc.) dictates who it will pass to and when and how it will be transferred as described above.

Will-Based v. Trust-Based Estate Plans

While your estate plan will likely include several documents, estate plans are usually centered around a Will or a Revocable Living Trust (“RLT”). While both types of plans utilize similar documents, the use of these documents may be different.

Will-Based Plans—A Will-based plan uses a Will as the primary set of instructions the Personal Representative is to follow to settle your estate when you die. Since a Will is only effective after someone dies, it does not allow for any disability planning while the Will-maker is alive. Therefore, under a will-based plan, it is necessary to utilize powers of attorneys and advanced medical directives to address pre-death mental incapacity issues.

Revocable Living Trust-Based Plans—An RLT-based plan generally uses the living trust as the primary set of instructions for both disability and death. While an RLT may be sufficient to allow a Trustee to gain control in order to protect your assets and pay for your care upon mental incapacity, it generally does not contain advance medical directives or grants of authority to make medical decisions, and therefore powers of attorneys will likely also be used. It is important to note that, in an RLT-based plan, the attorney may also have you execute a Will that directs any assets not properly titled in the name of the trust be given to your trust (this is called a “pour over” Will) and names guardians for minor children.

The right type of plan for you depends on your goals, assets, and personal and health issues, and there are pros and cons to all options. Both types of plans are revocable and amendable at any time, and should be reviewed either by you or with your attorney every few years. There are many changes in your life, the law, and your attorney’s experiences that may affect your estate plan and amending, restating, or redoing your estate plan may be necessary in order to achieve your goals.

Getting Started and Working with an Attorney

While you will be very involved in the development of your estate plan, estate planning is a complicated area of law and most attorneys do not expect you to come into their office ready to tell them what you want. Instead, a good estate planning attorney will counsel you through a variety of issues and ask a series of questions that will help them understand your goals and recommend an estate plan specifically for you. In the end, you should end up with an understanding of your options, the scope of the proposed plan, and how the documents involved operate and are used.

You should be prepared to ask the attorney about their fees for designing your plan, their experience, and their approach to estate planning. Working with an estate planning attorney to design your plan often involves spending a significant amount of time and having a significant

amount of trust in the attorney, so you should make sure you find the right attorney for you. In addition, you will likely have an on-going relationship with the attorney since there may be times that you need to update or change your plan or need help understanding and using the documents.

There are many ways to find an attorney, including through referrals from friends and family. The Colorado Bar Association offers several tools for finding an attorney that are available at www.cobar.org.

Other Professionals and Advisors Involved in Your Estate Plan

With your consent, your attorney may work closely with or at least consult your existing advisors in order to coordinate your estate plan and make sure your goals are achieved. Beyond the design of your plan, your attorney may consult with your other advisors going forward in the implementation of your plan. Such advisors include:

Life Insurance Agent—Life insurance may be an extremely important tool utilized in your estate plan, whether it is the purchase of policies or the coordination of your existing policies into your estate plan. The most important consideration is the beneficiary designation on existing policies, and current designations may need to be changed in order for your estate plan to work.

Financial Advisor—In addition to structuring the ownership of existing and future accounts with the advisor, many Financial Advisors manage retirement accounts for individuals, and the beneficiary designations that are usually associated with retirement accounts can have a big impact on the overall function of your estate plan.

Accountant—Your attorney may consult with your CPA or other tax advisor as many estate planning techniques are associated with tax planning, and your CPA may be consulted in order to minimize income and/or estate tax liabilities.

Primary care or attending physician—Especially when using the estate planning documents related to health care, your attorney may need to consult with your primary care and/or attending physician to understand your current condition and prognosis, as these factors may invoke the use of certain documents and alternate decision-makers.

Business Succession Planning

One of your assets may be a business that you have an interest in. Generally, business interests are owned in four primary ways:

1. Individually (e.g., as a sole owner or proprietor);
2. Joint partnership;
3. Shareholder of a corporation; or
4. Member of a limited liability company

While it is sometimes appropriate to address business succession issues in typical estate planning documents, business succession, like the transfer of other assets, often depends on the structure of

the business and the agreements related to the business. Therefore, business succession may be a component of your estate plan, but may be addressed separately from your personal assets.

Taxes

While the most important feature of an estate plan should be peace of mind that your family has the proper tools to take care of you if you become mentally incapacitated and to settle your estate in the most efficient manner, a comprehensive estate plan also includes tax planning. Estate tax liabilities can be reduced and, in some cases, eliminated through some advanced estate planning techniques. In addition, some estate plans may reduce income tax liability during your life.

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