

ESTATE PLANNING BASICS

prepared by Attorney Mark H. T. Fuhrman

Bell, Gierhart & Moore, S.C.

44 E. Mifflin St.

P.O. Box 1807

Madison, Wisconsin 53701-1807

(608) 257-3764

mfuhrman@bgmlaw.com

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*prepared by Attorney Mark H.T. Fuhrman
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I. INTRODUCTION

The purpose of this outline is to provide clients or potential clients with a basic understanding of the estate planning process. I have found that the estate planning process is much more efficient and, therefore, less expensive, when clients start the process with a bit of knowledge under their belts. Otherwise, a fair amount of time is spent explaining concepts to make sure informed decisions are made. So, if you think you may do some estate planning or are looking to update your plan, I strongly encourage you to read this outline once or twice before we meet or have our initial telephone conference.

II. BASIC ESTATE PLANNING CONCEPTS

A. What is Estate Planning? "Estate Planning" is the process which seeks to maximize the benefits offered in applicable areas of law (such as probate, wills, trusts, taxes, property, insurance, contract law, etc.), while at the same time meeting your wishes for the management of your property and health care decisions during life and the management and disposition of your property upon and after death.

B. What is a Will? A will is a written document in which you indicate how and to whom your "*probate property*" is to be left upon death. Wills may be changed or revoked during life as long as you are mentally competent. Upon death, your will becomes irrevocable (meaning it cannot be changed or revoked).

C. What is "Probate Property"? Most people don't realize that a will only determines who receives their "probate property." In general, probate property includes all of your property, with two major exceptions:

1. Jointly owned property with rights of survivorship. Probate property does not include property that you own jointly with another with rights of survivorship (or as survivorship marital property). So, for example, if you and another jointly hold title to a

piece of real estate, and one of you dies, the deceased owner's interest in the real estate passes to the surviving owner, regardless of what the deceased owner's will may say.

2. Contractual Assets. Probate property does not include property that is disposed of at your passing according to a contractual beneficiary designation. Examples of such "contractual assets" include life insurance policies, annuities, IRA's, 401(k)'s, pensions, payable-on-death (POD) accounts, etc. Upon death, your contractual assets are left to whomever you have named as a beneficiary, regardless of what your will may say about the asset. However, a contractual asset can be converted into a probate asset if you name your "estate" or a trust in your will (see testamentary trust discussion below), for example, as the beneficiary, thereby allowing the terms of your will to determine where the asset goes. But, extreme caution should be used in making such conversions, because significant negative tax results can occur if your will is not properly structured to accept certain contractual assets (especially retirement assets). Therefore, do not make any such conversions before consulting with your estate planning attorney or other qualified professional.

D. What Does It Mean To Probate An Estate? Upon death, the deceased's estate must be probated if he/she had probate property in his/her estate (in this context, "estate" refers to all property owned at death). The person that probates your estate is called the "personal representative" (also known as the "executor"). For estates with few probate assets, the process of probate can be relatively simple and inexpensive. For larger estates, probate can take a long time and involve large legal, accounting, and personal representative ("PR") fees.

1. The probate process. In very general terms, the process begins with the delivery of your will to the probate court, typically by your PR or his/her lawyer. This is usually accompanied by a petition to the court requesting that the estate be probated and that the personal representative be formally approved. If there is no will, then a spouse or other family member typically steps forward and files the petition requesting that the estate be probated and that they be appointed. Various other documents must also be prepared and filed. Notice is given to all "interested parties" (generally, those who would take if you died without a will – see discussion below) and a hearing is set to determine if anyone objects or contests the will. Assuming there is no will contest (will contests are rare), notice to creditors is published in the paper and creditors have several months to file a claim against the estate. The PR also files or exhibits to the probate court an inventory of your probate assets. Assets are gathered and an estate checking account is typically opened. Final tax returns are filed (such as income, fiduciary, and estate tax returns). Creditors are paid off

and/or claims are settled. Property may need to be sold to pay claims or facilitate transfer. Once all this is done, the personal representative then distributes the assets to the heirs in accordance with the terms of your will. The personal representative then gets receipts from the heirs and files them with the court along with a request to close the estate, a final accounting, and any necessary documents showing that all taxes have been paid. The court reviews the estate and if it is satisfied that the process is complete, it will close the estate and discharge the PR. Statutes give the PR 18 months to complete the process. In our experience, probate typically takes between 6 - 12 months.

E. What Happens If You Die Without A Will? If you die without a will, your state legislature has been kind enough to prepare a set of rules that determine this for you. They are known as the "rules of intestacy." They represent how the legislature believes most people would want to leave their probate assets upon death. Here is a general description of how your probate assets get distributed if you die without a will:

1. If your spouse survives you, it all goes to your spouse, unless you have issue ("issue" refers to lineal blood descendants, that is, a person's children, grandchildren, great grandchildren, etc.) from a different relationship.

2. If your spouse survives you and you have issue from a different relationship, then $\frac{1}{2}$ of your probate property goes to your surviving spouse and the other $\frac{1}{2}$ of the probate property goes to your issue.

3. If you have no surviving spouse, then all the probate property goes to your issue.

4. If you have no surviving spouse and no surviving issue, then all of the probate property goes to your surviving parents.

5. If you have no surviving spouse, surviving issue, or surviving parents, then all of the probate property goes to your surviving brothers and sisters and to the surviving issue of a deceased brother or sister (your nieces and nephews).

6. If you have no surviving spouse, surviving issue, surviving parents, or surviving issue of your parents, then your probate property gets divided into two equal shares, with one share going to your maternal grandparents and the other to your paternal

grandparents. If either set is deceased, then their share goes to their surviving issue (your aunts, uncles, etc.). If either set is deceased and survived by no issue, then their share goes to the other set of grandparents (or their issue).

7. If none of the above survives you, then your probate assets get distributed to the state, to be added to Wisconsin's school fund.

F. Trusts.

1. What is a "Trust"? You can think of a "trust" as a special type of account that can hold any type of property: real estate, cash, stocks, bonds, partnership and LLC interests, jewelry, furniture, equipment, vehicles, boats, cats, dogs, etc. While a trust can be created verbally, most trusts are set forth in a written trust document. All trusts have three players: (1) the person who creates the trust – referred to as the "grantor" or "settlor"; (2) the "trustee" who holds legal title to the trust's assets and has the fiduciary responsibility to manage the assets according to the terms of the trust; and (3) the "beneficiary" for and to whom the trustee is managing and distributing the trust assets.

2. What Types of Trusts Are There? There are many different types of trusts. However, we can generally divide them into two groups:

a. Testamentary Trusts. These are trusts that are set forth in your will. Because they are part of your will, they can be changed or revoked by you at any time as long as you are alive and competent. Upon death, they become irrevocable. Testamentary trusts remain as empty shells until the grantor dies. After death, assets then get placed in the trust according to the terms of your will and via other methods, such as naming the trust as the beneficiary of a contractual assets, such as life insurance.

b. Non-Testamentary Trusts. These are trusts you create during life in a document separate from your will. These trusts take many forms and are either revocable or irrevocable. Many revocable, non-testamentary trusts are commonly referred to as revocable "living trusts" (and are discussed in more detail below).

3. Subtrusts. When you start talking about trusts, it can get a bit confusing. One reason for this is because a written trust document can have another trust (a subtrust) drafted into it. For example, a living trust can also contain within it provisions that allow for the creation of other trusts under certain conditions. The same is true for testamentary trusts. For example, both testamentary trusts and living trusts can contain within them a subtrust for

a surviving spouse (at the first spouse's death, his/her assets are left to the surviving spouse in a new trust). And, to continue with the example, at the surviving spouse's death, the will or living trust can provide yet another subtrust for children or grandchildren.

G. Estate Taxes.

1. What is the Estate Tax? When a person dies, their property forms an estate. The government imposes an estate tax on the right to transfer that property from your estate. This is what is commonly referred to in the media as the "death tax."

2. What Property Is Subject to the Estate Tax? It's very important to realize that your estate, for estate tax purposes, includes the fair market date of death value of all property in which you had an interest at the time of death. This includes the value of life insurance proceeds on policies owned by you, pension and annuity proceeds (that don't terminate at death), real estate, cash, ownership interests in a closely held business, stocks, bonds, jewelry, cars, boats, etc. – basically, everything.

3. Are There Exemptions to the Estate Tax? Yes. While this outline does not cover them all, here are the main ones. Subject to a few exceptions, the federal government presently allows individuals to distribute up to \$2,000,000 from their estate, free of estate tax. Wisconsin law, however, only allows for transfers of up to \$675,000 before the Wisconsin estate tax kicks in. (Note, these exclusion amounts are reduced to the extent you make taxable lifetime gifts.) The tax can be very large. For example, under current law, and absent a marital deduction (discussed below), the approximate estate tax on a \$2,500,000 estate for someone dying in 2007 is \$230,000 at the federal level and \$138,800 at the state level (a total of \$368,800).

Another, and very significant exemption to the estate tax, is known as the unlimited marital deduction. You can leave an unlimited amount of property to your spouse, provided you leave it to him/her outright, with no strings attached (subject to a few exceptions). However, at the death of the surviving spouse, a federal and state estate tax will apply if the survivor's estate is over the applicable exemption amount (\$2.5 million and \$675,000, respectively).

4. Changes in the Estate Tax Laws. Presently, there is a great deal of legal uncertainty regarding estate taxes. At the federal level, the exemption amount went up to

\$2,000,000 in 2007 and will go up to \$3,500,000 in 2009. In 2010, the federal estate tax disappears. At the end of 2010, the exemption amount goes back down to its old level of \$1,000,000 unless Congress elects to make its repeal permanent.

To add to the uncertainty, Wisconsin's estate tax system is very likely to change in 2008, but we don't know yet if that change will affect the existence of the tax or the current exemption amount of \$675,000.

5. Ways to minimize the estate tax? There are several ways to minimize the estate tax.

a. Credit Shelter Trust. Perhaps the most efficient way to minimize the tax is through the use of a credit shelter trust. As with just about any other type of trust, this trust may exist as a subtrust in your will or revocable living trust. This technique is only available for married couples and must be set up while both spouses are alive and competent. The idea is that at the first spouse's death, part or all of the deceased spouse's property is placed into an irrevocable trust we call the "credit shelter trust" (sometimes referred to as a "bypass trust" or an "A-B Trust"). There is no estate tax as long as the amount put into the trust is less than the applicable state and federal exclusion amounts indicated above. The surviving spouse is typically named as the lifetime beneficiary, getting distributions of income and principal from the trustee. The assets not going into the credit shelter trust go to the surviving spouse outright or in a special trust (either way the assets avoid taxation because of the marital deduction). At the surviving spouse's death, the remaining assets in the credit shelter trust go to the named beneficiaries, free of estate tax. The estate tax is avoided because the survivor did not own the credit shelter assets, so they are outside of the survivor's estate. And, if the survivor's assets are less than the applicable exemption amount, then his/her assets get distributed free of estate taxes, too.

Because of all the uncertainty surrounding the estate tax laws, many married couples with current exposure use a credit shelter trust that is drafted to allow the surviving spouse to decide how much property goes into the trust, if any. This technique does carry some risk that the proper tax planning will not occur. But, it also offers great planning flexibility because the surviving spouse can survey the laws at the time of the first spouse's death, thereby making a more informed decision on the need to fund the trust.

b. Unmarried clients and married clients with very large estates. For unmarried clients and married clients who have estate tax exposure beyond what a credit

shelter trust can protect, the most common way to minimize estate taxes is through some form of lifetime gifting. Examples include outright annual gifts of \$12,000 per person per year (the 2007 annual exclusion amount); setting up limited family partnerships or family limited liability companies and gifting ownership interests; setting up charitable trusts; creating irrevocable life insurance trusts; etc.

III. COMMON ESTATE PLANNING TOOLS

A. Wills.

1. Some Advantages of Having a Will. Wills can be important for a variety of reasons, such as the following:

a. Avoid the rules of intestacy. You can decide who gets your probate property and how, thereby avoiding the application of the statutory default rules (discussed above).

b. Utilize a testamentary trust.

i. For children. Many people set up a testamentary trust for their children. The main reason for this arises out of a concern that parents don't want their children to receive their inheritance too early. For example, many people with children carry a significant amount of life insurance. Prior to developing an estate plan, most people have named their spouse as the primary beneficiary and their children as contingent beneficiaries. However, if both parents die, this means the life insurance proceeds (and all other assets) go directly to the children. If they are under 18, they go into a guardianship account and the children receive the assets at 18. Because of the great disincentive this can create to finish school or pursue a career, nearly all of our clients with young children change this result by setting up a trust for their children and naming the trust as the beneficiary of their probate and most non-probate assets, such as life insurance. The trustee distributes income and principal to or for your children's benefit according to the instructions you leave in your trust (such as for health, support, education, etc.). Then, at an age that you decide, the trust typically terminates and distributes the remaining assets to your children.

ii. Supplemental trust for disabled child or heir. Many people set up supplemental trusts for disabled children or heirs who are receiving state or federal subsidies, such as SSI. An outright inheritance often disqualifies the beneficiary for

government benefits. Such trusts can be very useful in supplementing the beneficiary's lifestyle while minimizing the risk that government benefits will be lost or that the government may take the assets as a form of reimbursement.

iii. For parents. Clients sometimes set up a trust for their parents. This can be useful because the trust property can be managed for the parents and distributed to them for whatever reasons you provide. Further, at the parent's death, the trust can indicate who gets the remaining assets. And, if applicable, the trust may be useful in supplementing the parent's lifestyle while not jeopardizing Medicaid benefits.

iv. Minimizing estate taxes. As discussed above, clients with larger estates often set up a special type of trust to minimize estate taxes (often referred to as a credit shelter trust or bypass trust or A-B trust).

v. Ensure children are not advertently or inadvertently disinherited. Whether your children are from your marriage or if you're married and have children from a prior relationship, if you leave all of your assets to your spouse, you run the risk that your spouse may change his or her estate plan in such a way that disinherits your children at the survivor's death. Typically, this is more of a risk for married clients with blended families, i.e., one or both spouses have children from a prior relationship. There are many ways to plan around this. For example, you can leave all or part of your assets in trust for your spouse for his or her lifetime during which time the spouse can get income and principal from the trust. The trust usually provides that at the surviving spouse's passing, the remaining assets are left to your children or among a group of beneficiaries from which the surviving spouse can choose. When disinheritance is a concern, the estate planning can get a bit complicated and time consuming and, therefore, more expensive. There are many planning options to choose from. Further, in some cases, such planning may warrant separate legal representation, which can further increase cost and planning time.

vi. Other reasons. There are a myriad of other reasons clients set up trusts in their will. They may want to set up a type of charitable trust, a trust to hold the stock of a family business, a special trust to care for their animals, etc.

c. Nominate a guardian for your children. The will is the only document in which you can tell the court who you want to raise your minor (under 18) children if there is no surviving parent. This person is known as a "guardian." There are two types: a

guardian of the estate (who manages the child's property) and a guardian of the person (who manages the child's health). Also, in some cases, such as a divorce that involved a parent with special problems, the will can be used to express a parent's views about whether it is in the best interest of their children to have the surviving parent act as guardian (there is no assurance the court will honor that request, but you can at least let your opinion be known). Finally, you can also use your will to tell the court that you want to exclude other non-parent relatives from acting as guardian.

d. Charitable Gifts. For those clients with charitable intent, the will can be very useful in leaving a gift to a favorite charitable organization.

e. Reduce the chance of unintended results in the event of multiple deaths. You can provide in your will that a beneficiary has to survive you for a certain period, such as 90 days, in order to take property under your will. Absent such a clause, an heir has to survive only 5 days after you to take under your will. This may result in unintended consequences.

f. Appoint your personal representative. Absent a designation in a will, the court will determine who will be named as your personal representative to probate your estate.

B. Revocable Living Trust.

1. What is a Revocable Living Trust? As mentioned earlier, this is a trust you create while alive that is outside of your will (that is, it is a separate document). The trust document is typically drafted to provide that you are the grantor, the trustee, and the beneficiary of the trust. After the trust is created, it is typically funded. "Funding" the trust involves transferring all of your probate assets (see definition above) into the trust.

If you are married, the trust is typically a joint trust where you and your spouse are both the grantors, trustees, and beneficiaries. Whether you are married or not, the trust typically allows you to continue using your property the same way as you did before you funded the trust. Normally, there is no loss of control. For most clients, once the trust is funded, they don't even know it is there. The only time it is noticed is when you see a

document of title, such as a deed to your home showing the owner as your trust. Further, there are very few tax ramifications in most cases. For most clients, you continue to file your taxes as usual. In other words, if properly structured, the trust will be disregarded as a taxable entity by the I.R.S. and the state. You continue to use your social security number as your tax identification number. However, exceptions can exist if certain requirements are not met. For example, for a joint trust that holds marital property, you must file a joint income tax return.

Upon the grantor's death, there are many ways to structure the plan of disposition. If you are married, the trust typically continues as an ongoing revocable living trust for the surviving spouse, where the survivor continues as the trustee and beneficiary. However, many other options are available. For example, a credit shelter subtrust can be set up to minimize estate taxes or a subtrust can be created to preserve assets for the first spouse's children. Upon the death of the surviving spouse or upon the grantor's death if unmarried, the assets are left to children or other heirs or beneficiaries either outright or in trust.

As the name suggest, this type of trust may be amended and revoked at anytime during your life, with a few conditions. First, you must be competent to make a change. Second, for married couples with joint trusts, amendments (but not revocations with respect to marital property) typically require the consent of both spouses.

2. Some Advantages of Revocable Living Trusts.

a. Minimize probate in Wisconsin and elsewhere. Perhaps the main reason people set up living trusts is to minimize probate. As explained above, probate only occurs if you die with probate property in your estate. Probate property does not include contractual assets (those assets whose disposition at the owner's death is controlled by a beneficiary designation – life insurance, annuities, etc.). A revocable living trust is a contractual asset. But, to avoid probate, you must transfer all of your probate property into the trust during life (including assets located in other states). A fully funded trust will completely avoid the time and cost of probate. While certain things still must be done, such as final tax returns, a fully funded living trust can take a large burden off family members and greatly reduce the amount of time and expense it takes to distribute assets to heirs.

b. Centralized management. The living trust can create a centralized vehicle for managing your assets in the event you become disabled, incompetent or

incapacitated. In such event, your spouse, if you are married, or another named successor trustee, can take over the management of the trust.

c. Privacy. Living trusts are private. Wills and other probate documents, on the other hand, are public documents. For example, you can go the probate court and make a copy of your neighbor's probate file if you like. For a fully funded living trust, the court generally never gets involved.

3. Some Disadvantages of Revocable Living Trusts.

a. Administrative Formalities. To avoid probate, you must fund the trust. This means you have to change title to your titled assets, such as real estate, vehicles, financial accounts, etc., to that of your trust. And, for all future financial accounts and titled assets (except contractual assets), you have to remember to acquire them in the name of your trust.

b. Increased Costs. For a variety of reasons, setting up an estate plan where the main vehicle is a revocable living trust is in almost all cases more expensive to set up. For example, more documents are necessary. You still need wills. They are referred to as "pour-over wills." Their purpose is to distribute your probate assets into your trust at death in the event you fail to transfer all such assets into the trust during your life. Also, for married couples, a marital property agreement (MPA) is strongly recommended. This type of MPA does not apply (unless requested) to the division of assets in the event of divorce. Rather, its main purposes are to provide legal certainty with respect to the classification of assets at death, to help equalize estates for those clients doing estate tax planning, and in some cases, minimize capital gains taxes. Finally, the attorney's involvement in funding your trust takes additional time. Nevertheless, these additional costs are often a small fraction of the savings provided by a fully funded trust that avoids probate.

C. Marital Property Agreements ("MPA's").

In 1986, the Wisconsin Marital Property Act went into effect, turning Wisconsin into a marital property state. Among other things, this created a rebuttable presumption that assets are owned 50-50 between spouses upon death, regardless of how the assets are titled.

If you want to control how your property is classified during life, at death, and/or in the event of divorce, you most likely will need a MPA. For most estate planning, a MPA is used

to provide legal certainty with respect to the classification of your assets as marital property or individual property at death. This can save a tremendous amount of time and expense in the event a classification dispute arises in the probate court or the I.R.S., for example. Further, by classifying most assets as marital assets, estate tax planning can be made more efficient. And, classifying assets as marital property can provide very significant capital gains tax savings, under the right circumstances.

For those clients who want a MPA for purposes of determining the division of assets in the event of divorce, the planning can get complicated. (Such agreements entered into prior to marriage are often referred to as prenuptial agreements.) Whether such agreements are enforceable upon divorce depends upon a variety of factors. One of the most important of such factors is whether both parties were represented by their own attorney. The need for separate representation increases the cost of this type of MPA.

Finally, the MPA can be used to provide for the nonprobate transfer of assets upon a spouse's death. This can be a useful way to fund a living trust, for example, when the deceased spouse has not completed funding during life, and still avoid probate.

D. Durable Power of Attorney ("DPOA").

How will your assets be managed if you become temporarily or permanently disabled, incapacitated, or incompetent? Many people address this problem by executing a DPOA. In a DPOA you appoint one or more individuals or "agents," often a spouse, relative, or close friend, to act as your agent to manage your assets. The document can be structured to become effective immediately or only in the event of disability, incapacity, or incompetence. Absent this document, you often have to go through an expensive guardianship hearing (a trial in certain cases) to have a guardian appointed to manage your property. By using this document, you get to decide in advance who will be managing your property and avoid a guardianship hearing. Further, you can expressly control what powers you give to your agent.

E. Power of Attorney for Health Care ("POAHC").

If you become mentally incapacitated, you can no longer make your own health care decisions. With a POAHC, you nominate an agent to make health care decisions for you in the event of such incapacity. The agent typically has broad discretion to make decisions for

you. Under Wisconsin law, you have to indicate specifically if you authorize your health care agent to place you into a nursing home or community based residential facility for long term stays, whether your agent is authorized to withdraw a feeding tube, and whether your agent can make health care decisions for you if you are pregnant. You can also add additional wishes or restrictions. Further, you can use this document to make anatomical gifts.

Without a POAHC, many people have to go through a guardianship proceeding in which the court is asked to appoint a guardian to make your health care decisions for you. That individual may not be your person of choice and may be unfamiliar with your personal views regarding health treatment. Further, the procedure is time consuming and expensive.

F. Living Will.

In general terms, the Living Will provides a written statement of your health care wishes regarding the use or withdrawal of health care under certain conditions. The living will is not as popular in Wisconsin since the adoption of Wisconsin's POAHC statute in 1990. This is because the POAHC provides much more discretion to your health care agent and therefore is much more flexible than the Living Will which typically directs physicians to do "this" or "that" under certain conditions. However, the Living Will can be useful in certain circumstances, such as when a client trusts no one to be his/her health care agent under a POAHC. And, clients often can and do blend "living will" type language into their POAHC with respect to terminal conditions and the permanent loss of consciousness.

IV. COMMON ESTATE PLANS, THE PROCESS, AND GUIDANCE ON COSTS

A. Four Common Plans. It's impossible to describe all the different types of estate plans because of everyone's unique circumstances. However, I have found the following types of plans tend to be the most common. The details within each plan can vary greatly depending on your needs and goals.

1. Basic Testamentary Estate Plan With No Estate Tax Planning. This plan typically contains three documents (for married clients, there are two of each):

- a. Will** (with trust for children and guardianship provisions if applicable).

- b. **Durable Power of Attorney.**
- c. **Power of Attorney for Health Care** (often blended with Living Will language).

2. **Basic Testamentary Estate Plan With Estate Tax Planning.** This plan typically contains four documents (for married clients, there are two of each):

- a. **Will** (with credit shelter trust for surviving spouse (only applies if client is married)). Often includes subtrusts for children or other heirs and guardianship provisions if applicable.
- b. **Durable Power of Attorney With Estate Tax Provisions.**
- c. **Power of Attorney for Health Care** (often blended with Living Will language).
- d. **Estate Planning Marital Property Agreement.**

3. **Basic Revocable Living Trust Estate Plan With No Estate Tax Planning.** This plan typically contains six or more documents (for married clients, there are two of each, except for the living trust, which is typically a joint trust):

- a. **Revocable Living Trust (joint for married couples).** For married couples, this typically contains an ongoing revocable living trust for the surviving spouse. Often a subtrust is included for children and/or grandchildren at the surviving spouse's death.
- b. **Pour-Over Wills.** These are used to distribute probate assets to the trust if all such assets were not transferred into the trust during the deceased's life.
- c. **Durable Power of Attorney.**
- d. **Power of Attorney for Health Care** (often blended with Living Will language).
- e. **Estate Planning Marital Property Agreement.** May contain nonprobate transfer provisions.
- f. **Certain Trust Transfer Documents.** To transfer assets into the trust.

4. **Basic Revocable Living Trust Estate Plan With Estate Tax Planning.** This plan typically contains six or more documents (for married clients, there are two of each, except for the living trust, which is typically a joint trust):

- a. **Revocable Living Trust (joint for married couples).** For married couples, this typically contains a credit shelter trust and an ongoing survivor's trust (which is simply an ongoing revocable living trust for the surviving spouse). Often a subtrust is included for children and/or grandchildren at the surviving spouse's death.
- b. **Pour-Over Wills.** These are used to distribute probate assets to the trust if all such assets were not transferred into the trust during the deceased's life.
- c. **Durable Power of Attorney with Estate Tax Provisions.**
- d. **Power of Attorney for Health Care** (often blended with Living Will language).
- e. **Estate Planning Marital Property Agreement.** May contain nonprobate transfer provisions.
- f. **Certain Trust Transfer Documents.** To transfer assets into the trust.

B. The Estate Planning Process.

If you decide to move forward with an estate plan, the process is typically divided into several steps. First, we typically have an initial telephone conference where some preliminary information is gathered, we discuss your goals in general and any special issues, and then schedule our first planning meeting (either in person or a telephone conference – whichever you prefer). Next, an estate planning questionnaire is sent out. I ask you to complete and return it prior to the first meeting. At the meeting, we'll go over your estate planning options or choices and I'll get enough information from you (in most cases) to prepare initial drafts. The drafts are typically sent to you in a couple of weeks. You then review the drafts and contact me with any questions, changes, or any missing information. Unless another meeting is necessary, the documents are then finalized and an appointment is made for you to come in and sign. At the end of that meeting, we'll go over the safekeeping of your documents and a list of any remaining tasks.

C. Costs. It is difficult to estimate costs without a fair amount of information from you. Time is billed hourly (in minimum increments of .1 hour (six minutes)) at the 2007 rate of \$195/hour (for Attorney Fuhrman). If other attorneys work on the file for consultation, they bill at their normal hourly rate (with a 2007 maximum rate of \$220/hour). Paralegals bill at \$75 per hour in 2007.

A garden variety estate plan of one of the four types described above typically falls within the range of \$850 to \$2,550, plus expenses for postage, long distance calls, copying, etc. (typically not more than \$20 - \$30). The above plans are ordered according to expense, with plan 1 typically being the least expensive (about \$800) and plan 4 typically being the most (between \$2,050 to \$2,550).

The final cost of some plans can be very difficult to predict. Examples include plans for clients with blended families who want to take steps to ensure that their children do not get disinherited. Prenuptial planning and opt-out marital property agreement planning is also difficult to predict because of the possibility of negotiations with another attorney, among other reasons. If you have a business, planning costs can also be tough to predict. Another area that can often get a bit complicated is when clients are married without children or single and without children – it's not unusual for such clients to have unique and much more customized plans of disposition. Often times, however, I am able to offer a fairly accurate range of the costs for planning in these areas, but usually only after spending several hours discussing your estate and goals. Despite all this, for the vast majority of clients, it's very unusual for the estate plan, regardless of the type, to cost more than \$5,000 (and even that amount is unusual).

If you have any questions about this outline, please feel free to contact Attorney Mark H.T. Fuhrman directly at 608-259-2302. Thank you for taking the time to read this outline. If you have any comments on how it may be improved, please feel free to contact Attorney Fuhrman with your feedback (mfuhrman@bgmlaw.com).