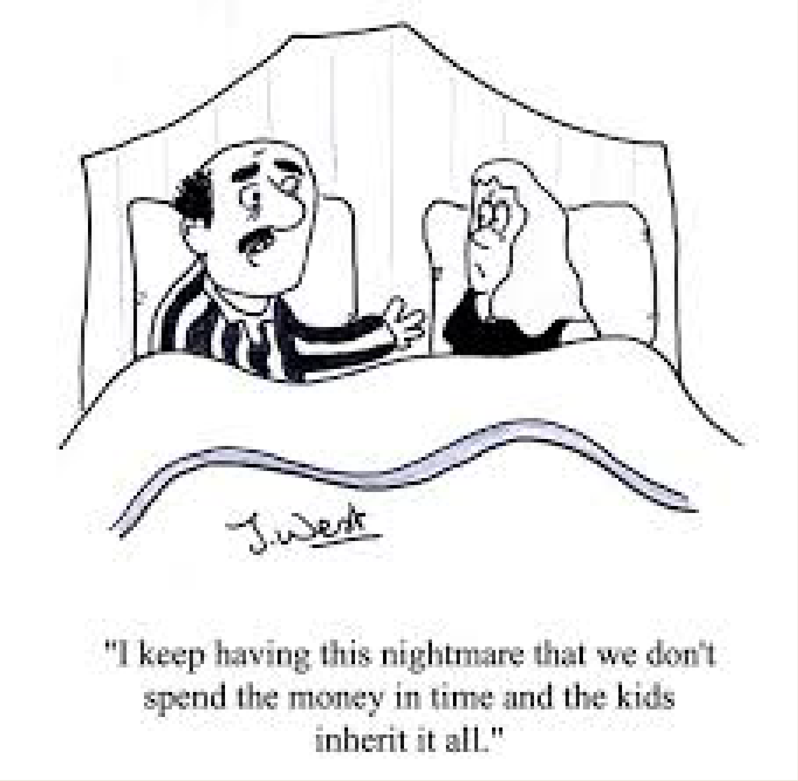
ESTATE PLANNING TOOLS AND CONSIDERATIONS

WHAT IS ESTATE PLANNING

- Estate planning is a lifetime process whereby…
  - Owner controls property while alive and well
  - Appoints agent or successor if alive but not well
  - Assets are transferred per owner specifications (who, when & how) after death
  - Minimize professional and court fees
  - Minimize any estate taxes by using available exemptions

WHAT IS ESTATE PLANNING

- Title of property
- Beneficiary designations
- Powers of Attorney
  - Financial
  - Medical
- Living Will
- Will
- Trust



ESTATE PLANNING - ESTATE/GIFT TAXES

- $18,000/person annual exclusion as of 2024*
- Estate, Gift and GST Tax Exemption $13.61M per person (may reduce to ½ this amount in 2026)**
- Portability
- Tax Reform

*Tax Cuts and Job Act 2017

**State Estate Taxes may be based on different amount if applicable

ESTATE PLANNING - INCOME TAXES

- Income tax planning is playing a much larger role
- Older trusts may cause unnecessary capital gains tax - TOTALLY AVOIDABLE!

ESTATE PLANNING - PORTABILITY

- Pros
  - Step-up in basis
  - Avoids cost of setting up trust
- Cons
  - Requires timely filed estate tax return
  - Can be lost by re-marriage
  - Appreciation not shielded from estate tax
  - Does not apply to state death taxes

COMMON ESTATE PLANNING TECHNIQUES

- No plan - a.k.a. the government plan (80% of Americans)
- Title based plan (joint ownership)
- Lifetime gifting
- Beneficiary designations
- Will based plan
- Trust based plan

GOVERNMENT PLAN - INTESTACY

- Plan established by your state legislature
  - Laws vary from state to state
  - Generally applicable – apply to no one in particular
- Guardianship/conservatorship during life
- Probate at death
- Court makes final decisions

TITLE BASED PLAN

- Primary ways of holding title to real estate
- Individual owner
- Multiple owners
  - Joint tenants with rights of survivorship
  - Tenants in common
  - Tenancy by the entirety
  - Community Property

TITLE BASED PLAN - JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP

- Multiple owners
- Each owner owns an undivided interest in the entire property
- Often undefined
- Interest automatically passes to other joint tenant(s) upon death of owner
- Cannot direct your share of property
- Probate court involvement on death of last surviving owner or in the event of incapacity
- Creditor implications
- Partition rights

TITLE BASED PLAN

- Joint Tenancy – an example
  - Bob wants to avoid probate, so he deeds his son Jim an interest in the family home as joint tenants with rights of survivorship. Bob tells Jim that upon his death the home should be sold and the proceeds divided equally with Jim's two sisters. Bob dies and Jim becomes the sole owner of the property immediately. Jim suffers a business set back and before Jim can sell the property one of his creditors forecloses on the home to pay Jim's debt. The sisters are powerless to stop the foreclosure.

TITLE BASED PLAN - TENANTS IN COMMON

- Multiple owners
- Each owner owns an undivided interest in the entire property
- Often undefined
- Interest does not automatically pass to other owners upon death of an owner
- Cannot control who becomes your “partner”
- Probate court involvement on death of owner or in the event of incapacity
- Creditor implications
- Partition rights

TITLE BASED PLAN

- Tenants in Common – an example
  - Brothers Bob and Tom own farm ground as tenants in common. Each owns 50%. Bob dies and his share passes to his five children in equal shares. Each child owns 10% and Tom continues to own 50%. Tom dies and leaves his share to his four children. There are now nine owners of the farm ground. Each cousin must approve any sale and any cousin could force a partition of the ground.

BENEFICIARY DESIGNATIONS

- Life insurance, retirement accounts, bank accounts, brokerage accounts
  - Avoids probate
  - Can result in a lack of coordination
  - Distribution may not happen as hoped
  - Can't control when or how a distribution is made

WILL BASED PLAN

- Death instrument only
- Tells the court how you want your property distributed after you die and who you want in charge
- Court makes final determination
- Usually does not control disposition of all property
- Requires probate (complicated, expensive, slow)

TRUST BASED PLAN

- An agreement that provides for the management of property at different stages of life
  - A carrying case for property that comes with an instruction book
  - The instruction book tells the Trustee how to care for the Beneficiaries
  - It says how to use money and property, but also why you made these choices – expressing your beliefs, values, and choices

TRUST BASED PLAN

- Revocable or Irrevocable
- Private document, not a public record
- Effective while you are alive – not just after you die
- Can be used to avoid Guardianship/Conservatorship
- Avoid probate
- Protect minor children
- Planning for blended families
- Special needs planning
- Asset protection planning
- Estate tax planning

TRUST BASED PLAN

- The Trust Life Cycle

Level 1 – Both Spouses Alive and Able

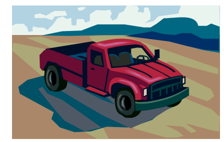
Level 2 – Incapacity

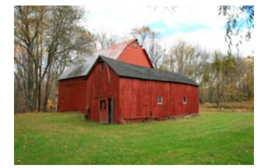
Level 3 – Death of First Spouse

Level 4 – Death of Surviving Spouse

TRUST BASED PLAN

TRUST





Death of 1st Spouse

Survivor's Share – Surviving Spouse's share of estate

Marital Share – Deceased Spouse's share of estate

Family Share – Funded with assets up to current Estate Tax Exemption

Death of surviving Spouse

CHILDREN'S TRUST
Can be held in trust or distributed outright

WHAT CAN A TRUST OWN?

- Almost anything!
  - Homes and recreational property
  - Farm and ranch property
  - Business entities
  - Personal property
  - Bank accounts
  - Stocks and bonds
- But . . .
  - IRAs and qualified retirement accounts

TRANSFER STRATEGIES – BEQUESTS AT DEATH

- Maintain control
- Full step-up in tax basis
- Limits the successor options
- Assets stay in estate – subject to your debts and liabilities

TRANSFER STRATEGIES - LIFETIME GIFTING

- Legitimate planning technique
- Must be coordinated with other planning
- Tax consequences
  - Not income to the recipient
  - Gift tax implications
  - No step-up in basis
- May cause Medicaid ineligibility
- Loss of control – when you give it away, you give it away!
- Irrevocable Trusts

LIFE INSURANCE

- Used to solve many problems
- If you own the policy, on death policy proceeds are included in estate for estate tax purposes
- Consider an Irrevocable Life Insurance Trust (ILIT), so proceeds are not included in your taxable estate
- Proceeds to beneficiaries are not considered as income for income tax purposes

SPECIAL USE VALUATION

- Alternate valuation method based upon value of property as actually used
- For five of the previous eight years the real property must…
  - Be owned by the decedent or a member of the decedent’s family
  - Used as a farm for farming purposes
  - There was material participation by the decedent or a member of the decedent’s family in the operation of the farm business

SPECIAL USE VALUATION

- "Farm assets" (real and personal) make up at least 50% of the adjusted value of the gross estate
- Real property makes up at least 25% of the adjusted value of the gross estate

SPECIAL USE VALUATION

- The real property must pass to a qualifying heir (usually a family member)
- Requires an agreement signed by each person having an interest in the property, consenting to the liability for any estate tax recapture that may occur later
- Additional estate tax imposed if, within 10 years
  - Any interest in qualified real property is disposed of (other than disposition to a member of his family), or
  - The real property ceases to be used for the qualified use.

CONSERVATION EASEMENTS

- Landowner sells/donates easement to Qualified Organization subject to terms of Easement Agreement
- Limits use of land in perpetuity
  - Usually development rights are extinguished
- Subject to certain limitations, the “value” of the easement can be deducted from the donor’s income
  - Many of the current disputes with the IRS center on the value of the easement

CONSERVATION EASEMENTS

- To qualify for the federal charitable income tax deduction, the conservation easement must meet three key requirements…
  - Qualified real property interest
  - Qualified organization
  - Exclusively for conservation purposes

CONSERVATION EASEMENTS

- The donation must be “exclusively for conservation purposes”
- The IRS allows four conservation purposes
  - The preservation of land areas for outdoor recreation or education of the general public
  - The protection of a relatively natural habitat of a fish, wildlife, or plant community or similar ecosystem
  - The preservation of certain open space (including farmland and forest land) areas
  - The preservation of a historically important land area or a certified historic structure

THE NURSING HOME PROBLEM

- Average cost of a nursing home in Utah is $8K to $10K per month.*
- What is your plan to pay for long term care?
  - Self pay
  - Insurance
  - Family
  - Medicaid

*Genworth Financial Inc. (2022). Cost of Care Survey: Median Cost Data Tables

QUESTIONS?