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Estate Planning
Frequently Asked Questions

We have prepared this brief summary of Frequently Asked Questions (faq) to acquaint our new clients with the basics of the estate planning process and some terms that they might want to know. Please understand that that this FAQ contains only very basic and general information on what are often very complex topics.

1. What is "Estate Planning"?

Wikipedia defines Estate Planning as the process of accumulating and disposing of an estate to maximize the goals of an estate owner. This is a terrific definition. It encompasses the needs of the family, perhaps with their first child just starting out, It includes, perhaps, the needs of the couple in their 40's with several children about to face college education costs perhaps with parents just retiring or beginning to need attention. The estate planning process includes attention to retirement planning as well as planning for death and disability.

Many people believe that estate planning is a one-time transaction. In point of fact, that is far from the case. As an individual's family and financial circumstances change (and as the federal and state tax laws as well as the state probate and trust laws change), the estate plan needs to be reviewed and kept up-to-date. Estate planning is a dynamic process that needs regular attention throughout one's adult life.

2. What can clients of Kaufman Law Group expect during the estate planning process?

We pride ourselves on customizing every plan to the goals, objectives and circumstances of every client family. At Kaufman Law Group, every plan is custom designed for each family. Nonetheless, some general observations might be helpful. Most often, our estate planning engagements include three meetings.

During the first meeting, we will gather basic information including a complete family history. We'll want to know a lot of information about you and your family. We're going to ask a lot of questions you'll expect – *and some you probably don't.* We will also build together a spreadsheet of your assets so we can look at net worth, liquidity, insurance and estate tax exposure. Finally, and most importantly, we'll talk at length about your objectives – what's important – not only about your money but what it means for you and your family. We'll examine various options for your plan. Jay will explain all of them to you so that they are very clear. Once a course of

action is decided, we will diagram out all the components of the estate plan on our state-of-the art SmartBoard, so you can see how they work together. All decisions concerning executors, trustees, guardians and others will be made. This meeting can last from an hour to two or more hours.

The second meeting is often called the "walk through" meeting. Jay will walk you through the entire estate plan. He will use the color diagram, the 8 or 9 page summary and perhaps also the legal documents. There will be as much time for questions as you need. If there are changes to the legal documents, sometimes they can be made during the meeting. If the changes are complex, another meeting might be required. If everything is in order, the wills, trusts, deeds, beneficiary designations, powers of attorney and ancillary documents can be signed in accordance with the legal requirements.

We offer a third meeting with our estate planning clients at no additional charge. This meeting generally is a few weeks after everything is signed. At this meeting, we briefly review the estate plan once more and deliver the client's original documents as well as a disk containing images of all the signed instruments. During this shorter meeting, we also make a plan to ensure that all the assets are properly coordinated and that the plan is reviewed and followed on a regular basis.

3. What is Probate?

Probate is the legal process by which property is transferred from one generation to another under a set of prescribed rules. (Probate courts in Illinois also supervise the estates of minors and disabled persons under many circumstances). The records of a probate case are not private. They are open to public inspection (and to the media). We always tell our clients that when they are involved in litigation, we never can predict what might happen because we can't completely control the process. There are other parties involved, namely a judge and sometimes others who might be adversaries. The same is sometimes the case in a probate proceeding. As a result, the process can be long and often expensive.

The Illinois Probate Act does have a couple of options for expedited and simplified probate. One is called "independent administration" which we use often if we have no choice but to administer a decedent's estate in probate. Sometimes the single advantage of forcing property through probate is that controversies can be resolved and competing claims concerning the title to property can be adjudicated.

Property titled in one's name alone ("Frederic Flintstone") must pass through probate upon his or her death.

It our experience that the probate process should be avoided whenever possible. There are simple ways to leave property to one's intended beneficiaries without probate – predictably and inexpensively. For example, up to $100,000 of property in a person's name alone (accounts, securities and the like) can be transferred *without probate* under Illinois law using a Small Estate Affidavit which is prepared by an attorney after an individual's death.

We will discuss these methods during our estate planning work together.

4. What is a Will?

A Will is a formal legal document in which an individual indicates to whom his property is to be transferred upon his or her death. Many people believe that if they have a Will, the probate process is avoided. *This is a common misconception.* In point of fact, a Will often forces property in an individual's name through probate.

A Will serves additional functions. The most important is nomination of guardians for minor children. The guardian of the child's *person* is responsible for the day to day care of the minor until he or she attains the age of majority (18 in Illinois). Most parents will want to nominate a guardian for their minor children and also a "backup" guardian in case the primary guardian is for some reason unable to act.

5. What is Joint Tenancy?

For estate planning purposes, when a residence or an account is held in "joint tenancy" it means that upon the death of one joint tenant, the account or residence is owned by the survivor immediately, without legal process. Hence, if a residence is owned by Fred and Wilma Flintstone, upon Fred's untimely demise, Wilma owns the residence, without probate, without the need for a new deed or other action. It is hers immediately.

Joint tenancy is often a convenient way to hold title. Unfortunately, however, in the event of a common disaster, the account or residence would then be subject to probate. Thus, if Fred and Wilma were both killed in a car accident, the house would be subject to probate in State of Bedrock.

6. What is Tenancy by the Entireties?

Many married couples own their home as "tenants by the entireties". They often wonder what this means. Real property (or an interest in a land trust) held as "tenancy by the entireties" between husband and wife is the same as joint tenancy property (see FAQ #4 above) with one very important and very unique feature. This is best illustrated by an example. Fred Flintstone owed $5,000 to a bank for his Bedrock Visa bill in an account held in his name only. He failed to pay the bill and the Bedrock Circuit Court entered a judgment against him. To enforce the judgment, could the bank then foreclose on his house to recover the $5,000 unpaid bill? The answer is no. Because the house is titled in tenancy by the entireties, the house is protected from garnishment or levy because of Wilma's separate interest. Thus, tenancy by the entireties allows for asset protection planning as well as conventional estate planning.

7. What is a Revocable Trust?

Many families want flexibility built into their estate plans. They also want to avoid probate and when the time comes, settle their estates quickly, inexpensively and privately. They also want a plan designed to minimize taxes. In many situations, families want to provide long term

protection so that family wealth is not subject to the claims of descendants' spouses in a future divorce proceeding or to the claims of a future judgment creditor due to a the financial mistakes of immaturity.

Often, it is the revocable trust (also known as the "living trust") which serves as the centerpiece of the estate and which provides many of the benefits described in the previous paragraph. You might ask, then, "What is a Trust"?

At its simplest, a trust is nothing more than a contract. Who are the parties to the contract? There is the "Grantor" – the person who creates the trust and the "Trustee who has the responsibility of managing the trust. During our planning meetings, we will discuss at length the duties of the trustee, who best should be appointed and how best to communicate these duties to them. In addition, the "beneficiaries" are the individuals intended to benefit from the trust.

The revocable trust format allows the attorney to fashion the agreement so that it fits each family's desires. Flexibility is the watchword. "Revocable" means exactly that and more. The trust can be revoked at any time before death. The trust can be amended in whole or in part during one's lifetime as well.

8. What is *Per Stirpes*?

This is a term that is often used to describe how a family's property is to be distributed after the parents have died. Many wills and trusts will say that the assets should be distributed in trusts to "my then living descendants, *per stirpes*". Literally, *per stirpes* means "by the stalks". Simply put, it means, "keep it in the blood lines". Thus, upon Fred and Wilma's death, their assets will pass to Pebbles. However, if Pebbles predeceases Fred and Wilma leaving two children of her own, those two children stand in Pebbles' shoes (equally). In this way, the assets are distributed along the blood lines.

9. What is a Living Will?

A "living will" is a document in which an individual can give directions concerning end of life decisions and in particular the question of continuance or withdrawal of life support. While Illinois still has on its books a living will statute, some practitioners have included instructions with respect to end of life and other health care directions in a comprehensive durable power of attorney for health care. (see question 9) Generally speaking, this is the approach we take to this question. The "living will" is less flexible in our opinion. Therefore, we tend not to use it much.

10. What is a Durable Power of Attorney for Health Care?

A durable power of attorney for health care allows you (the "Principal") to appoint an "agent" to act on your behalf to make medical decisions (include those concerning end of life and termination of life support) for you in the event you are unable to do so. The Illinois statute provides a "statutory short form" which can be used, but is not required. A different form can be utilized so long as the legal requirements are met. It is our practice to draft powers of

attorney carefully to meet the client's needs. Thus, we do not believe that the statutory power provides sufficient flexibility. In addition, a properly prepared power of attorney will include waivers under the Health Insurance Portability and Accountability Act (HIPAA) so that doctors and other caregivers have permission to discuss treatment plans and the like with your agent (and, if applicable other family members).

11. What is a Durable Power of Attorney for Property?

A durable power of attorney for property allows an agent you appoint to deal with your assets (pay your bills, manage accounts not in your trust) in the event of your inability to transact daily business due to accident or illness without having a court appoint a guardian.