Estate Planning for Non-Married Couples Part II - Advanced Planning Techniques

Earlier, we discussed essential components of estate planning emphasizing an extra measure of protection for non-traditional couples. When a will contest appears likely or additional tax planning is needed, however, more advance planning techniques are advised.

Joint ownership is the simplest planning tool as property generally passes to the joint owner outside of probate. Joint ownership may be undesirable though, as it gives present access to and ownership of the property or account, and is usually treated for tax purposes as a gift.

Payable-on-death (POD) accounts (a.k.a. totten trusts) allow the account holder to retain full ownership, use, and control of the account while alive. Upon death, the account transfers to the beneficiary(s). POD accounts are not restricted to bank accounts either – government securities, savings bonds, certain securities, stock and brokerage accounts, automobile titles, real property deeds, and other assets may all carry a POD designation. Although an excellent tool to provide for a partner while bypassing probate, the account is still the grantor's taxable estate so potential tax issues should be considered.

Living trusts are a popular and effective method to protect assets and preserving privacy by avoiding probate. Especially important when a will contest is likely, trust assets pass outside of probate and are not easily challenged. Revocable trusts give the grantor complete control and flexibility over assets while living and provides for a partner after death outside of probate. The trust can also provide for another beneficiary after the death of the first. If drafted properly, a trust can offer protection from the beneficiary's creditors as well. Trusts, however, may be initially expensive and useless (or worse) if assets are not actually transferred into the trust (a "dry trust"). And a trust alone is not necessarily an effective tax planning tool as it remains in the grantor's taxable estate.

Life insurance is an often overlooked but highly useful tool as the proceeds can quickly be paid directly to someone or into a trust for their benefit. As with trusts the proceeds pass outside of probate and the policy is not subject to claims of the beneficiary's creditors (though the proceeds may be once received). There are, of course, down sides. Family members receiving insurance proceeds may be given monetary war chests with which to challenge the will. Life insurance can be a factor in estate tax liability as the policy is part of the taxable estate (though the proceeds are not subject to Maryland inheritance taxes). The policy can be removed from the estate for tax purposes by use of an irrevocable life insurance trust (ILIT) in which the trust purchases and owns the policy and is the beneficiary, but such techniques are subject to strict IRS regulations and should only be attempted with professional assistance.

As part of an overall estate plan, these and other techniques can be used for the nearly challenge-proof and tax efficient transfer of assets. With proper planning, you can leave your estate without family conflict and preserve your estate for your family and partner.

Disclaimer: This general information is neither legal opinion or advice, nor a complete estate planning discussion, and refers to Maryland law - your state's law may differ. As each situation is different, you should seek independent legal advice from an attorney for specific information.

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