ALASKA COMMUNITY FOUNDATION & UNIVERSITY OF ALASKA FOUNDATION

ESTATE PLANNING WEBINAR

Presented by Chelsea Riekkola, Counselor at Law
Foley & Pearson, P.C.

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- Wills
- Trusts
- Incapacity
- Estate Tax Planning
- Probate
- Trust Administration
- Alaska Community Property Agreements & Trusts
- Corporate Law & Business Succession Planning
- Charitable Legacy Planning
What We Will Cover

• The Definition of Estate Planning
• The Problem of Title
• The Probate Process (in a Nutshell)
• Powers of Attorney & Health Care Directives
• Basics of Wills
• Beneficiary Designations & Joint Titling of Assets
• Introduction to Trusts
• Protecting Inheritance for Loved Ones
• Estate Tax Basics
• Charitable Legacy Planning
• Odds and Ends
Definition of Estate Planning:

What Exactly *is* Estate Planning?

- Not just for fancy people
- Any decision or arrangement you make during your lifetime about how and by whom your property is controlled at your death or incapacity, including:
  - Beneficiary Designations
  - Pay on Death (POD) or Transfer on Death (TOD) Designations
  - Joint Titling
- Concerned with controlling costs at death or incapacity, including:
  - Administrative Expenses
  - Legal Fees
  - Accounting Fees
  - Appraisal Fees
  - Taxes
The Problem of Title:
Who Controls Property Upon Death or Incapacity?

• When you die or become incapacitated, someone needs to be given authority to manage, control and convey your property.

• The legal process that confers authority to manage, control and transfer property depends upon the type of property and how it is titled.
<table>
<thead>
<tr>
<th>Property Type</th>
<th>Death</th>
<th>Incapacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Account</td>
<td>Probate</td>
<td>Power of Attorney</td>
</tr>
<tr>
<td>Real Estate</td>
<td>Probate</td>
<td>Power of Attorney</td>
</tr>
<tr>
<td>Joint Property</td>
<td>Operation of Law</td>
<td>Operation of Law</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>Ben. Designation</td>
<td>Power of Attorney</td>
</tr>
<tr>
<td>IRA</td>
<td>Ben. Designation</td>
<td>Power of Attorney</td>
</tr>
</tbody>
</table>

The Problem of Title: Examples of How Property Might be Controlled at Death or Disability
Court supervised process conferring legal authority upon the Personal Representative (Executor) to wind up the financial affairs of the decedent

- Personal Representative is responsible for:
  - Managing assets
  - Accounting for creditors and taxes
  - Keeping all interested parties informed
  - Distributing property as directed by the Will, and
  - Providing an accounting

- Personal Representative has a “fiduciary duty” to creditors, heirs, devisees and beneficiaries (put the interest of others first)
Estate Planning Tools for Incapacity

Power of Attorney

• Durable Power of Attorney in effect now and at incapacity
• Springing Power of Attorney comes into effect at time of incapacity
• Special or Limited Power of Attorney for specific tasks
• Considerable power with limited oversight
• Becomes ineffective at death
Estate Planning Tools for Incapacity

Advance Health Care Directive

• Appoints agent(s) to make health care decisions when you are not able to make the decisions

• Allows you to give directions regarding end-of-life care
Incapacity Without a Plan:

Guardianship/Conservatorship

• Court-Supervised Care of Incapacitated Individual and His/Her Property
• Time Delay
• Emotional Cost
• Financial Cost
  • Attorney’s Fees
  • Examining Physician’s Fees
  • Court Visitor’s Fees
Basics of Wills:

Intestacy (Dying Without a Will)

- State law will provide a plan for you
- Does not avoid probate
- No tax planning
- No planning for incapacity
- No provisions to manage or protect inheritance for heirs
Basics of Wills:

What Your Will Does

• Transfers property solely in your name
  • Specific Distributions
  • Residual Bequest
• Names Personal Representative & Successor Personal Representative(s)
• Names guardians for minor children
• Can create a testamentary trust for children or other loved ones
Basics of Wills:
What Your Will Won’t Do

• Probate required
• Court involvement
• Potential time delay
• Public process
• Potential for probate in multiple states
• A Will only controls the transfer of property solely titled in the name of the decedent
• Joint titling, beneficiary designations, and pay on death arrangements supersede the Will
Beneficiary Designations:

Part of the Whole Puzzle

• Named beneficiaries may not be consistent with Will

• Property often passes outright to beneficiaries without available protections:
  • No Estate Tax Planning Protections
  • No Asset Protections
  • No Provision to Manage Inheritance for Heirs

• Options: individuals; your estate; trusts for loved ones; or your living trust (more on that later)
Joint Tenancy with Rights of Survivorship:

Be Intentional

- Property passes automatically at death to the joint tenant
  - Potential unintended heirs
  - Subject to claims by creditors of co-owner(s)
  - May defeat tax or asset protection provisions in Will or Trust
Introduction to Trusts:

What is a Living Trust?

• A Contract
• You are Trustmaker, Trustee and Beneficiary while you are alive and well
• Names Successor Trustees to take control upon your death or incapacity
• Identifies and provides for beneficiaries after your death
• Acts as a “Will substitute”
Introduction to Living Trust:
How a Living Trust Works

- Appropriate retitling of assets (funding) with proactive involvement of the attorney is essential
- Should include appropriate definition of incapacity
- May include detailed personal instructions
- Can be named as a pay-on-death beneficiary (treat with caution)
- Detailed explanation of trusts is covered in the regular webinar Foley & Pearson teaches—outside the scope of today’s webinar for the sake of time
Introduction to Living Trust:

When to Use a Living Trust

- When you want to limit or avoid probate proceedings
- When you own property in more than one state
- When you have a taxable/potentially taxable estate
- When you want help with management of your financial affairs
- When you want to leave your wealth to your spouse or loved ones in a protective trust
- When you want your affairs to remain private
Protecting Your Estate for Loved Ones:
Not All Estate Plans Provide Asset Protection for Your Beneficiaries

• “I Love You” Wills
• Joint Titling
• Beneficiary Designations to Individuals
Leaving assets in a Testamentary Trust for loved ones protects the assets from creditors and predators.

“Nope!”

“Sorry, Charlie!”

Not All Estate Plans Provide Asset Protection for Your Beneficiaries
Protecting Your Estate for Loved Ones:

Benefits of Inheritance Trusts

• Management Assistance
• Creditor Protection
• Protection in Event of Remarriage
• Safeguard Children’s Inheritance (Bloodline Protection)
• Minor Children
• Financial Management Assistance
• Special Medical Needs
• Substance Abuse
• Protection from Creditors
• Protection from Divorce
• Generation Skipping Tax Planning
• Family Legacy Property
What is the Estate Tax?

- A tax on the transfer of property or wealth, a/k/a “excise” tax
- Same rate applies to both lifetime transfers (gifts) and transfers at death (leaving someone an inheritance)
- Not an income tax
- What property is subject to the estate tax?
  - Anything that is titled in your name
  - Half of property that is jointly titled
  - Anything you can name a beneficiary on
    - Life Insurance
    - IRAs
    - Annuities
Estate Tax Basics:

What is NOT Subject to the Estate Tax?

• Marital Deduction
  • You can transfer unlimited wealth to your U.S. citizen spouse now or at death without triggering a federal estate or gift tax

• Applicable Exclusion Amount (The “Coupon”)
  • You can transfer wealth to anyone other than your spouse without triggering a federal estate or gift tax up to the “coupon” amount
## Estate Tax Basics:

### History of the Estate Tax Coupon Amount

<table>
<thead>
<tr>
<th>Date</th>
<th>Exclusion Amount</th>
<th>Top Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>$675,000</td>
<td>55%</td>
</tr>
<tr>
<td>2002 (EGGTRA)</td>
<td>$1.0 Million</td>
<td>50%</td>
</tr>
<tr>
<td>2009</td>
<td>$3.5 Million</td>
<td>45%</td>
</tr>
<tr>
<td>2010 (TRUIRJCA)</td>
<td>$5.0 Million or None</td>
<td>35% or None</td>
</tr>
<tr>
<td>2011</td>
<td>$5.0 Million</td>
<td>35%</td>
</tr>
<tr>
<td>2013 (ATRA 2013)</td>
<td>$5.25 Million (Indexed)</td>
<td>40%</td>
</tr>
<tr>
<td>2020</td>
<td>$11.58 Million (Indexed)</td>
<td>40%</td>
</tr>
<tr>
<td>2022</td>
<td>$12.06 Million (Indexed)</td>
<td>40%</td>
</tr>
<tr>
<td>2026</td>
<td>$5.0 Million (Indexed)</td>
<td>40%</td>
</tr>
</tbody>
</table>
Estate Tax Basics: Lifetime Gifts

- Annual gift limitation of $16,000, indexed to inflation
- You must report gifts exceeding $16,000 per person to the IRS
- May use some or all of the $12.06 million Coupon during your lifetime, which allows larger gifts without triggering a tax
- Reduces overall Coupon amount at the time of death
Estate Tax Basics:
States May Also Impose Estate or Inheritance Taxes

• Alaska has no estate or inheritance tax
• Other states have estate or inheritance taxes in addition to federal estate taxes
• Taxes are imposed by states if you are a resident of the state or own real estate in that state when you die
• Washington and Oregon have a state estate tax
Odds and Ends: Putting it All Together

- Will or Living Trust
  - “Pour-Over” Will for Trust-Based Plan
- Power of Attorney
- Advance Health Care Directive
- Memorial Instructions
- Memorandum of Personal Property
- Proper Beneficiary Designations
- Proper Titling of Financial Accounts and Real Property
- Community Property Agreement
- LLC
Charitable Legacy Planning: Retirement Assets

• Human Beneficiaries of retirement assets (401(k)s, IRAs, 403(b)s, TERS, PERS, etc.) pay income tax on distributions
• 10 Year Rule applies under SECURE Act
• Charities DO NOT pay income tax
• Lifetime income tax savings: consider directing required minimum distributions (RMDs) to charities
• Income tax savings for beneficiaries after your death: consider naming charities as beneficiaries on retirement assets
Donor Advised Funds

- Allows the donor to work with the charity during the donor’s lifetime to create a “fund” and establish general goals for the fund (i.e. journalism, EDI work, social justice, wildlife, pets, children, the Arts, medicine, etc.)

- Donor then names an “advisor” who oversees the allocation of the fund dollars to achieve the donor’s purpose after the donor’s death

- Typically held at a community foundation, though not always
Charitable Legacy Planning:

**Other Charitable Planning Tools**

- Charitable Remainder Trust (CRT)
- Charitable Remainder Unitrusts (CRUT – Cousin of the CRT)
- Charitable Lead Trust (CLAT)
- Charitable Gift Annuity (CGA)
- Endowments
- Private Foundations
- Lifetime Gifting
Thank You for Attending!

• Please fill out the short evaluation form
• Personal Information Forms are available for individuals interested in working with Foley & Pearson, P.C.
• Workshop schedule available at FoleyPearson.com