



Estate Planning

An Overview

Office of the Staff Judge Advocate,
MRMC & Fort Detrick



Estate Planning

A continuing process of arranging for the use, conservation, and transfer of one's property/wealth during life and upon death.





Estate Plan



May include one or more of these:

- Will/military testamentary instrument
- Trust
- Life insurance
- Advance Medical Directive/”Living Will”
- Health Care Power of Attorney
- Durable Power of Attorney
- IRA/TSP/529 Plan beneficiary designation(s)
- Anatomical gift designation



Estate Planning *Goals*



- **Taking Care of the Family/Avoid Family Strife**
 - Ensure Minor (& college-age) children are provided for
 - Avoid disinheritance Blended families
- **Disability/Incapacity/End-of-Life planning**
 - Powers of attorney
 - Advance Medical Directive
 - Providing for assisted living
- **Avoiding/Postponing Estate Taxes**
 - Taking advantage of the Gift Tax exclusion
 - “Bypass” or “Disclaimer” Trust
 - Leveraging the marital deduction – the QTIP Trust
 - Irrevocable Life Insurance Trust- ILIT
- **Appointing Fiduciaries** - Guardians, personal representatives, executors, trustees, and lawyers



Estate Planning Issues & Decisions

- ☞ How do you want your assets to be managed during your lifetime?
- ☞ Who gets your property at your death?
- ☞ Who will be your personal representative?
- ☞ Who will raise your minor children... and handle their assets?
- ☞ Will your estate be “a tax problem”?
- ☞ Is a trust right for you?



How Property Passes At Death

- A. By the operation of law (i.e., Deeds with survivorship provision)
- B. By contract (i.e., Bank accounts that are “JTWRORS,” retirement rights, IRA’s)
- C. By estate (everything else)
 - Will
 - Intestate succession -- NO WILL



Methods of Transfer



Intestacy



Will



Joint
Ownership
"By Law"



Contractual
Transfers



Inter
Vivos Trust



Wills

- What is a will?

A will distributes your property through court action called probate after you die.

- What happens if I die without a will?

Your heirs are determined by law and they take through court action called administration according to intestacy law.



Intestate Succession In General



- No spouse, then property distributed in the following order:
 - Children
 - Parents
 - Siblings
 - Grandparents or if dead, their children
 - Children of your deceased spouse
 - Relatives of your deceased spouse
 - State



Intestate Succession In Maryland

First \$20,000 to spouse

1/2 rest to
parents

1/2 rest to
spouse

Spouse + One or Both
Parents surviving



Intestate Succession In Maryland



1/2 to
child(ren) or
descendant

1/2 rest to
spouse

**Spouse + Minor Child(ren)
surviving**



Intestate Succession In Maryland

First \$20,000 to spouse

1/2 rest to
child(ren) or
descendant

1/2 rest to
spouse

**Spouse + Adult Child(ren)
surviving**



Intestate Succession In Maryland



Whole Estate to Spouse

Spouse only surviving;
no kids, no parents



Intestate Succession In Maryland



- If no spouse and no children, then as follows:
 - To parents, divide equally or survivor takes all
 - To siblings, equally, per stirpes
 - To grandparents, equally, if deceased to issue
 - To great-grandparents, equally, if deceased to issue
 - To stepchildren
 - Board of Education, or Dept of Health and Mental Hygiene if decedent was a recipient of long term care benefits under MD Medical Assistance Program



Wills

- What is a will?

A will distributes your property through court action called probate after you die.

- What happens if I die without a will?

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Wills

When Do You Need One?

- If are still alive and competent to read this slide, you should have will. [Insert smiley face.]
- Or, at lease if :
 - You have REAL property.
 - You want to appoint a guardian of children.
 - To establish a trust for children.
 - If you have a detailed property distribution scheme.



Wills

What Should It Include?

- Appoint a guardian for your children
- Name an executor
- Provide for the discharge of any and all estate taxes and settlement expenses and the distribution of your assets to your heirs



Wills: Executors Who Are They?

- Responsible for:
 - Administering the estate and distributing the assets to your beneficiaries.
 - Ensuring that all life insurance and retirement plan benefits payable to your estate are received.
 - Filing the necessary tax returns and paying the appropriate federal and state income taxes.
 - Making sure that all other expenses are paid.



Wills: Guardians

- Guardian v. Conservator
- One v. Two



Wills v. Trusts

- What is a trust?
- When should you set up a trust?
- Revocable v. Irrevocable?
- Living v. Testamentary?



Wills v. Revocable Trusts

Advantages of Will

- Court supervision
- Court as impartial arbiter
- Certainty of statutory framework
- No need to retitle property during life
- Nonclaim statute

Disadvantages of Will

- Lack of privacy
- Probate fees
- More complex procedure
- Possible delay in action



Revocable Trusts

Advantages

- Privacy
- Avoidance of probate fees and procedure
- Rapidity of action

Disadvantages

- Absence of court supervision
- Need to retitle property to trust during grantor's life
- Nonapplication of probate nonclaim statute
- Higher cost at outset



Estate Taxes

- An Estate is subject to two kinds of taxes: Federal Estate Tax and State Death Tax.
- Federal Estate Tax currently is between 37% and 45%.
- Applicable Exclusion Amount Applies.





Estate Taxes



Applicable Exclusion Amount

Calendar Year	Applicable Exclusion Amount	Highest Estate and Gift Tax Rates
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006-2008	\$2,000,000	46%
2009	\$3,500,000	45%
2010	Repealed	Gift Tax only, equal to top individual income tax rate
2011-2012	\$5,000,000	45%



Taxable Estate = Amount Above Exemption

2011 CREDIT
\$1,750,000

=

EXEMPTION
\$5,000,000

Taxable Rate = 35%





Combating Estate Taxes

- The Unlimited Marital Deduction
- Marital Trusts
- The Annual Gift Tax Exclusion
- Charitable Giving
- Life Insurance



The Unlimited Marital Deduction

One of the most powerful estate planning tools available.

Distributions to surviving spouse are estate and gift tax free



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- Charitable Giving
- **Life Insurance**



What I Can Do

- Draft your will
- Include a testamentary trust for kids
- Basic estate tax tool of disclaimer credit shelter trust
- Line up non-probate transfers

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Conclusion

See us in the Legal Assistance Office

Complete our questionnaire and call for
appointment at 301-619-2221

Questions?

Office of the Staff Judge Advocate,
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