

Estate Planning 101

By Peta-Gay Gordon, Esq.

What is Your Estate?

- Anything that you own (assets), such as:
 - bank accounts
 - house
 - car
 - jewelry
 - paintings
 - intellectual property, such as creative rights



Why Create an Estate Plan?

- Avoid Probate
- Control who gets your property
- Get assets to your beneficiaries quickly
- Choose who controls your property after you die
- Nominate a guardian
- Minimize taxes



What is Probate

- The process during which a person's assets and debts are handled after death
- Court-supervised
- Estates with gross value of over \$150,000.00
- Statutory Fees (Personal Representative & Attorney):
 - 4% on the first \$100,000
 - 3% on the next \$100,000
 - 2% on the next \$800,000
 - 1% on the next \$9,000,000
 - 1/2 % on the next \$15,000,000
 - Over \$25,000,000, the court sets the fees

What is Probate

- Order of payment
 - Fees of Administration paid first
 - Secured debts
 - Funeral expenses
 - Last illness expenses
 - General debts
 - Distribution to family
- Minimum 6 months to one year

Documents in Estate Plan

- Trust
- Assignment
- Pour Over Will
- Durable Power of Attorney
- Advance Healthcare Directive
- HIPAA Authorization

Trust

- An agreement where one person or entity holds assets on behalf of someone else
- Trustor/Settlor – person who creates the Trust
- Trustee – person who is in control of the assets
- Beneficiary – person who benefits from the Trust
- Provide a list of your assets and state who you want them to go to
- Include certain terms to minimize taxes

Assignment

- List assets
 - Specific assets
 - Categories of assets
- Clearly state that you are assigning these assets to your Trust
- Helps to get your assets into the Trust if you did not change title

Pour Over Will

- Used in conjunction with Trust
- Effective at death
- Safety device
- States that any assets in your Estate at the time of your death is to be transferred to your Trust
- Make specific bequests of personal property
- Choose Guardian for minor children

Durable Power of Attorney

- Appoint person to take care of your finances
 - Pay your bills
 - Operate business
 - Take care of pets
 - Represent you in litigation
- Nominate a Conservator of Estate
- Instantly effective or upon incapacity

Advance Health Care Directive

- Sometimes referred to as a Living Will
- State what actions you want taken on your behalf if you are unable to make your own decisions
 - End of life decisions
 - Pain Management
- Appoint person to exact wishes and to make decisions where your instructions were not provided
 - Organ donation
 - Disposition of remains
 - Funeral arrangements
- Effective immediately or upon incapacity
- Nominate Conservator of Person

HIPAA Authorization

- Works in conjunction with Advance Health Care Directive
- Authorizes release of health information and medical records to Agent

Questions

- Why both a Will and Trust?
 - Will
 - effective upon death
 - assets remain in your name and you state to whom you want your assets to go when you pass away
 - Probate is still necessary if the assets are valued over \$150,000
 - Trust
 - Effective upon execution and funding
 - create an entity that holds title to your assets while you are living
 - generally avoid Probate

Questions

- Any circumstances in which probate would still be required?
 - Yes. If:
 - Trust not funded.
 - Particular asset valued at over \$150,000 not titled in the name of your Trust and not assigned to your Trust.
 - Life insurance policy that names Estate as beneficiary or fails to name one.
 - Certain tools to still get asset into Trust if can prove Trustor's intent



Questions

- Do assets automatically fall within a trust although not specifically listed?
 - No. Trust must be funded with assets.
 - Real property – Trust Transfer Deed
 - Accounts – title them in Trust, ex. XXXXX, Trustee of XXXXX Trust dated August 21, 2016

Peta-Gay Gordon, Esq.

Oldman, Cooley, Sallus, Birnberg & Coleman, L.L.P.

16133 Ventura Blvd., PH

Encino, CA 91436

818-986-8080

pgordon@ocslaw.com