

# SPECIAL REPORT

## Estate Planning Reminders

We want to thank you for allowing us to represent you in your estate planning. We appreciate your confidence and hope that you will call us in the future to provide you with other necessary legal services.

Since good estate planning is a continuous process, we would like to remind you about the following matters:

### **DESTROYING OUTDATED AND DRAFT ESTATE PLANNING DOCUMENTS**

The originals of old Wills and drafts of your current Will can lead to confusion and disputes among heirs. I strongly recommend that you destroy these unnecessary documents. I also recommend that you destroy any revoked trust agreements, durable powers of attorney and advance medical directives.

### **WHERE SHOULD YOU KEEP YOUR ESTATE PLANNING PAPERS?**

I recommend that you keep the originals of your estate planning papers where you keep your other important legal documents (i.e. your deeds, insurance policies, titles to vehicles, etc.). I believe these documents should be kept in a secure

place, but remain accessible to your agent and executor. Your family should also know where you keep them.

I recommend that you consider a safe deposit box at your bank or a locked fire proof file box. In Virginia, neither the state nor your bank will seal your safe deposit boxes at your death. If you choose to keep your documents in a safe deposit box, however, you should designate another person as an authorized person to open the box in the event of your death or disability. You must execute a written instrument at your bank to authorize this third person to enter your safe deposit box. The authorized person should not necessarily have a key, but should be able to obtain a key if he or she needs to access the box. Additionally, you should not keep all of the originals of your advance medical directives and durable powers of attorney in the safe deposit box. You might need them on a weekend or at night when the box is not accessible. I recommend that you keep one original advance medical directive and one original durable power of attorney at home for ease of access.

However, many of my clients prefer to keep their estate planning documents at home for ease of access. If you choose to keep the originals of your estate planning documents at home, I recommend

that you keep them in a locked, fire proof file box. These file boxes can be obtained at most office supply stores.

I additionally recommend that you give a copy of your advance medical directive to your regular physician for his records. We have provided you with a wallet card to inform health care providers that you have an advance medical directive. I suggest that you put the card in your wallet and carry it with you at all times.

### **HOW OFTEN SHOULD YOU REVIEW YOUR ESTATE PLANNING PAPERS?**

Your will, durable powers of attorney, trust, and advance medical directive are effective indefinitely. You should, however, regularly review them to ensure that they continue to meet your needs. The laws concerning these documents change regularly. Your circumstances will change over time.

I recommend that you review your estate plan at least every five years or whenever you have a significant change in your property, health, or family. For example, you should have your estate planning documents reviewed when you change the State in which you live, when there is a death or disability in your immediate family, when there is a significant change in the value of your assets, upon the birth of a child, or when your children reach the age of majority.

We cannot undertake to automatically review your estate plan or to contact you when changes are needed. We will, however, be happy to review your estate planning upon your request. At that time, we will ask you to fill out a client questionnaire with new information concerning your family and your property.

### **MEMORANDUM FOR DISPOSITION OF TANGIBLE PERSONAL PROPERTY**

If your Will authorizes the disposition of your tangible personal property by a separate memorandum, you should prepare the memorandum if you wish to give a specific item of tangible personal property to a particular person. Tangible personal property includes jewelry, furniture, silver, china, clothing, motor vehicles, and art work. It does not include cash, stock, mutual funds, bonds, certificates of deposit or real property.

We will be happy to provide you with a form memorandum for you to use. If you wish to make a gift of an item of your tangible personal property, you should complete the form, sign it and date it. I suggest keeping the memorandum with your Will. You may change this memorandum at any time by a new memorandum signed and dated by you. I suggest that you call us for a new form when you wish to change the memorandum.

### **IS IT SAFE FOR YOU TO CHANGE YOUR DOCUMENTS BY MAKING CHANGES BETWEEN THE LINES OR IN THE MARGINS?**

*No!* Such changes will usually not be effective. We executed your documents using witnesses and a notary public who were present while you signed the documents, and present while each of them signed the documents in your presence. I recommend that you call us if you wish to make a change. We store your documents on our computer network system to facilitate the preparation of amendments.

### **DO YOU NEED TO REVIEW YOUR JOINT ACCOUNTS AND YOUR DESIGNATIONS OF BENEFICIARY?**

*Yes.* Your will or trust does not govern the disposition of your joint accounts, life insurance policies, annuities, IRAs or retirement accounts.

The ownership of the assets in your joint accounts will normally pass to the surviving co-owner by virtue of survivorship. Your life insurance policies, annuities, IRAs and retirement plan accounts will pass at your death to your designated beneficiary. Please review your joint accounts and designations of beneficiary to insure that they will pass at your death in accordance with your wishes.

If you are married and have executed a will or revocable living trust that creates a credit shelter trust to reduce estate taxes, you and your spouse should not own your investment assets jointly with the right of survivorship. Assets in the joint account will pass to the surviving spouse and will not fund the credit shelter trust after your death. This may result in the unnecessary payment of estate taxes after both of you are deceased. To insure that your investments are available to fund the credit shelter trust, I recommend that you and your spouse own your investments in your individual names without the right of survivorship or, if you have executed revocable living trusts (RLTs), transfer title of your investments to the trustees of your RLTs.

You should review your designations of beneficiary to ensure they are consistent with your estate plan. If you executed an irrevocable insurance trust, the trust should be the owner and designated beneficiary of the insurance policies funding the trust. If you executed a revocable living trust, you should designate the trust as the beneficiary of the life insurance that you own which insures your life. The trust should not be designated as the beneficiary of any policies insuring your life which your spouse owns.

Generally, if you are married, you should designate your spouse as the beneficiary of your IRAs and retirement plan accounts. This will permit your surviving spouse to “roll over” the death benefits to the surviving spouse’s IRA and continue to defer the income taxation of the account. The designation of beneficiary form should also designate a successor beneficiary if your spouse does not survive you. On occasion, however, you will wish to designate a trust

as the beneficiary of your IRA or retirement plan account. This is very common in second marriages or where the account owner does not wish for his beneficiary to have complete control over the death benefits. However, the rules relating to designating a trust as a beneficiary of an IRA or retirement plan account are technical. Please contact me or another attorney prior to designating a trust as a beneficiary of these accounts.

Please call us if you have any questions concerning designations of beneficiary or joint ownership of property.

### **WHAT RECORDS DO YOU NEED TO KEEP FOR YOUR FAMILY AND SURVIVORS BESIDES YOUR ESTATE PLANNING DOCUMENTS?**

We recommend that you keep the following records:

- Your deeds, title insurance policies, and settlement statements.
- Your motor vehicle titles.
- Your insurance policies (life, auto, property, liability, disability and long term care).
- Your certificates of deposit, stock certificates and bonds.
- Your tax returns from the last four years and income tax basis records.
- Your loan documents.
- Your retirement plan documents.
- Your bank, brokerage and mutual fund statements from the last four years.
- A letter to your family, agent, and executor containing the names of your advisors (i.e., lawyer, tax return preparer, insurance agent, and banker), a list of your assets including account numbers, a list of your creditors including account numbers, and any instructions or advice you choose to leave for them. These instructions should include your wishes for funeral arrangements. Please remember to update this letter on a regular basis. I recommend annually.

Your family, agent, executor and trustee should know where these documents are located.

### **DO YOU NEED TO PLAN TO REDUCE ESTATE TAXES?**

If your assets, life insurance, and retirement plan assets exceed the exemption equivalent of the unified credit, an estate tax may be imposed at your death. The new Tax Act of 2001 has established the Estate Tax Rates and Unified Credit Exemptions up to 2009. See the following table:

<b>Year</b>	<b>Estate Tax Rate</b>	<b>UC Exemptions</b>
2009	45%	\$3,500,000
2010	Repealed	Repealed
2011	Prior Law	Prior Law

As can be seen the tax rate reaches its low point and the exemption reaches its high point in 2009. In 2010, both rates are repealed (eliminated) and in 2011, we revert back to the rates which existed prior to the Tax Act of 2001. If your estate exceeds \$675,000, you should discuss estate tax planning with us.

### **DO YOU NEED TO PLAN FOR THE PAYMENT OF LONG-TERM CARE?**

In Southeastern Virginia, the average cost of long-term care is \$5,000 per month. Medicare pays for very little nursing home care. Medicaid pays for nursing home care for indigent senior citizens.

If you are over 60 years of age and cannot pay for nursing home care out of your income, we recommend that you consider long-term care insurance. As a certified Elder Law Attorney, I will be happy to help you review long-term care policies. If you are over 60 years of age and can not afford or obtain long-term care insurance, you should discuss long-term care planning with us. The Medicaid rules concerning eligibility, asset protection and asset transfers are complex and constantly changing.

### **SHOULD YOU DISCUSS YOUR ESTATE PLAN WITH**

### **YOUR FAMILY?**

There is no one answer that is right for all families.

With the exception of irrevocable trusts and completed gifts, generally you can revoke or revise your estate plan. Changes in the law or in your circumstances may lead you to make changes in your estate plan. Therefore, I do not normally recommend that you discuss the terms of your estate plan with your family.

I recommend, however, that you ask those persons who you wish to designate as your agent, trustee, and executor whether they are willing and able to serve when needed.

### **WILL WE CHARGE YOU FOR ROUTINE TELEPHONE CALLS CONCERNING YOUR ESTATE PLANNING DOCUMENTS AND DESIGNATION OF BENEFICIARY?**

*No.* Please call us if you have any questions concerning your estate plan. If additional legal services are needed, we will estimate our fee in advance and obtain your approval before proceeding.

Thank you for allowing us to help you with your estate planning.

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