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Estate Planning

for You and Your Loved Ones

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INTRODUCTION

ESTATE PLANNING IS IMPORTANT FOR EVERYONE! More than just drafting a Will, it involves financial, tax, medical, and business-succession planning during your lifetime -- as well as determining how your property will be distributed after your death. Not normally a do-it-yourself task, estate planning requires the professional skill and advice of your attorney. It may also require the assistance of your accountant, financial consultant, insurance professional, and/or personal banker.

This brochure gives you a brief overview of some of the basic issues involved in estate planning including:

- Collecting important information.
- Estate planning during your lifetime.
- Estate planning effective upon death.
- Other estate planning considerations.

We do not give legal advice in this brochure, and you should always consult with your professional advisors. Further, laws and regulations for estate planning change constantly, and this brochure may become outdated shortly. Also, remember that a change in your situation may mean that your estate plan also needs revision. Periodically review your

estate plan to make certain it still meets your needs and carries out your wishes.

ESTATE PLANNING INFORMATION

Estate planning requires you to identify your property and keep certain family records.

Identifying Your Property. The first step in estate planning is identifying your property. Prepare a list of what you own and what you owe. For personal property, list form of ownership, location, serial numbers, and estimated values. For insurance policies, list policy numbers, premium amounts, death benefits, cash surrender values and beneficiaries. For bank accounts, list form of ownership, location, account numbers, balances, and beneficiaries. Also, record all other information that would be useful in your absence. For example, are there outstanding loans on your insurance policies? For real property (land and buildings), list the manner of ownership, legal descriptions, location, estimated value, and amount owed. This “estate planning inventory” is your road map to your legal and financial affairs.

Family Records. After you inventory your property, you should assemble important legal and financial documents including:

- Birth certificates.
- Social Security numbers for family members.
- Marriage license.
- Existing Will or Trust Agreements.

- Real estate deeds, abstracts, contracts for deed, notes, mortgages, leases, and real estate tax statements.
- Installment contracts and bills of sale.
- Life, health, disability, and other insurance policies.
- Stocks, bonds, and mutual fund records.
- Automobile titles, registrations, and insurance.
- Numbers for savings accounts and safe deposit box information.
- Divorce, separation, or pre-marital agreements.
- All tax records for the last three years and original cost basis documentation as to all real estate and all investments.
- Name and address of employer and list of existing pension, profit-sharing, deferred compensation, or other retirement benefit plans.
- Electronic records and user names and passwords for online accounts.
- Record of past illnesses with names and addresses of physicians and hospitals.

Keep these records current and in a place available to your family. Above all, keep your spouse (or other close relative) advised as to the location of these records.

ESTATE PLANNING DURING LIFETIME

Estate planning includes managing, using, and protecting your property during your lifetime. It also includes

documenting certain medical wishes, and designating others to make financial and medical decisions for you, if needed. Consider the following:

Power of Attorney. A Power of Attorney authorizes another person, known as an Attorney-in-Fact, to handle your legal and financial affairs.

- Durable Power of Attorney. The most common type of Power of Attorney used in Minnesota is the Statutory Durable Power of Attorney, which remains effective even if you become incapacitated. Everyone should have a Power of Attorney to designate who should handle their legal and financial affairs if they become mentally or physically disabled. When you give a Power of Attorney to someone else, you still have the right to take care of your matters yourself, and you can revoke the Power of Attorney at any time.

- Special Power of Attorney. A special Power of Attorney is often limited to a specific transaction. For example, you might authorize someone to sell something for you in your absence.

Investments, Pension Plans, IRAs and Social Security. Investments, pension plans, individual retirement accounts, and social security benefits are part of your estate plan. Wise asset management and tax planning will insure your assets provide the most benefit for you and your loved ones. Managing these affairs often requires the help of a professional.

Gifts and Gift Taxes. Gifts are the transfer of your property (including money, land or physical items) during your lifetime to persons and/or organizations designated by you. Spouses can generally transfer an unlimited amount of property

between themselves and to charities free from gift tax concerns. As to gifts to others (including children), you can currently give up to \$17,000 per donee per calendar year without any gift tax or estate tax consequences. Spouses can join together and give up to \$34,000 per donee per calendar year. This amount is called the annual exclusion. Thus, people with large estates often make gifts to family members and/or charities to reduce estate taxes upon death. If you intend to make gifts greater than the annual exclusion amount noted above, there may be federal gift tax and Minnesota estate tax implications. You should seek legal and tax advice before making larger gifts.

Health Care Directive. With a Health Care Directive, you can state your preferences and instructions regarding your health care. If at some point you can no longer express your wishes yourself, then your health care providers can refer to this document. In the Health Care Directive, you can designate a person to make health care decisions for you if you cannot. If you are in a situation where you cannot speak for yourself, family members are often grateful to have the direction provided by a Health Care Directive.

Buy/Sell Agreement. If you are in business with others, you should agree in writing what will happen if someone leaves, becomes disabled, or dies. Often, insurance will be purchased to fund a buy-out upon death.

ESTATE PLANNING UPON DEATH

Estate planning includes your wishes and desires as to the distribution of your property upon your death.

The “Will” Made by the State of Minnesota. Right now you have a “Will” whether you know it or not. This “Will” is provided by the laws of the State of Minnesota. Under these

intestacy laws, any property *you own in your own name* alone without beneficiary designations will be distributed upon your death according to a predetermined set of rules. This “Will” is inflexible. It cannot be altered to fit your family or planning goals, and it does not appoint a guardian for your minor children. Further, it distributes property to a child when he or she turns age 18. *If you prepare your own Will, you can make the decisions that will best suit your needs!*

The Will You Make for Yourself. A Will is a written document you prepare (usually with the assistance of an attorney) to direct the distribution of your property upon death. Oral Wills are not valid in Minnesota. Even if your estate plan is close to what State law provides, you should make your own Will to take care of such matters as appointing a guardian for minor children, providing trusts for children, stating who will be in charge of winding-up the legal and financial affairs of your estate, setting forth specific gifts to persons and/or charities, and other matters. You can also intentionally disinherit relatives (subject to certain restrictions with regard to a spouse) if you have a Will. Who can make a valid Will? Any person 18 years of age or older who is of sound mind. A Will is not valid if it is the result of undue influence, fraud, or mistake. A Will must be legally executed and witnessed.

Your Will has no effect until your death, it only affects property that is in your name only at your death, and a Will must be probated through court.

Probate Procedures and Costs. If the total value of assets in your name alone at the time of your death exceeds \$75,000.00 (and does not include any real estate), then it will be necessary to probate your estate through court. A probate proceeding usually takes about six months, unless it is more complex. The cost is based upon the time and

expertise required and the risks involved. The cost normally will run at least \$4,000 to \$5,000 for legal fees plus miscellaneous costs. If the value of assets in your name alone is less than \$75,000.00 (and does not include any real estate), then the Minnesota Small Estates Act permits closing your estate using an Affidavit of Collection of Personal Property and no court proceedings are required once thirty days have passed after your death.

Avoiding Probate Procedures and Costs. There are several methods you can use to avoid the need for probating your estate through court. For example:

- Joint Tenancy Property. Joint tenancy property is not affected by a Will. It is property that is owned by two or more persons who are designated in the documents concerning the property as joint tenants. If one of the named joint tenants dies, then the surviving joint tenant or joint tenants will own the property without going through probate. An Affidavit of Identity and Survivorship and Death Certificate are used to place sole title in the survivor as to real estate, and only a Death Certificate is required as to most bank accounts. Joint tenancy, however, is not always appropriate. For example, joint tenancy can have adverse tax consequences in larger estates.
- Life Insurance. Life insurance is a unique asset. It provides cash within a short period of time after death and can give financial protection to a young family, or provide retirement income for older persons. Where there is a named beneficiary, insurance proceeds pass directly to the beneficiary, thus avoiding the expense of court proceedings. Also, these proceeds usually are not subject to income tax or the claims of creditors.

- Payable-on-Death (“POD”) Assets. Payable on Death assets will also be distributed to the person you name on the asset without going through court. It is common to place a POD designation on U.S. Savings Bonds, Certificates of Deposit, and other bank accounts.
- Transfer-on-Death (“TOD”) Assets. The TOD designation lets an individual owner or joint tenancy owner register a security or investment account in beneficiary form, to be treated much like a POD asset.
- Life Estates. Another common method for avoiding probate is the life estate. Here, real estate is conveyed to the person or persons you desire to receive the property upon your death, subject to a life estate reserved by you. The life estate allows you the use of the property during your life. For example, if you transfer your homestead to your children and reserve a life estate, you have the right to occupy the property personally or to rent it out and receive the income. You still retain your homestead credit for real estate tax purposes if you live there.
- Transfer on Death Deed (“TODD”). Effective August 1, 2008 the State of Minnesota enacted legislation authorizing the use of Transfer on Death Deeds. The Transfer on Death Deed allows an owner of real estate to convey the property to another person or persons, effective only upon the death of the owner. This allows the real estate to be transferred to the person or persons named on the Transfer on Death Deed without having the property probated through court. Since the transfer is only effective upon death, it allows the property owner to do anything with the property the owner may desire during his or her lifetime, without having the persons named on the Transfer on Death Deed agreeing to or signing off on anything (e.g. to sell the

property to someone else or refinance the property). The Transfer on Death Deed functions somewhat similar to a “payable on death” designation.

However, one must be aware that signing and recording a Transfer on Death Deed does not in any way protect the property from liens, judgments, or long term care / nursing home costs.

- Living Trusts. A living trust can be either “revocable” or “irrevocable.” The most commonly used living trust is the “revocable” trust since most people desire to retain control of the assets in the trust and the right to change, or even revoke, the trust should circumstances change. Sometimes, however, there are tax advantages to creating an irrevocable trust. Regardless, both types of trust usually combine the post-death distribution provisions commonly found in a Will with provisions governing the management of trust assets during lifetime. Because they avoid probate proceedings and costs and can save substantial estate taxes, revocable living trusts have become a popular estate planning tool, especially with older persons. But there are also several disadvantages.

Advantages include:

- ◆ *Avoidance of probate proceedings*. The trustees simply continue managing the trust assets after your death.
- ◆ *Privacy*. At your death, trust information does not become a public record.
- ◆ *Immediate availability* of assets following death.
- ◆ *Asset management*. You can have a trust company named as co-trustee to assist with investments.

◆ *Familiarity.* Any income from trust assets is still reported on your regular individual income tax return.

Disadvantages include:

◆ *Administrative burdens.* The revocable trust only avoids probate if all of your assets are transferred into the name of the trust before your death, or are otherwise made payable to the trust at death via a beneficiary designation arrangement.

◆ *Greater initial costs.* Preparation of trusts cost more than Wills because of the additional language required to prepare the original trust document and the additional time and cost involved in transferring assets to your trust.

◆ *No protection from nursing home costs, creditors, or income taxes.* Contrary to popular belief, a revocable living trust does not protect against nursing home costs, creditors, or the imposition of income taxes.

On the other hand, *irrevocable* living trusts require a separate federal tax identification number and tax return and cannot be amended or revoked. Once promoted as a means of saving assets from the nursing home, Minnesota law now strictly limits the use of these trusts for this purpose.

To avoid probate it is essential to review your assets at the death of the first spouse.

Estate Taxes. Properly structured estates can save significant tax in larger estates. An unlimited amount of property can generally pass on the death of one spouse to the surviving spouse free of estate tax at both the federal and state level. It makes no difference if the amount is \$10.00 or \$10 million. If you give property at your death to someone other than a spouse or qualified charities, then under Minnesota law, the

first \$3,000,000 will pass free from estate tax. There are also additional provisions under Minnesota law whereby a qualified small business or family farm may receive an additional estate tax exemption up to \$5,000,000. Under federal law the first \$12,920,000 will pass free from estate tax in 2023. You should note, however, that if you make any substantial gifts during your lifetime (over the annual gift tax exclusion), the amount you can protect at death from Federal and Minnesota estate tax may be reduced. Please note that, in most cases, life insurance proceeds from policies owned by you and payable on your life will be included in your taxable estate for purposes of calculating estate tax.

Advanced Estate Planning Techniques. Many advanced estate planning opportunities are available for those who foresee a problem with estate taxes. One example is the irrevocable life insurance trust. By transferring an insurance policy to an irrevocable trust during your lifetime, you can often remove it from your estate for estate tax purposes. Also, if you are married, your estate can be structured to take advantage of the estate tax exemptions of both spouses.

OTHER CONSIDERATIONS

There are other matters related to estate planning that you may need to consider, including:

Nursing Home Costs. Some people worry that all their assets will be used for nursing home care. The laws regarding public assistance for nursing care are complex and change often. Lifetime gifts could affect the amount of public assistance available if needed. Therefore, you should consult with an attorney familiar with elder law.

Funeral Arrangements. You should place your wishes as to funeral arrangements in writing during your lifetime. Doing

this will lessen stress of those you leave behind. They will know they are doing what you wanted.

Organ Donation. You can arrange for organ donation by filling out donor cards, having “Donor” indicated on your driver’s license, or by so specifying in a valid Health Care Directive.

Safe Deposit Box. You may want to consider having at least one other name as an owner on your safe deposit box to avoid going through the state law procedure to open it if you die. If your name alone is on the safe deposit box, then the bank can open the box only for the purpose of removing any original Will.

CONCLUSION

Estate planning makes sense! It carries out your wishes and saves money! Its purpose is to provide for you and your loved ones during your life and upon your death. But remember, laws change and family situations change. What is true today may not be true tomorrow. Therefore, estate planning is a continuing process. If you do not have your estate planning up-to-date, it’s time to review what you have done in the past. If you have not done any estate planning, you need to start now.

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