

The Fundamentals of Estates and Trusts

I. Introduction

a. What is your "Estate"?

1. Real property
2. Tangible personal Property
3. Intangible personal Property

II. Creating your Estate - what is included?

A. Income

1. Employment
2. Investments

B. Savings

1. Liquid Assets
 - a. Cash
 - b. Mutual Funds
 - c. Stocks and Bonds
 - d. Other Investments
2. Retirement Plans
 - a. Pension
 - b. Profit-sharing
 - c. Individual Retirement Accounts
 - d. Keogh's and 401(k)'s

C. Real Estate

1. Homes
2. Vacation and Investment Real Estate

D. Business Interests

1. Corporations, partnerships and sole proprietorships.

E. Life Insurance

1. Purposes
2. Types
3. Decisions regarding owner and beneficiary

F. Inheritance and windfalls

III. Conserving and Transferring your Estate

A. Estate planning Goals

1. Reduce taxes
2. Provide for family
3. Provide smooth transfer of assets to heirs
4. Maintain flexibility and control while you are alive

B. Title to Assets

1. Individual ownership
2. Tenant: in common-each person's interest passes by Will or intestacy
3. Joint tenants with the right of survivorship - deceased person's interest passes entirely to survivor
4. Tenants by the entirety - husband and wife, deceased spouse's share passes entirely to survivor; interests are indivisible

C. Death Taxes

1. Pennsylvania
 - a. Inheritance Tax
 - 1) 4.5% if asset passes to spouse, children, parents, grandparents or grandchildren
 - 2) 12% if asset passes to brothers, sisters
 - 3) 15% if asset passes to any other persons
 - 4) Gifts within one year of date of death
 - 5) Charitable Bequests - no tax if a qualified charity
 - b. Pennsylvania Estate Tax ("pick-up tax")
 - 1) Only occurs in rare instances
2. Federal
 - a. Unified Estate and Gift Tax
 - 1) Rates range from 17% to 55%
 - 2) Subject to unified credit of \$220,550 ("exemption equivalent" - \$675,000)
 - 3) Unlimited Marital Deduction
 - 4) Annual gift tax exclusion (\$10,000 per year per donee)
 - 5) Gifts to minors
 - 6) Certain transfers within 3 years of death
 - 7) Gifts with retained interests
 - 8) Gifts for educational or medical expenses
3. Local Taxes
 - a. Personal property Tax - 4 mills (.4%)

D. Estate Planning Documents

1. Wills

- a. What is a will?
 - b. Requirements for valid Execution
 - 1) Intent
 - 2) Capacity
 - 3) Formalities
 - 4) Handwritten ("Holographic") wills
 - c. Restrictions
 - 1) Elective share of spouse
 - 2) Family exemption
 - d. Will Contests
 - 1) Capacity
 - 2) Undue influence
 - 3) Mistake
 - e. What a Will controls: "Probate Assets"
 - 1) Personal and real property
 - 2) Specific bequests
 - 3) Trusts - pourover or testamentary
 - 4) Charitable bequests
 - 5) Residuary estate
 - f. What a Will does not control: Non-Probate Assets
 - 1) Joint property
 - 2) Life insurance proceeds
 - 3) Retirement plans and proceeds
 - g. What if a person dies without a Will
 - 1) Laws of intestate succession
2. Trusts
- a. Who is the Grantor? The Trustee?
 - b. Types
 - 1) Intervivos - made while living; usually revocable
 - a) Funded
 - (1) "Living Trusts"
 - b) Unfunded - Pourover receptacle
 - (1) Assets are transferred to trust upon death
 - 2) Testamentary - Trust comes into existence upon death
 - 3) Irrevocable intervivos trusts
 - a) Life insurance trusts

c. Specific Trust provisions

- 1) Unified credit - created to Maximize federal Estate Tax savings
- 2) Unlimited Marital Deduction
 - a) "QTIP" Trust
 - b) "QDOT" Trust
- 3) Children's Trusts
- 4) Special Needs Trusts
 - a) Disabled/Incompetent
 - b) Medical
3. Durable power of Attorney
 - a. When is it needed? When does it become effective?
 - b. Who should serve as attorney-in-fact?
 - c. Special v. general powers
4. Health Care Power of Attorney and Living Wills
 - a. Appointment of agent to make health care decisions
 - b. Current status of law in Pennsylvania

IV. Administration of Estate Upon Death

A. Determination of whether probate proceedings will be required

1. IS a lawyer necessary? An accountant? A financial advisor?

B. What is an Executor? Administrator? Guardian? Trustee?

1. Fiduciary responsibility

C. Probate procedure

1. Grant of Letters Testamentary or administration
2. Advertisement of grant of letters
3. Tax identification number
4. Determination of interests
5. Notice to interested parties
6. Collection, valuation, liquidation and administration of assets
7. Assessment and payment of taxes (income, estate and inheritance)
8. Inventory/status Report
9. Claims of creditors
10. Final accounting
11. Distribution of net proceeds