

Legal Bits

a publication
for the business-
minded

Electronic Edition

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Understanding Estate Planning

Through proper estate planning, we can continue to care and provide for our loved ones long after the end of our own lives. This newsletter addresses some general terms and issues to assist with estate planning

I. Why Estate Planning?

Estate planning is appropriate for those who desire to:

- Designate the recipients of specific or general assets;
- Avoid paying estate taxes;
- Appoint someone to look after children and other dependents;
- Appoint someone to oversee investments or business interests; or
- Instruct others concerning life-sustaining healthcare decisions.

In other words, everyone should engage in some form of estate planning. In addition, estate planning documents should be reviewed every few years to account for changes in both circumstances and intentions.

II. Key Concepts

The Estate. What is an estate? A person's estate is the collection of all assets that the person, at the time of death, had a right to pass along to others. Estate assets can include property such as cash, certificates of deposit, stocks, bonds, mutual funds,

business ownership interests, real estate, insurance policies and proceeds, retirement benefits, vehicles, and personal property. An estate may be liable for debts and obligations owed to others. Estates may also be taxed.

Wills. A will is a document that describes how to distribute estate assets upon a person's death. Oregon law requires that wills are written and signed by the maker of the will in the presence of at least two witnesses. The witnesses must also sign the will.

Intestacy. A person who dies without a will is described as having died intestate. When this occurs, estate assets are disbursed according to Oregon's laws of intestate succession. Those laws attempt to predict how the deceased person would have wanted to give away estate assets upon the person's death. A single rigid formula is used to determine who receives estate assets through intestate succession. Typically, estate assets go to the deceased person's surviving spouse, children, parents, siblings, or other close relatives, in that order. If no close relative is alive to collect the estate assets, those assets will be taken by the state.

Frequently, people do not make a conscious choice to have assets distributed according to intestate succession. Rather, when a person dies intestate, it is typically due to procrastination, an improperly drafted will, or lack of knowledge about estate planning. The major problems with intestate succession are its inflexibility and failure to distribute estate assets according to the true wishes of the deceased.

Probate. The legal process that courts use to distribute estate assets and resolve disputes over those assets is known as probate. The probate process includes proving the validity of any will, providing for payment of estate taxes and expenses, resolving claims against the estate, and distributing assets to creditors, heirs, and beneficiaries. If a will exists, the probate court will follow the legal instructions contained in the will. Without a will, probate issues will be resolved using the default rules of intestate succession established by Oregon law.

Trusts. Trusts are legal devices used to hold, manage, and distribute assets. A basic trust has one or more trustors, trustees, and beneficiaries. The trustor creates the trust. The trustee administers the trust. Beneficiaries receive the assets or income from the trust. The rules for the operation of the trust are determined by the trustor in a written trust document.

Trusts may be revocable or irrevocable. A revocable trust is often called a "living trust" or "inter vivos trust" because the trust may be revoked at any time while the trustor is alive and competent. By contrast, a trustor may not revoke or indiscriminately remove assets from an irrevocable trust. Choosing to make a trust revocable or irrevocable depends

upon the purpose of the trust and could have significant tax consequences. An attorney should be consulted to determine the most suitable type of trust.

A common reason for using a trust is to avoid probate. Trust assets are generally not subject to probate because the trust, not the trustor, owns the trust assets. Upon the trustor's death, the trustee may instantly transfer trust assets to beneficiaries. This avoids the delay in distribution and legal fees associated with probate. However, a trust is typically more expensive to create than a simple will.

III. Estate Taxes

Estate Taxes. Estate planning usually involves structuring the estate so as to minimize and even avoid estate taxes. Due to recent changes in both federal and state estate taxes, one should consult with an attorney that is abreast of current estate tax law. Please contact this office for such assistance.