ESTATE PLANNING

Estate planning is a process in which a person's financial and personal planning goals are analyzed and action is taken to accomplish what is desired. Here are some of the problems that estate planning involves.

- Who should get my money when I'm gone? The needs of one's spouse, children and others must be weighed against one another. This can be particularly difficult if there are children by a prior marriage.

- Is there enough money to provide for my family? Particularly for young people, the adequacy of one's life insurance program should be carefully considered.

- Who will manage the estate? Who will hold title to the property? These are critical problems if there are minor children or others needing assistance with money matters.

- Are there tax-saving opportunities?

- Is there a problem of succession to ownership and control of a family business or farm? Do I need a Buy-Sell Agreement with my partner? Do I have enough cash to pay the taxes on my farm or business?

When the objectives have been developed, documents are drawn and, if required, property transferred to put the plan into effect. A Will is almost always part of the plan. Other applicable documents may include Trust Agreements, Beneficiary Designations on Life Insurance and Employee Benefit Plans, Financial and Health Care Powers of Attorney, Standby Conservatorship Petitions and Buy-Sell Agreements. Sometimes the basic structure of a business will be altered through corporate recapitalization or the creation of a limited partnership, limited liability company or other legal entities.

Professional Help

An attorney should certainly be involved in preparation of the estate plan. In addition, many people use the services of a certified public accountant, life insurance underwriter, trust officer and financial planner.

Ideally, there should be close coordination among the advisors. If a bank is to be named as executor or trustee, the planners should work closely with the appropriate bank officer. Coordination of the insurance with the overall estate plan should involve the insurance underwriter. Finally, the family and the advisors should remain in contact with each other and review the estate plan from time to time, because many events can occur that call for changes in the plan. In addition, revisions in the laws may necessitate changes of the plan.

A Word About Taxes

Depending upon the size of an estate, there Federal Estate Tax may result. In addition, all property passing to a spouse is generally free from any Federal Estate Tax regardless of the amount. The Federal Estate Tax exclusion changes frequently – so your plan should be reviewed periodically to make sure your plan is applicable in the current climate.

The State of Iowa also has a death tax, called the Inheritance Tax. A surviving spouse, however, may inherit an unlimited amount of property without paying Iowa Inheritance Tax. On July 1, 1997 the inheritance tax for gifts to children and grandchildren was repealed.

In addition to the Federal Estate Tax, there is also a Federal Gift Tax on certain gifts made during one's lifetime. Outright gifts to any individual in one calendar year not exceeding certain amounts are not subject to tax or to tax reporting. If a spouse joins in a gift the annual exemption amount per recipient can be increased. Gifts between spouses are not restricted as to amount. Iowa has no gift tax.

Transfers by Will or gift to relatives who are two (2) or more generations below the person making the transfer may trigger an additional tax. Because of the complexities of the so-called "Generation Skipping Tax", any Will or Trust containing such a provision should be carefully reviewed.

Any person whose estate may be subject to Federal Estate Tax or Iowa Inheritance Tax may save taxes by using special estate planning techniques. These techniques are available under the Internal Revenue Code and applicable Iowa law.

What Information Do I Need to Prepare A Will?

It will be helpful if you fill out an information form in advance of the initial visit. This will not only help in properly advising you about the type of estate plan that will best suit your needs but will also save time which will save you money. The form contains a section for family information and a section for the listing of family assets and liabilities. In the estate planning process, it is important to disclose what assets you own individually and what assets you own jointly with another. In addition, all current life insurance, annuity and benefit plan beneficiary designations must be reviewed. Future inheritances or gifts should also be disclosed.

Finally, you are urged to review your estate plan periodically and keep it current. There should be a check-up about every three (3) years, and an immediate review if there are changes in the family (birth, death, marriage, divorce), changes in the size of your estate, or changes in the tax laws. The wrong plan can be very costly and upsetting to family members.

WILLS

A Will is a document that controls the passage of a person's property at death. Each state has formal requirements for a Will and failure to strictly follow the legal mandates will mean that the Will would be ineffective. In Iowa:

- The maker of a Will must be eighteen (18) years old or have been married and must be of sound mind and memory.
- The Will must be in writing.
- The Will must be signed and must be witnessed by two persons in the special manner provided by law. (Persons who are beneficiaries under the Will should not serve as witnesses.)
- While not required, it is common practice in Iowa to sign a Will before a notary public in the manner specified by law.

A Will may be revoked or changed at any time before the death of the Maker. To be effective, changes must be made strictly in accordance with legal requirements. Changes, of course, can be made by executing a new Will or are often made by an addition called a "Codicil." Written additions, deletions, comments or marks on the Will itself may render the Will invalid. Once signed a Will should not be altered in any way.

What are Some Important Considerations in Making or Reviewing a Will?

- Who should receive your property and in what proportions and, if children, at what age? If a person you wish to name to receive a share of your estate dies before you who should receive the interest?
- Who should be named as guardians of minor children, and what are their duties?
- Should a Trust be created for your spouse, children or others? What are the costs associated with a Trust?
- Do any beneficiaries have special needs? Disabilities?
- Do you want to leave anything to a favorite charity?
- Should life insurance proceeds be payable to a Trustee named in your Will? Spouse? Children?
- Who should be named Executor? Successor Executor?
- Should a custodianship be directed for gifts to minors?

- Do you expect to inherit property from a parent or others?

- Can taxes be saved?

Generally a person may dispose of his or her estate by Will without restriction. However, Iowa law generally does not allow a spouse to completely disinherit the other. Consequently a surviving spouse, whether or not named in the Will, may claim at least a portion of the deceased spouse's estate (the "elective share") unless a validly executed and enforceable marital agreement was entered into prior to the marriage, in which event the agreement provisions will control.

Are More Costs Incurred with a Will?

No. When a person dies leaving an estate, the Court determines who is to receive the estate, and makes sure that all debts, taxes and expenses are paid. This must be done regardless of whether or not there is a Will if there were assets left in the decedent's name. However, a Will can save some time and expense by eliminating the need for sureties on bonds, expediting the sale of property, minimizing Court proceedings, avoiding Guardianships and Conservatorships for minors where not really necessary and otherwise providing the Executor of the Will with clear directions on the handling of the estate.

If there is no Will, the Court appoints an administrator to settle the Estate and make distribution as provided by law, after all debts, taxes and expenses have been paid. An individual who dies without a Will has no voice in the selection of the administrator as the priority is set by statute. If there is a Will, the executor named by the maker of the Will is the one who handles the estate. The person making the Will may name as executor one or more individuals in whom he or she has confidence. A bank also may be named as executor.

What if There is No Will?

Iowa law establishes the right to make a Will, but it is not compulsory. If there is no Will, the Court distributes the property to the legal heirs of the deceased according to law. Just how the property will be distributed depends on the actual situation.

Under the Iowa law of descent, if you die without a Will, your surviving spouse will inherit all of your property as long as (a) you leave no children, or (b) all of your children are children of you and your surviving spouse. If you die without a Will and leave children, some of whom are stepchildren to your surviving spouse, your surviving spouse will inherit all of your property up to $50,000.00, and approximately one-half (1/2) of your remaining property. The other one-half (1/2) of your remaining property will go to your children (by

your prior marriage). These are but two examples of what might happen under the law of descent in the event a person dies without a Will. In all cases, the law is rigid and makes no exception for those in unusual need or for other circumstances such as the inability to handle money. For example, minor children who inherit from a parent are entitled to receive their inheritance at age 18.

The value of a Will basically lies in the difference between:

- Planned distribution of your estate in strict accordance with your wishes, both as to shares and timing, and

- Having your property distributed arbitrarily by law.

Does a Good Life Insurance Program Take the Place of a Will?

No. Life insurance is simply one of the kinds of property you can own. Life Insurance Trusts are popular devices to assure proper use of insurance proceeds. Another way of bringing insurance proceeds into a Trust is creating a Trust in your Will although life insurance trusts are usually created by separate agreement. The insurance is then made payable to the Trustee.

"Death Bed" Will

It's human nature to procrastinate -- to put off until tomorrow what should be done today. In the case of a Will, this tendency can be disastrous. A Will should be prepared while a person is in good health and in a position to carefully consider its provisions. Too often, the hastily-contrived "death-bed" Will fails to carry out accurately the wishes of the Maker or is found to be invalid for some technical reason that could have been avoided.

EXECUTORS AND ADMINISTRATORS

What is an Executor or Administrator?

An Executor or Administrator is the personal representative of an estate of a deceased person. If the decedent left a Will (referred to as dying testate), the person who administers the estate is called an Executor. If the decedent left no Will (referred to as dying intestate) the person is called an Administrator.

Who Serves as Executor or Administrator?

An Executor is nominated by the decedent in his or her Will. An Administrator is nominated, generally, by the decedent's family according to the statutory rule. After a priority given the surviving spouse, any heir may be appointed. One or more individuals or a Bank, or a combination of these, may be named. Each Executor or Administrator must be approved and appointed by the Court.

What are the Responsibilities of an Executor or Administrator?

The duties and responsibilities of an Executor or Administrator are defined primarily by parts of the Iowa Code, the Internal Revenue Code and Court Rules. Some of these are summarized below.

Opening the Estate

If the decedent left a Will, it is the responsibility of the person in possession of the Will to file it with the Court. It is then the duty of the person nominated as Executor to ask the Court to probate the Will.

Duties with the Court

- Publish or provide required legal notices.
- Identify and notify beneficiaries and heirs.
- File an Inventory listing real estate and both tangible and intangible personal property.
- Approve or contest claims filed against the Estate.
- Petition the Court as necessary in the management of the Estate's assets.
- File periodic and final accountings reporting receipts, expenses and distributions, if not waived by interested persons.

Duties as to Property

- Investigate and inventory the decedent's safe deposit box. Collect the assets of the estate.
- Preserve, manage and insure assets during administration. Review abstracts of title and leases.
- Take action as directed by the Court to manage the decedent's business.
- Secure valuation and appraisal of assets.
- Sell enough property to raise cash needed to pay the estate's bills and taxes.
- Review the decedent's life insurance policies and pension rights and help the beneficiaries collect the proceeds as well as any unpaid salary, bonus or other job related benefits.
- Consider Social Security and veteran claims.
- Determine whether the decedent had any unfulfilled contractual obligations or was the recipient of such obligations.
- Determine the nature of joint tenancy assets, if any, and consider their inclusion or taxability within the estate.
- Arrange for transfer of stocks, bonds, bank accounts and other assets.
- Distribute the estate in accordance with the Will or, if none, to the heirs, as determined by law.

Financial and Tax Duties

- Keep records of all transactions.
- Keep idle funds properly invested in interest bearing accounts.
- File or assist in the filing of the decedent's final Federal and Iowa Income Tax Returns.
- File the necessary income tax returns for income received and expenses generated during the course of administration of the estate.
- Review decedent's records to determine whether any Gift Tax Returns were or should have been filed.
- File the Federal Estate Tax and Iowa Inheritance Tax Returns where necessary.

- Provide beneficiaries with appropriate tax information.

JOINT TENANCY

Joint tenancy with right of survivorship is a sometimes useful tool for holding title to property and for planning the transfer of that property after one's death. Joint tenancy is probably the most common form of ownership for residences and bank accounts between married persons. It is used less frequently among other family members. The fact that joint tenancy is widely used doesn't mean that everyone fully understands it. This section outlines the basic legal and tax implications of joint tenancy.

What is Joint Tenancy?

Joint tenancy has significant legal effects not only during the lifetimes of the joint tenants, but also when one of them dies. Each joint tenant, regardless of which one purchased or originally owned the property, has the right to use and to share in the income from the jointly owned property. A joint tenant's interest in the property terminates upon his or her death, and the surviving joint tenant then owns the property free of any claim by the beneficiaries, heirs and creditors of the joint tenant who died. This may not be the intent of the original joint tenants, because it prevents the heirs or beneficiaries of all but the survivor of the joint tenants from inheriting any interest in the property. For example if A and B hold title to a particular property as joint tenants and A dies and A's Will bequeaths the property to C, B will take the property, not C; when a provision of a Will (or the laws of intestacy) conflict with a joint tenancy designation, the joint tenancy arrangement will prevail.

Often times joint accounts are established for convenience purposes only "Mom has added me to all her accounts so I can pay her bills if she gets sick." If Mom dies the child on the account takes the property to the exclusion of other brothers and sisters. A Power of Attorney (for access) or a Trust would be a more appropriate means if equality among children is desired. Often a deputy or power of attorney signature card provided by a bank will serve the purpose of providing access to funds in the event of illness or temporary disability.

Joint tenancy shouldn't be relied on as a substitute for a Will. It doesn't cover unanticipated events. While it provides for a successor for a particular piece of property or account, joint tenancy does not provide a comprehensive plan for the disposition of one's entire estate as a Will does, nor does it provide what happens when the person who is assumed to be the one who will survive, in fact dies first.

Is Joint Tenancy the Only Way to Hold Title to Property With Another Person?

No. Two or more persons may also own property as tenants in common. Tenants in common, like joint tenants, each have the right to use and share in the income from the property. When a tenant in common dies, his or her interest (usually one-half) does not pass automatically to the surviving co-tenant. It passes, instead, as part of the estate to the heirs or the beneficiaries under the Will.

How is Joint Tenancy Established?

When the ownership is in real estate, the deed normally includes the words "as joint tenants will full right of survivorship and not as tenants in common".

For registered securities (stocks and bonds), the names of the owners are stated followed by the words "as joint tenants with right of survivorship, and not as tenants in common".

For bank accounts (both checking and savings), all of the joint tenants sign a signature card or account application, with the "fine print" on the back of the card or in the account application form generally designating that they are joint depositors.

On U. S. Savings Bonds and other US Treasury obligations, when the owners are listed as "A or B", either one may cash in the bond if both are living, but when one has died, the survivor of A or B is the sole owner and may cash the bond. If the bond is issued to "A p.o.d. B", the bond is payable to B on A's death, but B has no rights during A's lifetime.

What Are Some Other Features Of Joint Tenancy to be Considered?

All joint tenants must agree to the sale or mortgage of real estate and registered stocks and bonds. Dividend and interest checks must be endorsed by both.

Any one joint tenant may withdraw all or a part of the funds in a joint bank account.

Any co-owner may redeem U. S. Treasury Bonds.

The creation or termination of a joint tenancy may have important Gift Tax, Estate Tax, or Income Tax consequences.

Creditors of any joint tenant may levy upon jointly owned property or accounts even though the joint owner with creditor problems didn't contribute to the purchase.

If property of any kind is put in joint tenancy with a relative who receives welfare or other similar benefits (such as Medicaid or Title XIX supplemental income), the relative's entitlement to these benefits may be jeopardized.

If you place your residence in joint tenancy with your children, you may affect your right to advantageous income tax treatment when you sell it, you may also lose your right to advantageous senior citizen real estate tax treatment.

Is Joint Tenancy a Good or Bad Idea?

Joint tenancy is useful in the right case. However, joint tenancies are not a simple solution to estate problems but can, in fact, create problems where none existed. The costs of preparing a Will, tax planning, and probate may be of little significance compared with the unintended problems and family disputes that can arise from using joint tenancies indiscriminately.

LIVING TRUSTS

The Living Trust (or Revocable Trust) is a way for managing your property during your lifetime and passing it on to your beneficiaries at death without formal probate proceedings. To the extent that a Living Trust contains provisions detailing how your estate is to be distributed at your death the Living Trust becomes a "Will substitute" as to the property that is in your Trust at the time of your death.

A Trust, generally, is an arrangement where one or more person(s) (the Trustee) holds and manages property for another (the beneficiary) If you create a Trust under your Last Will and Testament, it's called a Testamentary Trust. If you create a Trust while you're alive, it's called a Living Trust or Revocable Trust. One special kind of Living Trust is the Self-Declaration Trust discussed below.

Here's how the usual Living Trust works: First, you create a Trust Agreement that names the Trustee and the beneficiaries, and defines everyone's rights and duties. The Agreement stipulates that you retain power to amend or revoke it whenever you want. One or more responsible individuals or a bank can serve as Trustees. You put property (real estate, securities, cash, etc.) in the Trust by transferring such assets into the Trustee's name. (You can, if you wish, begin by putting in a small amount, and then add to the Trust later.) The Trustee has management responsibility for the Trust property.

The Trust Agreement usually provides that you will automatically get all the income of the Trust and as much of the principal as you request, but if you are disabled, the Trustee is usually directed to use the income and principal to pay your bills, taxes, etc. Upon your death, the Trust assets are turned over to your beneficiaries in accordance with your directions contained in the Agreement or the Trust can continue, in whole or in part, for specified purposes for a period of time.

The Main Advantages of a Living Trust are:

- If you want or need to have someone else manage your property and pay your bills in case of illness, the Living Trust is a good arrangement. One alternative is a Court-supervised Conservatorship proceeding, but it is more costly and inconvenient and does have the disadvantage of disclosing your assets to public review since such records are public records. However, a conservatorship does assure greater supervision, and may be beneficial in some family situations. Another alternative is the power of attorney, which is discussed in the next section.

- Avoiding probate at death may save some time and money. Iowa probate procedures have been greatly modernized in recent years, however, and the importance of avoiding probate shouldn't be exaggerated.

- If probate avoidance is important to you and a Living Trust is appropriate for your circumstances, keep in mind all of your assets must be in your Trust at the time of your death to accomplish your goal of probate avoidance.

- Because a Trust itself is not filed in Court, its provisions are somewhat more private than the provisions of your Will.

- You have the added advantage of being able to observe how the Trustee manages the property and you may, if you desire, change the Trustee or terminate the arrangement completely if you so desire.

The main disadvantages are:

- If you use a Bank as Trustee, there are fees to pay, based upon the amount of assets in your Trust and the work involved. If the Trust is created but "dry"; that is assets are not transferred, then generally no fee or only a nominal fee is charged until such time as assets are actually transferred to the Trustee.

- Even if there are no Trustee's fees to pay, there will be costs and inconveniences during your life. There are additional initial costs in setting up a Trust; and if the Trust is immediately funded, there are additional costs associated with the transfer of property to the Trustee.

- Note that probate is only avoided if all assets are titled in the name of the Trust or the Trustee. Missing even just one asset might result in having to probate the entire estate including the assets in the Trust.

Self-Declaration Trusts

The Self-Declaration Trust is a variation of the Living Trust. Its unique feature is that the creator of the Trust is also the Trustee. The Trust document usually includes a procedure for removing the Creator of the Trust as Trustee without going to Court -- typically, one or more doctors or family members, or a combination, have the power to

declare the Creator as incapable of continuing to manage as Trustee; and then a named Successor Trustee takes over.

Many people of retirement age are concerned about the possibility of a disabling illness, even if they are currently in good health. They don't want to set up a Living Trust because they want to handle their own business as long as they are able to do so. The Self-Declaration Trust is a contingency arrangement to cover this situation -- the Creator of the Trust has full control and can continue to serve until disability or death occurs.

Taxes

The Living Trust has no tax advantage or disadvantage. While you live, the Trust income is reported on your federal and Iowa income tax returns just as if the Trust didn't exist. If you or your spouse are the Trustee separate tax returns for the Trust need not be filed. At death, the property of the Trust is included in your estate for Federal Estate and Iowa Inheritance tax purposes as if you owned it outright. Sufficient estate and inheritance tax planning can be accomplished with either a Living Trust or through a Will.

LIFE INSURANCE TRUSTS

A word about Life Insurance Trusts is in order. A Life Insurance Trust is a Living Trust, but its function is quite different from the Living Trust document discussed above. If such a Trust is irrevocable and if you assign all incidents of ownership in your life insurance policies to the Trust at least three years before death, it may be a way to exclude life insurance from your Estate for Federal Estate Tax purposes. If the Trust itself purchases the insurance initially, the three year rule may not apply. As such, it is a sophisticated planning device.

FINANCIAL POWERS OF ATTORNEY

The Living Trust is usually the best way to manage a person's property and the payment of bills during disability. For some, particularly those with smaller estates, however, the Financial Power of Attorney is a simpler device that may serve that same limited purpose.

In legal concept, the Financial Power of Attorney creates a form of agency -- the person named as "Attorney-in-Fact" has power to act as your agent for the purposes specified in the document that appoints the Attorney-in-Fact (The Attorney-in-Fact need not be a lawyer -- the word "Attorney" in this sense means only "agent".)

Some Financial Powers of Attorney are limited in scope. Examples of Limited Powers of Attorney are the deputy cards that you can sign to authorize someone to write checks on your bank account or to authorize access to your safe deposit box. The signing of a deputy card does not create ownership in the other person; it provides only a right of access or an authority. A Power of Attorney, on the other hand, gives the person designated by you broad power to manage your property and pay your bills. It may even allow the person holding the Power of Attorney to sell your property, to make gifts or to transfer your property to a Living Trust, if these powers are specified in the instrument. A Power of Attorney that deals with real estate must be acknowledged before a Notary Public as with a deed.

Financial Powers of Attorney that continue effective during periods of disability are commonly referred to as "Durable Powers of Attorney." Sometimes a "Standby Power of Attorney" is utilized, and the distinction is that it becomes effective only in the event of a triggering disability. In this latter variation, a doctor may be designated to make such determination as to whether a condition of disability exists.

In a long illness, a Financial Power of Attorney doesn't work as smoothly as a Living Trust. For this reason, Living Trusts are recommended for clients who are ill or elderly. Powers of Attorney can be used for clients who are younger and healthy, as "insurance" against unexpected happenings. The Power of Attorney may also be used to reinforce a Living Trust, but a Power of Attorney is no substitute for a Will or for a comprehensively drafted Living Trust.

HEALTH CARE POWERS OF ATTORNEY AND LIVING WILLS

Iowa law permits a person to designate in writing one or more persons to make health care decisions. This writing is commonly called a Health Care Power of Attorney. Typical decisions include the power to employ or discharge health care professionals, to select a hospital or care facility and to select a plan of treatment. A living will, in contrast, is simply a written declaration as to health care treatment. The usual living will declares that the signer does not want his or her life mechanically prolonged if death will otherwise occur in a short period of time and the attending health care professionals have determined that the person is terminally ill. The Health Care Power of Attorney and the Living Will can be combined into one document. To be effective a health care power of attorney and a living will must be properly executed before witnesses or a notary public. Additional reading material about the health care power of attorney and living will is available upon request.

Careful consideration is necessary in choosing the person who will act on your behalf with respect to health care decisions. It is highly desirable that the person selected understand your wishes.

GUARDIANSHIPS AND CONSERVATORSHIPS

Guardianships are court supervised proceedings for persons who lack sufficient capacity to make or carry out important decisions concerning their affairs, other than financial affairs. Conservatorships are also court supervised and involve the supervision of a person's financial affairs if the person lacks sufficient capacity to make or carry out important decisions concerning money matters. The person who is the subject of a guardianship and/or conservatorship proceeding is referred to as the ward.

A guardianship and/or conservatorship may be commenced by the ward (called a voluntary proceeding) or may be commenced by any other person, usually a family member; if not commenced by the ward the proceedings are characterized as involuntary. If involuntary, certain protective proceedings are required before the Court will appoint a guardian or conservator and the proposed ward is required to be represented by legal counsel. If the ward does not have separate counsel, the Court will appoint an attorney.

For estate planning purposes, especially for older persons, the execution of a Standby Conservatorship Petition should be considered. A conservatorship by Standby Petition is less expensive to start in contrast to the involuntary proceeding and the ward-to-be has the added benefit of selecting the conservator who will assume the responsibilities of financial management.

A conservatorship proceeding may be preferred over activities carried out by power of attorney. Further, while ordinarily not as flexible, and perhaps more costly in operation than a Living Trust, the Conservatorship does have the advantage of not having to be created until it is needed.

Most Standby Conservatorship Petitions provide that they are to be presented to the Court at such time as the person's doctor then attending him or her certifies in writing to the Court that the person is not capable of making or carrying out important financial decisions. It is not unusual to sign both a Standby Conservatorship and a Power-of-Attorney. Then, if assistance needed, a decision can be made as to what route to go.

ANATOMICAL GIFT LAW AND ORGAN DONATION

As a resident of Iowa you may give all or any part of your body to an appropriate institution or medical bank. The usual means is to use a separate document or card containing the necessary information.

The “gift document” must be signed by you and is usually carried on your person. It is recommended that if you sign an anatomical gift document that you have the donor alert box on your driver's license checked when you renew your license. Teaching hospitals, medical colleges, medical banks and other involved institutions can provide you with the necessary information and documents.

CONCLUSION

Proper estate planning means that you must understand the basic rules outlined in this pamphlet and work with us in the preparation of an overall plan that is uniquely suited to you. Your active and knowledgeable involvement will probably result in a savings of money to you and in a more understandable and comprehensive plan for you and your family.

You will be doing yourself a disservice if you simply sign a Will without considering all of the matters discussed in this pamphlet including taxes, the significance of the proper ownership of assets, and how your affairs will be conducted in the event of your disability.