

Estate Planning and Probate

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Phases of Estate Planning

- ▶ Incapacity
 - ▶ What happens when I can't handle my own business?
- ▶ Death
 - ▶ How do I plan for my property and my family?
- ▶ Asset Distribution
 - ▶ How does my property get to my beneficiaries?



Incapacity-Things to Plan For

- ▶ Financial and Property
- ▶ Healthcare

Incapacity- Financial and Property

- ▶ General Power of Attorney
 - ▶ Authorize someone else to handle your banking
 - ▶ Can manage your property
 - ▶ Handle government benefits
- ▶ What happens without a General Power of Attorney?
 - ▶ Court may have to be involved in order for your family to be able to handle your business

Incapacity- Financial and Property

- ▶ Revocable Living Trust
 - ▶ You name a trustee to manage your property in the event of incapacity.
 - ▶ You name who is in control.
 - ▶ Keeps court out of your affairs.

Incapacity- Healthcare

- ▶ HIPAA waiver
 - ▶ People that you authorize to access your medical records
- ▶ Healthcare Power of Attorney
 - ▶ Empowers people to handle medical and end of life decisions
- ▶ Living Will

Final Notes on Incapacity

- ▶ “The power dies with you”
 - ▶ These documents (not counting the revocable trust) are only effective while you are alive
- ▶ Planning for incapacity only is half the battle



Death-How to Plan

- ▶ Probate versus Non-Probate
- ▶ Estate Planning
 - ▶ Will
 - ▶ Revocable Trust

Death-Probate versus Non- Probate

- ▶ Probate
 - ▶ Assets are going through court
- ▶ Non-Probate
 - ▶ Assets are distributed outside of probate court
 - ▶ Can reduce the amount of time you are in probate court
 - ▶ These are assets that often have a named beneficiary

Death-Planning with a Will

- ▶ In Probate Court with a will
- ▶ Certain non-probate assets can help with probate
- ▶ Reasons to Avoid
 - ▶ Time
 - ▶ Court fees
 - ▶ Lack of privacy

Death- Probating a Will

- ▶ It all starts with Probate Court
- ▶ When to file?
 - ▶ Only after death
- ▶ Who files?
 - ▶ Your personal representative named in the will
- ▶ What do I need?
 - ▶ The will, death certificate, and application for opening probate
- ▶ How long will it take?
 - ▶ Conservatively, expect probate to last 12-15 months

Death- Revocable Trust

- ▶ Avoids Probate
 - ▶ The trust document controls where your assets go
- ▶ More privacy
 - ▶ Anything filed in Probate Court can become public record
 - ▶ Privacy can be an important consideration for business owners and family matters

Death-Will or Revocable Trust?

- ▶ Which is the right way to plan?
 - ▶ It depends...
- ▶ Will
 - ▶ Affairs are pretty straightforward
 - ▶ Most assets are already going to avoid probate
- ▶ Revocable Trust
 - ▶ A lot of assets could be going through probate
 - ▶ Avoiding probate in different counties and states
 - ▶ Desire more privacy

Death-What happens if I don't have a plan at all?

- ▶ Definitely ending up in Probate Court
- ▶ State law will dictate who inherits from you
- ▶ No control over where assets go or how they are received by heirs



Asset Distribution

- ▶ How do you get assets to your beneficiaries?
- ▶ Outright
- ▶ Testamentary trust

Asset Distribution- Outright

- ▶ Property is going directly to your beneficiaries if it is outright
 - ▶ More exposed to potential creditors
 - ▶ More susceptible to being taken from beneficiaries

Asset Distribution- Testamentary Trust

- ▶ Created by your will or a revocable trust upon death
- ▶ Trustee
 - ▶ Manages the trust for your beneficiary
 - ▶ They are named by you in the will or revocable trust
- ▶ Beneficiary
 - ▶ Your child or whomever you want to receive your property upon death
 - ▶ They receive the benefit of your property

Asset Distribution- Testamentary Trust

- ▶ **Benefits**
 - ▶ Better protection for beneficiaries from creditors
 - ▶ More control over how assets are managed

Final Thoughts

- ▶ Make sure you have a plan in place
- ▶ Think about how you want to leave your assets and who you want them to go to
- ▶ Review your plan every couple of years to make sure it still fits your needs
- ▶ Moving? Always review your plan

Final Thoughts

▶ Questions?

Thank You!

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