THE FARRELL LAW GROUP, P.C.

IS READY TO ASSIST YOU IN CREATING AND IMPLEMENTING YOUR ESTATE PLAN

Almost everyone thinks about putting together an estate plan to properly protect themselves, and their family, or at least getting a will. Unfortunately, too many people (you?) fail to contact their financial advisor and/or attorney in order to actually move the process forward and, finally, to **sign the necessary documents** to implement the estate plan agreed upon. Putting this process off invariably leads to significant and unnecessary problems being encountered by family members later.

Although each person's, and family's, case is unique, and a one-on-one consultation with your financial advisor and/or attorney, is necessary, the following information, in an easy to read Q & A format, is intended to provide you with answers to what we have found to be some of the most frequently asked questions concerning estate planning. By taking just a few minutes now to read this material, and then beginning the planning process by making an appointment with your financial advisor and/or your attorney, you will save time, aggravation and money (possibly a lot) in the future.

1. What is estate planning?

The entire concept of "estate planning" includes the accumulation, preservation, management and distribution of assets. Its primary purpose is to determine and accomplish your personal and family goals, to provide for the best management of your estate, and to minimize, or at least to reduce, taxes and estate administration fees.

2. What "tools" can be used to implement my estate plan?

There are many "tools" that can be used to implement an appropriate estate plan for each family's situation. The most important is usually your will. Other "tools" include powers of attorney, trusts, gifts, life insurance, and family limited partnerships. Several of these "tools" are discussed at greater length below.

3. How is my property transferred if I die without a will?

Dying without a will is called **"dying intestate."** If you die intestate North Carolina law (or the law of the state in which you reside if other than North Carolina) prescribes who will get the assets of your estate. You therefore give up your right to decide how you want your property distributed. This type of "intestate distribution" required by the law can become very complex and, almost always, results in assets passing in a way that you would not want to have occur. The problems of intestate distribution also increase substantially for estates with higher values. Do not let this happen to you.

4. What is property held in a joint tenancy with right of survivorship?

If property is held in joint tenancy with right of survivorship, by two or more people, when one of the owners dies all of his or her interest in the property is transferred immediately to the surviving owners. Unfortunately, many people believe that joint tenancy with right of survivorship can act as a substitute for a will, or estate plan. That is not true. Although joint tenancy with right of survivorship may be a "short term" way to avoid the need for a will for some assets, it can end up costing you, and your loved ones, many times the expense and headaches you thought you were avoiding.

5. What is a trust?

A trust is really nothing more than **a "receptacle"** where assets are placed to be cared for by a named trustee, which may be either a person, or a company. The management of the assets while held by the trust, and the distribution of the assets while the trust exists, are prescribed in the trust document. *Example:* Compare a trust to an empty soup can without a label having instructions. You pour what you want to be held and managed by the trustee (the assets) into the can, and you write the instructions and place them on the can. The trustee you name then holds the assets in the can, and "pours them out", per your instructions of the trust/can". As discussed further below, trusts represent one of the most significant "tools" for financial and estate planning.

6. How large can an estate be without paying federal estate taxes?

First, any amount passing from an estate to a surviving spouse passes without federal estate tax. Also, estates of less than $5,000,000 passing to other than a surviving spouse are exempt from federal estate taxes. For married couples the total exempt amount is $10,000,000. If any portion of the exemption is unused by the estate of the first spouse to die, the remainder of the exemption passes to the surviving spouse for use against the estate of the second to die. In effect, a total estate of $10,000,000 [husband and wife combined] may pass free of federal estate taxes. To the extent an estate is greater than the exempt amount, federal estate tax applies.

7. How can powers of attorney be used as part of an estate plan?

A power of attorney is a legal document authorizing someone else to act on your behalf when you cannot act for yourself. There are various types of powers of attorney.

One type of power of attorney, known as a **"durable power of attorney"** can provide to another person wide ranging powers could essentially allow the person appointed to act in

any way that you would be able to act. This type of power of attorney is especially valuable if you become incapacitated, or otherwise unable to control your own affairs.

Another power of attorney is **a "healthcare power of attorney."** By this document you authorize the designated individual to make healthcare decisions if the person granting the power is unable to do so.

Both types of powers of attorney are integral parts of any estate plan.

8. What is a "declaration of a desire for a natural death", or "living will"?

A declaration of a desire for a natural death states the directive not to be kept alive by life support. Such a document is often, but not always, part of a typical estate plan. Less often used is a **"do not resuscitate" ("DNR")** directive, sometimes desired by persons who are terminally ill.

9. What is a "living trust?"

A trust created under someone's will is known as a "testamentary trust." In comparison, **"living trusts"** are trusts that are set up *during your lifetime*. "Living trusts" can fill many purposes, and are an invaluable estate planning tool under the appropriate circumstances. Some of the most important types of "living trusts" are discussed below.

10. What is a "revocable living trust," and how can it be part of an estate plan?

A **"revocable" trust** is one that you can change, or end, during your lifetime if you wish. Assets can be added to or removed from the trust. In the appropriate circumstances a revocable living trust can be a primary estate planning tool. It typically includes provisions directing how the property held by the trust is to be managed while you are alive, and how it is to be managed and/or distributed when you die. However, such trusts are not appropriate for everyone.

Individual circumstances should be reviewed with a professional to determine whether or not a revocable living trust is appropriate for you. However, such trusts can significantly reduce probate fees and estate administration complexities, and preserve privacy.

You will still have control over the property you place into the revocable living trust while you are alive, and you will generally, but not always, act as the trustee, naming a "successor" trustee only if you become unable to act as trustee, or to act as the trustee after you die. Since the trust may be revoked, and the assets therefore remain under your control, neither income nor estate taxes are generally reduced nor eliminated by implementing a living trust.

The trust is "funded" when you transfer a portion of your (and possibly your spouse's) assets into the trust, to be owned and administered by the trust. This includes virtually any type of asset. In the appropriate circumstances, revocable living trusts can provide significant benefits. These include: passing the assets held by the trust outside of probate proceedings, and thereby avoiding probate costs and administrative burdens; ensuring the proper management of the assets in the case of the incapacity of those establishing the trust; ensuring the privacy of your financial and personal affairs; and other benefits depending upon the nature of the assets placed into the trust and the value of the estate. Finally, not only can the terms of the trust be altered as you wish, and as circumstances may require, but the entire trust itself can be revoked if you wish in the future.

11. How can an "irrevocable life insurance trust" be part of an estate plan?

An "irrevocable trust" is one that cannot be changed or revoked after you set it up. It is often used to receive, manage, and distribute life insurance proceeds. The proceeds payable under an insurance policy owned by you on the date of your death may be includable in your estate and can considerably increase your federal estate tax burden. Even if the life insurance proceeds are

free from tax the proceeds from life insurance can still "bulk-up" in the surviving spouse's estate, possibly resulting in substantially increased taxes later. By creating an "irrevocable life insurance trust" this problem can be eliminated.

As with any other trust, an irrevocable life insurance trust is a written document. The trust owns the life insurance policy on your life, and receives the necessary funds to allow it pay the premiums as they come due. Upon your death, the life insurance proceeds are collected by the trust, and those proceeds are then managed and distributed in accordance with what the provisions of the trust document. There are various legal requirements that must be followed when implementing an irrevocable life insurance trust. Your personal financial advisor and/or attorney can ensure that you follow those requirements. By creating an irrevocable life insurance trust substantial estate tax savings can be realized.

As a final comment, the use of irrevocable life insurance trusts has become less prevalent after the federal estate tax exemption increased to $5 million, and, essentially, $10 million for married couples.

12. Considering all of these "tools" that are available, what should a "basic" estate plan consist of?

In the case of a married couple, if the value of the total estate is under the federal exemption of $10,000,000 it is likely that an appropriate estate plan can be implemented using **wills for both the husband and wife**, naming an initial and alternate **guardian if there are minor children**. If appropriate, a **revocable trust** can be used to which assets will pass, and then be held and distributed according to the trust. Alternatively, appropriate trusts can be created in the will into which the estate assets will be placed to be administered for the benefit of any minor children, or other individual(s), until they reach a specified age if both parents die. The will also will name an initial and alternate executor. As noted, consideration of a revocable trust should also be part of the planning process.

The plan should also consist of a **durable power of attorney,** and a **health care power of attorney**. Finally, if there are substantial amounts of life insurance that could impact upon the taxability of the estate, an **irrevocable life insurance trust** should be considered.

Every person's estate plan is unique. The plan that is eventually created depends not only on the value of the assets, but the character of the assets, and, most of all, the desires of the people for whom the plan is created. Developing a proper plan is therefore certainly not merely a mathematical exercise. While reducing the tax impact on an estate can be an important consideration, especially for large estates, it is ultimately the desires of those creating the plan that must control. The plan will also depend upon the age(s) of those involved in or impacted by the plan.

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We hope this information helps you. It is important to understand that you need the assistance of professionals who are knowledgeable in the field of estate planning in order to make the decisions that are necessary to create an estate plan that is appropriate to your needs, and to your desires, and to implement the plan agreed upon by the use of the proper documents. If we can be of further assistance to you, please contact us by phone or e-mail at your convenience to schedule a conference.

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