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Funding Your Estate Plan

A common misconception is that a person has completed his or her estate planning once the planning documents are signed. However, for your estate plan to perform at its best, it is imperative that the plan is properly funded. The purpose of this article is to take you through different funding requirements associated with some of the more common estate planning strategies.

Revocable Trust Planning

Revocable trust planning, also sometimes referred to as “living” trust planning, is generally the first component of a family’s estate plan. While the revocable trust is an incredible estate planning tool, to avoid probate and maximize the estate tax and other advantages of the trust, all of your assets must be titled in the name of the trust.

In the state of Wyoming, every estate of a decedent who passes away with more than \$70,000.00 of value in the decedent’s individual name must comply with the formal statutory probate process. All assets titled in the decedent’s name, and not in the name of the trust, are called the “probate assets”, while all assets titled in the name of the trust are called “trust assets”. Probate assets are subject to the probate process, whereas trust assets are considered to be outside of the decedent’s probate estate and therefore not subject to the onerous probate process.

There are several downsides to the probate process.

- Firstly, the probate process takes a minimum of nine months and may last for a period of years depending on the nature and quantity of assets held in the probate estate. During this time period, your probate assets become much more difficult to administer, as it is oftentimes necessary to get court approval before distributing or disposing of any of these probate assets.
- Secondly, the probate process is public, allowing anyone to go to the courthouse and review the fair market values of the probate assets, meaning that if the estate desires to sell any of these assets, there is a fair market value of record which can affect the sale process.
- Finally, the probate process can be very expensive. The court costs and fees, personal representative fees, legal and accounting fees are all based on a percentage of the value of

the probate estate. If proper care isn't given to placing the majority of your assets in the revocable trust, it is highly likely that the estate will be severely eroded by all of the unnecessary costs and fees.

In order for your revocable trust to fully utilize your estate tax exclusion amount, presently \$1,000,000.00 per person, it is extremely beneficial to have all of your assets titled in the name of your living trust, especially in the case of married persons. If the vast majority of the assets in a married couple's estate is titled in the name of one spouse, and the other spouse is the first to pass away, there is a very high probability that your successor trustees will be unable to use the full estate tax exclusion amount since there will be insufficient assets in that spouse's estate. Through proper funding, we can ensure that both spouse's estate tax exclusion amounts are utilized to the fullest, saving the estate from paying unnecessary estate taxes.

Assets you want to place into your revocable trust:

Real Property

We always advise our clients to convey the title to any real property interests they hold in their own names, as joint tenants, or as tenants in common, to their revocable trust. We will also generally restructure the conveyance of this property so that one/half of the value of the real property is held in the husband's name with the other one/half of the value of the real property held in the wife's name. By doing this we are able to better use both spouse's estate tax exclusion amount.

Checking and Savings Accounts

We advise our clients to change the name on any checking or savings accounts into the name of their revocable trust. This is an extremely simple process and ensures that the assets of their checking and savings accounts are part of their trust estate, thereby avoiding probate on the death of either spouse. Even though these accounts are held by the trust, it is still possible to only have your individual names on the checks, and not the name of the trust, so that when dealing with third parties, they need not know that you have a revocable trust.

Investment Accounts

Investment accounts are treated the same as checking and savings accounts, and should be titled in the name of your revocable trust. By taking the simple steps of naming the trust as the owner of your investment account, you are able to keep these assets from being included in your probate estate.

Retirement Accounts

Retirement accounts are generally not placed into the name of your trust for income tax reasons. However, there are certain situations, which we like to review on a case-by-case basis, where the best available option is to rename the retirement account beneficiary as your revocable trust. In general, many requirement account payments are based upon the life expectancy of the beneficiary, and since a trust does not have a measured life expectancy, the retirement account plan can require that a trust take out all the account assets in a period of

five years, exposing those distributions to much higher income taxes than if the account were held by an individual. Therefore, we review the type of retirement account, the ages of the contingent beneficiaries, and any other pertinent issues relevant to the retirement account. For example, if we have underage or disabled contingent beneficiaries, we may name the trust as the contingent beneficiary in order to ensure that the retirement account assets are effectively managed for that beneficiary. If, on the other hand, we have competent adult beneficiaries, we might name them individually as the contingent beneficiaries to give them more flexibility with the retirement account, and to minimize the income taxes associated with distributions from that retirement account.

Stock & Membership/Partnership Interests

Virtually all stock and membership/partnership interests, hereinafter collectively referred to as “stock”, that you own should also be placed in the name of your revocable trust. This is most often completed by signing a stock assignment which you then forward to the company issuing the stock together with your original stock certificate. The issuing company will then issue a new stock certificate in the name of your trust.

However, there are certain stock issues which may not allow you to simply execute a stock assignment and transfer the stock to your trust. In the case of a professional corporation, state statutes may only allow a professional licensed in a particular field to own stock in professional corporation. A corporation in which you own stock may also have certain restrictions on your ability as a shareholder to transfer your stock. In these situations it is oftentimes advantageous to implement a buy-sell agreement between the corporation and your trust, providing that the corporation will redeem your stock and pay the determined value of the stock to your trust upon your death. These are issues that we are more than happy to review with you to determine the best means to fund your trust.

Life Insurance

Life insurance is often an effective tool for estate planning. While it is true that a life insurance policy owned by you is not a part of your estate, the IRS will include the death benefits paid from that policy when calculating your estate tax liability. If you have sufficient unused estate tax exclusion amount, presently \$1,000,000.00 per person, available to shelter the life insurance benefits, we will often name your revocable trust as the beneficiary of that policy. If, however, you do not have sufficient unused estate tax exclusion amount available to cover your trust estate as well as the life insurance policy benefits, we will probably recommend that you create a separate irrevocable life insurance trust to remove the life insurance policy benefits from your estate. Again, life insurance benefits and beneficiary designations are reviewed on a case by case basis.

Automobiles, Airplanes, & Other Liability Producing Assets

Any kind of vehicle raises the specter of liability, since it is possible that you could be in an accident while operating this vehicle. Furthermore, the titling issues associated with these vehicles oftentimes make it simpler for you to hold these assets in your own name. However, if you plan on keeping a boat, airplane or collector vehicle for a prolonged period of time, we

may suggest that it title to this vehicle be held in the name of the trust, or that a limited liability company be created to own this vehicle with the ownership interests in that limited liability company then held by the trust. By arranging ownership in such a fashion, we are able to drastically reduce the liability exposure associated with this vehicle.

Personal Property

All of your personal property should also be held in the name of your revocable trust. Many people severely undervalue their personal property. Generally, a person's personal property is sufficient, in and of itself, to cause an estate to go through the probate process. Therefore, we suggest that our clients assign all of their personal property to the trust at least yearly. By executing the assignments that we provide to you, we are assured that your personal property is held in the name of your revocable trust, further helping to avoid the probate process.

Promissory Notes & Other Contractual Rights

Any time that you are a beneficiary under a promissory note or some other contract, the appropriate funding course is to assign the rights under the promissory note or contract to your revocable trust. Depending on the terms of the promissory note or contract, you may be required to notify the person or entity owing you certain duties under the promissory note or contract of the assignment, so it is imperative to review the terms of the promissory note or contract before making the assignment.

Irrevocable Life Insurance Trust

Another common estate planning strategy is the irrevocable life insurance trust. The IRS will include the death benefits paid from that policy when calculating your estate tax liability. If you do not have sufficient estate tax exemption amount, currently \$1,000,000.00 per person, to shelter your life insurance policy benefits as well as your other assets, it may be beneficial to create an irrevocable life insurance trust. If you create an irrevocable life insurance trust, there are certain funding steps which must be completed.

First, you must purchase a new life insurance policy or transfer an existing life insurance policy to the trustee of the irrevocable life insurance trust. This is generally done by completing the forms provided by your life insurance company. We generally like to keep a copy of this form with the irrevocable life insurance trust documents in order to show the IRS that the policy was in fact transferred to the trust.

Secondly, you will need to make a gift to the irrevocable life insurance trust before any premium payments are due, so that the Trustee has funds available to pay the premiums. When these gifts to the trust are made, the beneficiaries of the irrevocable life insurance trust be given demand right notifications to ensure that the gifts to the trust are gifts of a present interest, enabling you to use your annual gift exclusion.

Charitable Remainder or Lead Trust

Should you create a charitable remainder or lead trust, it is imperative that you transfer the appropriate assets to the trust to obtain the charitable income tax deduction. We will always work with you to ensure that the assets passing to the charitable remainder or lead trust are appropriately placed into your trust. We will also coordinate the transfer with your certified public accountant regarding the charitable income tax deduction you may take on your income tax return.

Qualified Personal Residence Trust

In the event that you elect to create a qualified personal residence trust, it is necessary to place the appropriate interests in your home into the name of the qualified personal residence trust. We will work with you to convey the correct interests in your personal residence into the qualified personal residence trust. We will also contact your certified public accountant regarding the filing of a gift tax return should one be necessary.

In the event that you should outlive the term of your qualified personal residence trust, it then becomes necessary to have a lease agreement between yourself as the tenant and the qualified personal residence trust as the landlord.

Family Limited Partnership

A family limited partnership is an estate planning technique requiring substantial funding efforts to ensure that the technique fulfills its potential. It is essential that all of the partners contribute some value to the limited partnership. For you, this means that you contribute the appropriate assets to the limited partnership, and for your children or other limited partners, to contribute at least \$100.00 to the limited partnership. Once these assets are placed into the partnership, we are able to ascertain the percentage interests of each of the partners, and obtain a business valuation to determine the discounts applicable to the limited partnership interest for lack of control and lack of marketability. We will then use these percentages to make future gifts of limited partnership interests to the other partners. Whenever a gift of limited partnership interests is made, we will also use the percentages to determine the relative interests of the different partners to the partnership.

Summary

With virtually every estate plan, it is imperative that the plan be properly funded to maximize the potential of that estate plan. Generally, we recommend that the majority of the funding transpire shortly after the creation of the estate plan. However, throughout the life of the plan, it is necessary to review your planning documents and the funding of your assets to ensure that any subsequently acquired assets are properly titled. We recommend that you review your estate plan with us, or your other advisors, on a routine basis to ensure that your estate plan is properly funded and will obtain the maximum benefits obtainable.