KOTZ SANGSTER

ATTORNEYS AND COUNSELORS AT LAW

Andrew W. Barnes	Kathleen Kinney Bowman	John R. Colip
(269) 287-2011	(269) 637-1151	(269) 695-3849
David R. de Reyna	**Mowitt S. Drew, III**	**Kelly L. Travis**
(313) 259-8596	(269) 591-6917	(269) 591-6916

www.kotzsangster.com

ESTATE PLANNING 101/EZ
A SUMMARY OF THE BASICS

Estate Planning is more than just planning for estate taxes. Estate planning provides for the orderly distribution of your assets upon your death. It also provides for the ability to manage your affairs in the event of a disability or incompetency while you are alive. The summaries below are meant to provide you with a guide to the basic estate planning documents and estate tax issues which each person needs to understand to properly provide for their families and themselves both during their lifetimes and upon death.

Each individual should have at a minimum three basic estate planning documents:

Last Will and Testament ("Will")
General Durable Power of Attorney ("POA")
Designation of a Patient Advocate ("PA")

These three basic documents provide for you to detail who are your decision makers in the event of your incapacity during your lifetime or upon your death.

LAST WILL AND TESTAMENT: The Will is signed by an individual and provides, among other things, instructions to the local probate court to direct who is in charge of your estate upon your death and who are the recipients of your assets. The Personal Representative is the person in charge of administering your estate upon your death. The Will also can nominate who the guardian will be of your minor children. A Will becomes effective at your death once it's been accepted by the probate court.

There are negatives to having only a Will. Your probate estate is subject to public review, typically there is no estate tax planning, and most importantly there is a lack of distribution planning if needed for your family. Children are considered adults at age 18. Therefore, if a child is a beneficiary of your Will, they will receive the assets outright at age 18 without further supervision. Your family situation may require more sophisticated planning than a Will can provide.

WHAT'S PROBATE: Probate is the legal system which controls the transfer of your assets upon your death by either the terms of your Will or, if you die without a Will, by state law. Every state has a series of laws which describes who should be in charge upon your death if you do not have a Will.

Dying without a Will is called dying Intestate and the county where the decedent resided at death is the probate court where the estate will be administered and a probate proceeding commenced.

Only assets which are solely in the decedents' name upon their death are subject to probate. Assets that have a beneficiary designation (i.e. an IRA, life insurance policy, 401k, etc.), assets which are owned by a trust, or assets that are owned as joint tenants with rights of survivorship avoid probate.

If you own real estate in more than one state, then you will be required to commence an ancillary probate proceeding in each state that you solely own real estate. There are different types of probate proceedings depending upon the dollar amount of the probate estate, complexity of the situation and parties involved.

GENERAL DURABLE POWER OF ATTORNEY: The POA allows you to appoint someone to make financial and other decisions on your behalf during your lifetime. The POA can either become effective upon signing or upon incapacity. If you don't have a POA, then upon your incapacity or incompetency your family will need to petition the probate court to appoint a conservator in order to have access to your assets. All POAs terminate upon the death of the grantor, upon the revocation by the grantor or upon a specific event designated in the document.

DESIGNATION OF PATIENT ADVOCATE: Most states have their own version of a living will. Michigan's Patient Advocate law allows an individual to appoint someone to make medical decisions if the individual is unable to make decisions for themselves. We recommend updating this document every five years and provide a copy to both your primary care physician and any hospital which you are likely to be a patient.

PROBATE AVOIDANCE AT DEATH: Beneficiary designations typically allow assets to avoid the probate court system. However, if you name a minor as a beneficiary of the asset, upon the death of the owner the asset will be subject to the probate court's control until the minor has attained the age of 18. Also, if a beneficiary predeceases you, the beneficiary form may not provide for an alternative distribution which will then require a probate proceeding.

Joint Ownership is another probate avoidance tool. Making someone the joint owner with rights of survivorship of your bank accounts or real estate will typically avoid probate. However, there are income tax, gift tax, estate tax and control issues which occur when adding someone as the owner to your assets. The idea that a child or children are on your account for convenience can lead to disastrous consequences. Multiple owners of the asset each with their own legal rights to the property and the sale of the asset may require all of the owners' approval. Also, the sale may require the proceeds to be placed in all the owners' names. There may also be gift tax consequences upon the establishment of the joint ownership. All of these legal issues may impact the property.

> **Example No. 1:** Mom adds her three children as owner to her brokerage account. Child #1 files for divorce. Child #1's former spouse now claims that the account with Mom is part of the marital estate for the divorce. What if child #2 files for bankruptcy? The assets are then subject to Child #2's bankruptcy estate.

Example No. 2: Parents add their child as co-owner on a brokerage account. Upon the death of the first parent 50% of the account is included in the Gross Estate of the deceased parent and does not qualify for the unlimited marital deduction. This could create a taxable estate upon the first parent's death. Upon the second parent's death, the account is now owned by the child. If there are other children they will not receive the proceeds from the account.

WHAT IS A LIVING TRUST? AND DO I NEED ONE?

Many people ask do I need a Trust? What is a Living Trust and how can it benefit me? There are many different kinds of trusts for different needs. However, the most common type of trust is revocable living trust.

REVOCABLE LIVING TRUST: A revocable living trust ("RLT") is a written agreement which provides estate tax planning, income tax planning, privacy and distribution planning upon your death. RLT's are commonly used to avoid probate and provide for delayed distribution provisions. The person who sets up the RLT is commonly referred to as the Grantor or Settlor. That person is also usually the initial trustee (or the person in charge) of the Trust. A RLT usually provides for distributions upon the death of the Grantor to first the spouse and then upon the surviving spouse's death to their children. The distribution provisions are customized for each Grantor's individual needs, goals and circumstances and can be changed at any time while the Grantor is competent and not incapacitated.

RLT's are also used to provide basic estate tax planning. Estate tax planning allows a married couple to transfer the federal exclusion amount (described below) to their family. Without a RLT, most couples with a taxable estate fail to utilize the maximum estate tax planning available.

ESTATE TAX & INCOME TAX AT DEATH: Estate taxes can occur at both the federal and state level. Federal estate taxes have been in place for over 100 years. There are a few basic definitions which need to be understood.

Unlimited Marital Deduction: Assets which pass between spouses are exempt from estate taxes, no matter what the value, unless the surviving spouse is a non U.S. citizen. Non U.S. citizens have unique tax laws beyond the scope of this material.

Gross Estate: Gross Estate is defined as the date of death fair market value of all your assets, wherever located, reduced by the any liabilities. This includes the death benefit of any life insurance as well as the value of any IRAs, 401(k)s etc.

Applicable Exclusion Amount: The amount which the Internal Revenue Code allows an individual to transfer at death to non-spouses without incurring a federal estate tax (currently $5,490,000 for 2017).

Cost Basis Adjustment: After tax investments (non IRA's, real estate, etc.), cost basis is adjusted to the fair market value as of the date of death.

Gift Tax Exemption/Exclusion: The current annual gift tax exemption is $14,000 per person. This means that you may gift $14,000 to as many people as you want in any calendar year. The dollar amount is adjusted for inflation and changes periodically, but only in increments of $1,000. In addition, you can gift up to $5,490,000 during your lifetime without incurring any gift tax. The annual gift tax exemption does not reduce the lifetime gift tax limit. However, any gifts in excess of the annual gift tax exclusion will reduce the amount of the life time limits and Applicable Exclusion Amount available upon your death.

Estate Tax Planning requires the strategic use of your Applicable Exclusion Amount upon your death. A RLT is the traditional estate planning tool for married couples to allow the maximum use of the Applicable Exclusion Amount upon the death of the first spouse.

Estate Tax/Federal: The current Federal Exclusion amount is $5,490,000 per person with the surviving spouse able to carryover the deceased spouse's unused amount. The exclusion amount is annually indexed for inflation. Portability of the deceased spouse unused exclusion amount requires the filing of a federal estate tax return.

State Estate Tax: Prior to 2005, most states received a portion of the federal estate tax if there was a federal estate tax due. As part of the 2001 tax law changes there was a phase out of what a state received until the amount reached zero in 2005. Michigan has repealed its own estate/inheritance tax. However other states have created their own separate estate tax. If you have assets located outside the state of Michigan these assets may be subject to the estate taxes in that state.

Estate Planning requires making important decisions about who is in charge of your assets when you are unable to act for yourself and includes distribution planning, income tax planning and estate tax planning. Understanding your options is part of our mandate. In the event you would like to discuss any of these topics, please contact us for a complimentary consultation.

KOTZ SANGSTER WYSOCKI P.C.
Detroit ▪ Bloomfield Hills ▪ Grand Rapids ▪ Niles ▪ Buchanan ▪ South Haven ▪ St. Joseph
Phone: 313.259.8300 ▪ Fax: 313.259.1451
www.kotzsangster.com