

# ESTATE PLANNING

Presented by the Aberdeen Proving Ground  
Client Services Division  
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# ESTATE PLANNING

- The process of anticipating and arranging for the disposal of an estate in order to
- eliminate uncertainties over the administration of a probate,
- maximize the value of the estate by reducing taxes and other expenses and
- designate guardians for minor children and beneficiaries in incapacity.

# PARTS OF THE PLAN

- Financial Power of Attorney
- Healthcare Power of Attorney/Advance Directive
- Non-probate assets
- Probate assets
- Last Will and Testament
- Trusts
- Final wishes

# DO I NEED THIS STUFF?

- Yes.
- Yes, you do.
- Yes, you do, even if you don't think you do.
- I do not get paid per will or Power of Attorney.
- It is just really true.



# WHY?

- To make sure you can choose the people you want handling your financial affairs if you become unable to do so.
- To make sure your desires are known to your friends and family about personal wishes in the event of a health crisis, disability, or your death.
- To make sure your property passes upon your death according to your wishes and your overall plan.
- To make arrangements for your next of kin, including minor children.

# BUT I AM MARRIED...

- Your spouse does not automatically have the authority to make financial and healthcare decisions for you
- Your spouse does not automatically inherit all of your property upon your death if you do not have a will!!
- What if you and your spouse pass away together?



# BUT I AM SINGLE...

- Who do you want to make decisions about your finances and health if you become disabled?
- Who do you want to handle your affairs if you die?
- Bank accounts, vehicles, personal property, etc. will all need to be accounted for and distributed

# POWERS OF ATTORNEY

- A written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter.
- May be
  - General or
  - Limited (Specific) – for one act or purpose only
- May be effective
  - immediately or
  - “springing” (only effective upon incapacitation)
    - Warning: some states do NOT allow springing PoAs!!

# LORETTA'S LAW

- Maryland's Power of Attorney statute, effective 2010
- Put forth statutory forms for both General and Limited Powers of Attorney
- Requires two witnesses and a notary
- All PoAs are assumed to be durable
- Greater responsibility on named agent
- Requires institutions to accept statutory form

# ADVANCE DIRECTIVE

- Formerly known as Living Will
- Many states have specific requirements
- Current versions usually include two portions:
  - Appointment of Healthcare Agent (or proxy)
  - Written directives regarding end of life care
- MOLST – Medical Orders for Life-Sustaining Treatment
- DNR – Do Not Resuscitate orders

# NON-PROBATE ASSETS

- Assets that will pass without going through the probate process
- Assets titled as joint tenants
- Insurance policies with a named beneficiary
- Assets held in trust or in a life estate
- POD (payable on death) accounts
- Retirement accounts payable to a named beneficiary

# PROBATE ASSETS

- Assets that require the probate process in order to change title and be distributed
- Real estate
- Motor vehicles
- Bank accounts
- Life insurance policies with no named beneficiary
- Personal property not gifted during your lifetime

# LAST WILL AND TESTAMENT

- Written legal declaration by which the Testator
- Names a person to manage the estate
- Provides for the transfer of real and personal property upon his or her death
- Must be
  - In writing
  - Signed by testator
  - Signed in the presence of two disinterested witnesses

# NORMAL PROVISIONS

- Burial expenses and requests
- Specific bequests
- Disposition clause
- Trust provisions
- Naming of Personal Representative, Trustee and Guardians
- Legal stuff: definitions, powers of PR, survivor clause

# USING TRUSTS IN ESTATE PLANNING



# WHAT IS A TRUST?

- a relationship whereby property is held by one party for the benefit of another.
- A trust is created by a
  - **Settlor** who transfers some or all of his property to a
  - **Trustee** who holds that trust property for the benefit of a
  - **Beneficiary**



# TRUSTEE

- The person who holds the property for the benefit of another
- Is the actual owner of any property held “in trust”
- Powers and duties of the trustee are defined by:
  - Trust document
  - Type of trust
  - Statute and common law



# BENEFICIARY

- “Person” who is entitled to the benefit of any trust arrangement
- May be an individual, group, charity or company
- In estate planning, normally will be:
  - Minor child
  - Wayward child
  - Disabled child
  - Spouse (for tax purposes)



# LIVING TRUSTS

- Also known as *Inter Vivos*
- Revocable
  - Settlor retains the right to revoke/revise the trust or remove property from the trust at any time
- Irrevocable
  - Settlor relinquishes all control of assets to the trustee upon creation of the trust



# LIVING TRUSTS

## Advantages

- Can be used to avoid probate in multiple states
- Can be used to manage multiple complex assets for individual who has failing health
- Can be used for tax planning purposes in high wealth cases and for passing to multiple generation

## Disadvantages

- Are expensive to establish and maintain
- Unnecessary – most individuals can accomplish basic estate planning goals through wills, Powers of Attorney and proper titling of assets
- Do not save estate, inheritance and income taxes for most individuals

# TESTAMENTARY TRUSTS

- Pre-residuary Trust
- Discretionary Trust
- Credit shelter (bypass) Trust
- Marital deduction Trust
- Qualified Domestic Trust (QDOT)
- Supplemental Special Needs Trust (SSNT)



# PRE-RESIDUARY TRUST

- Husband has a child from a previous marriage and two children with his new wife. Husband wants to leave his entire estate to his new wife, then if she predeceases him, equally to all three of his children.
- IF Husband dies first, what prevents new wife from taking all of the assets and changing her will to leave everything to her two children and disinheriting husband's first child?
- **NOTHING!!**



# PRE-RESIDUARY TRUST

- A pre-residuary trust is a trust that is funded prior to the remainder of the estate being distributed.
- A pre-residuary trust can also be funded with proceeds from a life insurance policy (namely, SGLI or VGLI).
- Husband can establish a pre-residuary trust with his first child as the beneficiary and fund the trust with a percentage of his SGLI.
- Husband can then leave the remainder of the estate to his Wife and their children.
- If Husband dies first, trust is funded and Wife cannot disinherit first child.

# DISCRETIONARY TRUST

- Husband and Wife have three small children. If they pass away together, they want all of their assets to be used for their children's benefit.
- They want their Trustee to have flexibility in taking care of the needs of the children:
  - Health
  - Education
  - Maintenance
  - Support

# DISCRETIONARY TRUST

- Discretionary trusts –the entitlements of the beneficiary to the trust fund are not fixed, but are determined by the criteria set by the Settlor
- Normally used to protect assets for minors
  - But also used for wayward children
  - Age of termination set by the testator
- May be pooled or separate trusts
  - Pooled – one trust for ALL beneficiaries
    - May result in inequitable distributions
    - Trust doesn't terminate until youngest beneficiary ages out
  - Separate – at time of creation, estate is split into equal shares and individual trust created for each beneficiary

# CREDIT SHELTER TRUST

- Also referred to as a Bypass Trust
- This type of tax-saving trust was designed to take advantage of the decedent's federal estate tax exemption
- When first spouse died, assets up to amount of federal estate tax exemption were placed in trust with spouse as beneficiary. When second spouse passed, no estate tax was due.
- No longer needed, as IRS now allows the estate of second spouse to claim first spouse's unused exemption.

# A-B-C TRUSTS

- Maryland estate tax limits are lower than federal estate tax limits
- Maryland allows for state-only Bypass Trust that can maximize tax savings
- Married couples can fully fund their federal exemptions while deferring Maryland estate tax by making a special election on the Maryland estate tax return of the first spouse to die

# ROMEO & JULIET

## Romeo and Juliet

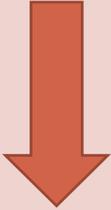
\$1,000,000

\$1,000,000

# ROMEO & JULIET

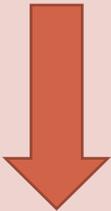
Romeo	Juliet
Dies 	\$2,000,000 No tax due

# ROMEO & JULIET

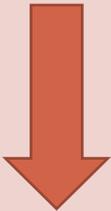
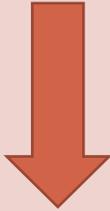
Romeo	Juliet
	<p data-bbox="991 462 1213 508">\$2,000,000</p>  <p data-bbox="1611 691 1707 736">Dies</p>
	<p data-bbox="991 858 1280 903">Children owe:</p> <ul data-bbox="991 915 1707 1019" style="list-style-type: none"><li>*No federal tax</li><li>*MD tax on estate over \$1,000,000</li></ul>

Total Md Tax: \$160,000

# ROMEO & JULIET

Romeo	Juliet
<p>Dies \$1,000,000 into credit shelter trust</p> 	<p>\$1,000,000 No tax due</p>
<p>Tax return filed – full MD tax credit used *No federal tax due *No MD tax due</p>	

# ROMEO & JULIET

Romeo	Juliet
<p>\$1,000,000 Trust</p> 	<p>\$1,000,000</p> <p>Dies</p> 
<p>Passes to children No tax due – already accounted for upon death of Romeo</p>	<p>Tax return filed – full MD tax credit used *No federal tax due *No MD tax due</p>

# ROMEO & JULIET, 2.0

Romeo	Juliet
\$6,250,000	\$1,000,000

# ROMEO & JULIET, 2.0

Romeo	Juliet
Dies 	\$7,250,000  No federal tax due No state tax due

# ROMEO & JULIET, 2.0

Romeo	Juliet
	\$7,250,000  Dies
	Children owe: *Federal tax on estate MD tax on estate over \$1 million

\*Unused credit is currently portable for federal estate tax, may eliminate federal estate tax

Total federal tax: \$800,000

Total MD Tax: \$1,000,000

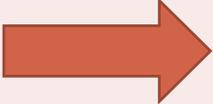
# ROMEO & JULIET, 2.0

Romeo			Juliet
B	C	A	
Dies	To utilize federal tax credit	Remaining assets – marital gift	\$1,000,000
To utilize MD tax credit			
\$1,000,000 MD-Only Bypass Trust	\$4,250,000 Credit Shelter/ Marital Trust - Gap amount	\$1,000,000 Marital gift or deduction trust	No federal tax due No MD tax due

\*\*Without Trust C, MD tax of \$680,000 due at Romeo's death\*\*

\*Using \$1 million MD tax credit and \$5.25 million federal tax credit

# ROMEO & JULIET, 2.0

Romeo B	C	A	Juliet
<p>\$1,000,000 Trust</p> 	<p>\$4,250,000 Trust</p> 	<p>Marital trust – spent down to \$500,000</p> 	<p>Dies \$1,000,000</p> 
<p>Pays to children No federal tax No MD tax due</p>	<p>Pays to children No federal tax *MD tax due (was deferred)</p>	<p>Pays to Juliet's estate</p> 	<p>\$1,500,000 fed estate No federal tax due \$1,500,000 MD estate *MD tax on estate over \$1 million</p>

Total MD Tax: \$760,000  
 \$680,000 – Romeo  
 \$ 80,000 - Juliet

Tax Savings: **\$1,040,000**  
 Federal: \$800,000  
 MD: \$240,000

# QUALIFIED DOMESTIC TRUST

- Husband (a U.S. citizen) is married to Wife (a German citizen). Husband passes away first and leaves all of his property to his Wife.
- What prevents Wife from taking all of her money and returning to Germany, never returning to the United State?
- **NOTHING!**
- Which is why the IRS has decreed...



# QUALIFIED DOMESTIC TRUST

- Unlimited marital deduction does **not** apply to non-citizen spouse unless assets are paid into a Qualified Domestic Trust (QDOT) with spouse as beneficiary.
- To qualify as a QDOT, a trust must meet the following requirements:
  - At least one trustee must be a U.S. bank or bonded U.S. citizen.
  - No distribution can be made from the trust, except for income, unless the trustee who is the U.S. citizen or corporation has the right to withhold estate taxes from the distribution.
  - The trust must meet Treasury regulations regarding the collection of any tax.
  - The executor must elect on the estate tax return to treat the trust as a QDOT.
- After the death of the surviving spouse, the assets in the QDOT are subject to the estate tax as though they were included in the estate of the first spouse to die. These assets are not included in the surviving spouse's estate.
- **Income** distributed from the QDOT to the surviving spouse is subject to income tax, but not estate tax. However, when **principal** is distributed from the QDOT to the surviving spouse it is subject to estate tax, unless the distribution is made for hardship reasons.

# SUPPLEMENTAL SPECIAL NEEDS TRUST

- Husband and Wife have a child with Down's Syndrome. Child qualifies for disability benefits, including state Medicaid.
- If child accumulates assets over \$2000, child will become disqualified for continued government benefits.
- Parents want to provide for their disabled child, but what if they leave their entire estate to their other children hoping they will “do the right thing”? What could be done if the other children give nothing to the disabled sibling?
- **NOTHING!**

# SUPPLEMENTAL SPECIAL NEEDS TRUST

- designed to provide for a disabled beneficiary and still allow such person to be qualified for governmental health care benefits under the Medicaid welfare program
- Federal and state regulations govern required terms
- In Maryland:
  - Must be irrevocable
  - Must be for disabled beneficiary under 65
  - Must be established by parent, grandparent, court or legal guardian
  - Extensive list of trustee duties and powers that must be specifically listed
  - **MUST include pay-back provision**

# FINAL WISHES

- Burial requests
- Funeral or memorial service
- Discussing location of important papers with next of kin

# QUESTIONS??

- General questions only – we cannot address individual legal issues in this forum. Thank you!!

