Estate Planning in a Changing Environment

Northwestern University
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Intestacy

• A person who dies without a will dies “intestate”
• Intestacy statute in the decedent’s state of residence usually determines the disposition of the decedent’s property
• In Illinois:
  – one-half to the surviving spouse
  – one-half to surviving children
• Reasons to execute a Will:
  – Provide for a plan of distribution other than the plan imposed by the intestacy statute
  – Planning for minor children including nominating guardians
  – Identifying the preferred executor of the estate
  – Dealing with special needs of intended beneficiaries
Federal Estate and Gift Tax

• Unlimited marital deduction

• Federal estate and gift tax exclusion – currently $11.4 million

• Indexed for inflation
• Portable – Unused exclusion can transfer to a surviving spouse
Illinois Estate Tax

• $4 million exclusion
  • Not indexed for inflation
  • No portability – use or lose
“It’s a little less amusing when you hear your kids calling it ‘the death tax.’”
GST Tax

• A tax on transfers to beneficiaries more than one generation removed from you – your grandchildren.
• 40% flat tax rate – but
• $11.4 million GST exemption
  • Indexed for inflation
  • Not portable
Estate Planning Documents

• Revocable Trust
  • Can amend or revoke at any time
  • Add or remove assets at any time
  • Provide for payment of debts, taxes, expenses
  • Provide for distribution of real and tangible personal property
  • Provide for gifts to charity
  • Provide for outright distribution or distribution in trust
    – benefits of outright distribution
    – benefits of distribution in trust
    – options using continuing trusts
      • in trust until the beneficiary attains a certain age or ages
      • in trust for life
      • in trust for generations
      • GST planning
  • Selecting a successor trustee
Estate Planning Documents

• The Will
  • Can be used in place of the revocable trust or in conjunction with the revocable trust (pourover will)
  • Public record in Illinois
  • Requires probate administration in court
  • Necessary to nominate guardians for minor children
  • Spoiler: the “reading of the Will” seldom happens
Disability Planning Documents

• Power of Attorney for Property
  • Control of your assets without appointment of a guardian
  • Agent acts when you cannot
  • One agent at a time

• Power of Attorney for Health Care
  • Health care decisions, including end-of-life decisions
  • Agent acts when you cannot
  • One agent at a time

• Living Will
Charitable Planning

• Lifetime Gifts:
  • Outright gifts
  • IRA charitable rollover
    – Must be age 70 ½ or older to qualify
    – Up to $100,000 per year to public charities only
    – Counts against the Required Minimum Distribution
  • Charitable gift annuities
    – One life or joint lives
    – Cash or marketable securities
    – Deferral of gain on appreciated property
    – Charitable deduction for the total value of the contribution, reduced by the present value of the annuity
Charitable Planning

• Gifts at Death
  • Life Insurance
  • Gifts from Tax-Deferred Accounts
    – A double benefit:
      » Passes free of estate tax
      » Charitable organizations take free of income tax

• Gifts under Trusts and Wills
  – Work with the charitable organization to properly identify the organization/program/purpose of the gift
  – Make sure the charitable organization can fulfill donor intent
“Everything I have, son, I have because your grandfather left it to me. I see now that that was a bad thing.”
QUESTIONS?

Patrick Bitterman
Quarles & Brady LLP
300 North LaSalle Street, Suite 4000
Chicago, IL  60654
(312) 715-5122
patrick.bitterman@quarles.com

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