ESTATE PLANNING

ESTATE PLANNING CONCEPTS AND CONSIDERATIONS

Joel D. Cavanaugh
Joel D. Cavanaugh, LLC
388 S. Main Street, Suite 402
Akron, Ohio 44311
Phone: 330-253-2227
joel@neolaw.biz

INTRODUCTION

- Proper estate planning gives you control over important financial and personal decisions. It can help you and your family to preserve your legacy and accomplish goals even after you pass away.
- Contrary to common belief, everyone needs estate planning. Whether you are working or retired, single or married, wealthy or not, you will see that careful estate planning can benefit you!
- The tax law changes that apply to estate planning have caused many people to develop an effective estate planning strategy and others to re-evaluate and update their plan.

INTRODUCTION

Today, we will cover the following topics:

- Objectives of estate planning
- Planning for incapacity
- Taxes
- Wills
- Probate
- Gifting assets
- Joint ownership of property
- Direct transfer assets
- Trusts
- Benefits of trusts
- Types of trusts

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Estate planning is a process that provides control over personal matters and assets during your lifetime as well as after you pass away. Without proper planning, not only do you lose control over important decisions, but the administration of your estate can become complicated and expensive.

Objectives of Estate Planning While Alive:

- Document your intentions
- Transfer assets to the people or trusts that you choose
- Appoint a guardian to care for children (if incapacitated)
- Appoint a person to make medical decisions for you (if incapacitated)
- Appoint a person to make financial decisions for you (if incapacitated)
- Provide peace of mind

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Objectives of Estate Planning After Death:

- ❑ Appoint a guardian to care for children
- ❑ Distribute your assets when, how and to whom you choose
- ❑ Provide charitable gifts to organizations
- ❑ Minimize potential expenses and taxes
- ❑ Avoid legal and financial complications as well as family disputes
- ❑ Eliminate delays
- ❑ Transfer business interests according to succession plan

INCAPACITY PLANNING

In many cases, if you become unable to make decisions for yourself and have not prepared the documents listed below, decisions will be made for you by law or by a person appointed by the court. After creating the following documents, you should discuss these decisions with your family, other named persons and provide medically-related documents to your primary care physician:

- ❑ Durable General Power of Attorney
- ❑ Health Care Power of Attorney
- ❑ Living Will
- ❑ Last Will and Testament

INCAPACITY PLANNING

DURABLE GENERAL POWER OF ATTORNEY:

A durable power of attorney is a legal document in which you (the principal) are appointing the person or persons (attorney-in-fact) that you want to make financial decisions for you. In this document, you must specify the powers being granted and when the document becomes effective. This document should be created by an attorney and customized to meet your needs.

INCAPACITY PLANNING

HEALTH CARE POWER OF ATTORNEY:

Also referred to as an Advance Health Care Directive or Medical Power of Attorney, this document appoints a person (health care agent) to make health care decisions for you if you are unable to do so. This document also serves as directions for the appointed person or to limit your health care agent’s power.

INCAPACITY PLANNING

LIVING WILL:

A living will specifically documents your wishes about being kept alive in case of terminal illness or persistent unconsciousness. A living will is also known as an Advance Health Care Directive.

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LAST WILL AND TESTAMENT:

Your Last Will and Testament allows you to control how and to whom *probate* property is passed, as well as allowing you to appoint a representative to carry out the wishes stated in your Will.

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Dying Without a Will

Dying without a will is referred to as dying “intestate.” In this case, once certain assets are transferred directly, a probate judge will distribute your remaining assets according to intestate succession laws of your state of residence.

Disadvantages of Dying Without a Will

You lose control over personal decisions:

- ❑ A person or entity will be appointed to administer your estate
- ❑ A guardian will be appointed for any minor children
- ❑ Property may be distributed to unintended beneficiaries pursuant to State statute

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Dying Without a Will

Disadvantages of Dying Without a Will Continued:

You lose control over when, how and to whom assets are distributed:

- All children are treated equally, regardless of their needs or your wishes
- If minor children inherit assets, the court will appoint a conservator to manage assets until children receive them upon reaching age of 18
- Distant relatives may receive assets which you intended to leave to friends or charities
- Depending upon state law, all assets may pass to your spouse and none to your children from a previous marriage
- Depending upon state law, no assets may be provided to the survivor of an unmarried couple

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Dying Without a Will

Disadvantages of Dying Without a Will Continued:

You lose control over the expense and time frame of estate distributions:

Your estate may incur taxes and expenses that could have been avoided

Your estate may experience delays and a shortage of liquid assets to pay estate taxes (due within 9 months of death)

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LAST WILL AND TESTAMENT

A will is an important legal document. In your will, you (the testator or testatrix) should provide instructions for the distribution of your estate upon your death and appoint a person (executor, executrix or personal representative) to administer your estate.

Advantages of a Will:

- You select the person or entity (executor or personal representative) you want to carry out the terms of your will
- You indicate the persons or organizations (beneficiaries) that should receive your assets

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LAST WILL AND TESTAMENT

Advantages of a Will Continued:

- You provide any limitations pertaining to when and how assets will be distributed
- You select a guardian for any minor children
- You specify assets that are to be transferred into trusts upon your death
- You guarantee your estate will be submitted for probate and the administration of your estate will be supervised by the court

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LAST WILL AND TESTAMENT

When it May be Time to Revisit Your Will:

- The death of a beneficiary or executor
- The birth of a child
- Children reaching age 18
- Marriage or divorce
- A change in your wealth
- A move to a different state
- New legislation
- A change of mind about your executor or a beneficiary.

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A Will May Not Be Enough

Disadvantages of a Will-Only Estate Plan

- Your will is subject to probate (and associated costs) to determine if your will is valid
- Your will can be challenged and creditors can make claims on your estate
- All information about your assets will become available to the public
- Your assets will not be available to your heirs until your estate is approved by probate court (usually takes 6 months to over 2 years)

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

PROBATE PROPERTY:

- Property/Assets that are in your individual name, alone with no joint-owners and no stated beneficiaries

NON-PROBATE PROPERTY:

- Conversely, property/assets that are jointly owned with rights of survivorship or to which there are stated beneficiaries

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Advantages of Probate:

- Provides a consistent legal process for people who die without a will
- Determines the validity of your will and interprets its intent
- Provides court supervision to ensure your executor is acting according to your will
- Generally limits the time in which the will can be challenged and creditors can make claims on the estate
- Pays debts and taxes, settles disputes and transfers legal title
- It does not influence any assets transferred by other methods

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Disadvantages of Probate:

- Probate related fees and expenses usually average between 3% and 8% of the value of the probated estate
- Assets subject to probate may not be available to beneficiaries or heirs during the probate period (which usually lasts from 6 months to over 2 years)
- All information about your assets will become available to the public

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate

Due to time, expense and publicity, many people seek to have as many assets as possible transferred outside of probate. As you will see, the strategies you use to avoid probate can make a big difference in accomplishing your estate planning objectives.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Lifetime Gifting

Advantages to Lifetime Gifting:

- Opportunity to experience the recipient enjoying your gift
- Reduce the size of your estate (and estate taxes)
- Gift taxes are only owed on gifts that exceed both the annual limit and the lifetime gift tax exclusion

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Lifetime Gifting

Disadvantages to Lifetime Gifting:

- ❑ Loss of potential price appreciation of gifted asset (potential capital gains issue for beneficiary)
- ❑ Loss of income from gifted asset
- ❑ Loss of control of how or when the gifted asset will be used

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

Two or more people often hold joint ownership of property. Property may include real estate, a business, bank accounts, stock, etc. There are different types of joint ownership, some avoid probate and others do not.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

Joint Tenancy with Rights of Survivorship

Although this type of ownership avoids probate, there are disadvantages. When two or more people own property as joint tenants, the deceased’s ownership interest in the property is automatically inherited by the other owner(s) regardless of instructions in the deceased’s will or living trust. Characteristics of joint tenancy are listed on the next slide.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

Joint Tenancy with Rights of Survivorship - While alive:

- Tax and estate planning ability is limited
- Other owners have access to the jointly owned asset
- Property may be subject to claims of other owners' creditors
- Potential gift tax liability

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

Joint Tenancy with Rights of Survivorship – After Death:

- ❑ Property avoids probate until the death of the survivor
- ❑ Cannot place restrictions on survivors
- ❑ May unintentionally disinherit heirs
- ❑ No protection from potential estate taxes

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

Tenants in Common

When two or more people own property as tenants in common, the deceased's ownership *is not* automatically inherited by the other owners. Rather, *it is* included in the deceased's estate and distributed accordingly.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Joint Ownership

OHIO IS NOT A COMMUNITY PROPERTY STATE!

Community Property

When living in one of nine community property states, property that is acquired by either spouse or both spouses during marriage is presumed to be community property unless acquired as separate property by gift or inheritance. The deceased spouse's 50% interest in community property is included in his/her estate and distributed accordingly. If held as community property, the deceased spouse's community property interest gets a step-up in basis to date of death value and the surviving spouse's community interest also gets an equal step-up.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Direct Transfer Assets

Beneficiary Designations

Certain types of assets enable you to name a beneficiary. Since the beneficiary will automatically receive the asset upon your death, the asset will avoid probate. It is important to periodically review any beneficiary designations. You may name a beneficiary for assets such as:

- Insurance policies
- Annuities
- IRA and Roth IRA accounts
- 401(k)s1 and other types of retirement plans

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Direct Transfer Assets

Payable on Death Accounts

A payable on death registration allows the ownership of certain assets to pass automatically to the person you name without the risks of joint ownership. The transfer of these assets avoids probate. The following types of assets may be transferred by payable on death registration:

- ❑ Bank accounts
- ❑ Certificates of deposit
- ❑ Mutual fund accounts
- ❑ Brokerage accounts

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Direct Transfer Assets

Direct Transfer Asset Characteristics:

- Direct transfer does avoid probate
- Not available for all types of assets
- Problems may occur if minors or people who are incapacitated are named

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

A trust is a legal entity that can be created to hold title to assets as well as manage and distribute them according to specific terms and conditions.

Simpler: A trust is a legal agreement between a Grantor and Trustee, where the Grantor agrees to transfer property to the Trustee to hold under the terms of the agreement; the agreement tells the Trustee when, how and to whom distributions of property should be made.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

Definitions

- The Grantor – Also known as the Trustor or Settlor, this party creates the trust, names the trustees, beneficiaries and transfers assets or property to the trust.
- The Trustee – One or more parties who hold title to trust assets and administer the trust according to specified terms and conditions for the benefit of one or more parties.
- Beneficiaries – One or more parties that receive the benefits of the trust, such as income or assets, according to the terms of the trust.
- Trust Agreement – A written, legal document created by the grantor that specifies the parties and terms of a trust.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

Types of Trusts

- Testamentary Trusts - Testamentary trusts are created by your will and are funded by your estate. These types of trusts are administered by the trustee(s) who you name in your will. Since they do not become active until you pass away, you may own and manage assets during your lifetime.
- Living Trusts - Living trusts, also referred to as "inter vivo trusts," are set up and take effect while you are still living. You may serve as the trustee or you may name someone else. When designed properly, trust assets may be distributed directly or be held for the benefit of the trusts beneficiaries upon your death and avoid probate. Living trusts are designed to be either revocable or irrevocable.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

Types of Trusts

- Revocable Trusts - Revocable trusts allow the grantor to revoke the trust or modify its terms. Assets can be transferred in or out of the trust without annual limitations. Assets in a revocable trust are taxed as part of your estate. The grantor may also serve as the trustee and the beneficiary during their lifetime.
- Irrevocable Trusts - As its name implies, once an irrevocable trust is created, it cannot be revoked or modified by the grantor. By using an irrevocable trust, the grantor surrenders control of the trust and its assets. Irrevocable trusts are often used to minimize or avoid income and potential estate taxes. Common types of irrevocable trusts include irrevocable life insurance trusts and charitable remainder trusts.

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

Benefits of Trusts

- Avoid probate (and associated expenses) and publicity
- Isolate and transfer assets, even if your will is contested
- Distribute indivisible property among beneficiaries or equalize inheritances
- Simplify the distribution of certain assets such as property you own in a different state

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts

Benefits of Trusts Continued

- Protect assets from claims of creditors or lawsuits
- Manage assets for a beneficiary who is unable to handle financial responsibility
- Delay the transfer of ownership or possession of assets until a certain time or event
- Transfer the responsibility of managing assets or to plan for the possibility of incapacity
- Minimize or avoid income, gift, and potential estate taxes

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts - Revocable Living Trusts

Revocable living trusts are often used to avoid probate while maintaining flexibility and control over assets during the lifetime of the grantor. Key features of revocable living trusts are listed below:

- ❑ Can make changes to terms, trustee and beneficiaries (in case of legislative changes or change of mind)
- ❑ Avoid probate and publicity
- ❑ Do not save income or potential estate taxes and are not protected from grantor's creditors
- ❑ May contain provisions designed to save potential estate taxes for married couples

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PROBATE PROPERTY V. NON-PROBATE PROPERTY

Avoiding Probate – Trusts - Revocable Living Trusts

- At death, trust assets may be distributed to beneficiaries designated in the trust (according to the specified time frame), or may be held in further trust for their benefit
- May be used to hold assets in multiple states (and avoid multiple probates)
- May reduce the risk of your will being contested – Can provide penalties for contesting validity of will and/or trust
- Assets should be transferred and owned in the name of the trust (including transferring title and obtaining a revised deed for real estate)
- A "pour over" will serve to transfer any assets outside your trust into your trust upon your death

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BOTTOM LINE

Advantages of Completing your Estate Plan:

- During lifetime, you plan for incapacity and provide easier, more cost-effective ways for loved ones to care for you and help you with financial and medical needs
- You control who makes decisions for you, to whom assets are distributed, and how and when assets are distributed
- You control who cares for minor children and how and when assets are distributed to minor children

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Thank you for your time! Questions??

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