

THE FPMT NEWS

"... useful information for clients and prospective clients."

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Estate Planning a Must

Where There's a Will There's a Way: Is Your Estate in Order?

You have worked all your life to accumulate assets for you and your family. When you die, you do not want unintended heirs or Uncle Sam to benefit at the expense of your loved ones. An estate plan can defeat claims by unintended heirs, minimize costly estate taxes, and prevent needless confusion when you die or are seriously ill. Estate Planning coordinates applicable laws with your own desires.

Will or Living Trust

Your estate comprises of all of the property and assets you own at your death. This includes all land, bank accounts, cars, houses, and items of sentimental or financial value. A Will, which only becomes effective at your death, is a legal document that disposes of your assets when you die. A typical Will appoints the executor of your estate, names your beneficiaries, and designates the guardian for your minor children.

Another legal document that distributes your assets is a revocable trust or "living trust." A living trust holds legal title to property, which is managed by a trustee for your benefit or for the benefit of the people you choose. The trustee can be you or someone else. A living trust, unlike a Will, may be effective during your life-time and may be cancelled when you wish to regain control of your property. Whether a Will or living trust is best for you depends on various factors, such as the size of your estate, ownership of out-of-state property, and your need for privacy.

You do not have to be rich to have an "estate" or to have a Will or living trust. In fact, every person reading this newsletter should have either a Will or

living trust in place. Should you die without one, State law provides inflexible rules to govern distribution of your property. In other words, your property may be distributed in a way you would not want. Moreover, in some cases, a costly court proceeding occurs. Your loved ones can be spared this hassle and expense when you have a Will or living trust.

Durable Power of Attorney

Today it is just as important to plan for incapacity as it is to plan for your death. Thanks to advances in modern medicine, people are living longer. However, as we all know, the benefits of living longer comes with certain costs, namely, the quality of life. A significant portion of our aging population finds it difficult to manage financial affairs effectively or to make wholesome health care decisions.

If you become "incompetent," it might become necessary for a relative, friend, or government entity to go to court for the appointment of a guardian to manage your affairs. The court will conduct a public hearing to determine your competence. Psychological or psychiatric evaluations will probably be required. To avoid this embarrassing and costly legal procedure, one should plan for possible infirmities that may strike in the future.

You can take steps now to ensure trusted family members of your choosing control your financial and health care decisions when you are no longer able to do so. A way to avoid the court's intervention into your financial affairs is to have a properly drafted and validly executed durable power of attorney. A power of attorney is a document that authorizes another to act as your agent or "attorney" in fact. This document

permits that person to act on your behalf in various situations. A durable power of attorney remains in effect when you become disabled or incapacitated.

Advanced Health Care Directive

In addition to having a financial durable power of attorney, you may also designate a person to make important health care decisions for you. Making your wishes known needs to be in writing, usually in the form of a durable power of attorney for health care and a living will or an advanced medical directive. Among other things, these documents can spell out your desires about life-sustaining procedures. These documents can relieve your family of the burden of trying to guess your desires. They provide a place to clearly state your intent and a greater assurance that your preferences will be honored.

Taxes

A common question is whether you have a "taxable" estate. The answer depends on the value of your property when you die, to whom you leave your property, and the applicable exemption (or unified credit). With the passage in 2001 of the Economic Growth and Tax Relief Act (EGTRRA), the year you die is also important. Under EGTRRA, until 2010 the present exemption of \$1,000,000 rises gradually to \$3,500,000 while the top federal estate tax rate declines from the present 49% to 45%. In 2010, under present law, there will be no federal estate tax. BUT, in 2011, we go back to an exemption of \$1,000,000 and the top estate tax rate of 55%. Many observers expect Congress to make changes in EGTRRA before 2009. The law

was passed when it was thought flush economic times would continue unabated. Reality, however, may soon set in.

The down side of EGTRRA is the "decoupling" of state inheritance taxes to the federal exemption. For example, while the federal exemption rises, the New Jersey State exemption remains frozen at \$675,000. Thus for New Jersey residents, accounting for the State Inheritance Tax in your estate plan is more important than before. Therefore, it is important to consult your estate planner to confirm that your documents are properly drafted to meet your desired tax consequence.

Conclusion

Drafting an estate plan is a very personal process. Most families need help to implement a family estate plan and to have it reviewed for compliance with applicable laws. If you already have an estate plan, your plan may need an update to account for changes in your life such as a change in marital status, the birth or adoption of a child, or a substantial change in your financial situation. Anticipated changes in the laws will also require a review.

For more information or to learn about our law firm's services and experience, our telephone number is (201) 569-5959.

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