ALASKA COMMUNITY FOUNDATION
&
ALASKA PUBLIC MEDIA

ESTATE PLANNING WEBINAR

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Foley & Pearson, P.C.

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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.
## The Problem of Title:
### Examples of How Property Might be Controlled at Death or Disability

<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>
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
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
Protecting Your Estate for Loved Ones:

Not All Estate Plans Provide Asset Protection for Your Beneficiaries

- Leaving assets in a Testamentary Trust for loved ones protects the assets from creditors and predators

“Sorry, Charlie!”
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
Estate Tax Basics:

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>2021</td>
<td>$11.7 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 $15,000, indexed to inflation
- You must report gifts exceeding $15,000 per person to the IRS
- May use some or all of the $11.58 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
Other Estate Planning Tools

Limited Liability Companies

• Can be used for
  • Businesses
  • Real Estate
  • Family Legacy Property

• Requires upkeep
  • Biennial Reports and notice of certain changes
  • Foley & Pearson offers annual maintenance plans for LLCs and corporations in order to help maintain the organization’s good standing with the State of Alaska
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
Charitable Legacy Planning: Charitable Remainder Trust (CRT)

- 10 Year Rule imposes heavy income tax burden on inherited IRA beneficiaries, especially for large IRAs
- CRTs allow an inherited IRA to pay out to a human beneficiary for the human beneficiary’s lifetime instead of imposing the 10 Year Rule
- All remaining funds at the death of the human beneficiary pay to the charitable beneficiary of the CRT
Charitable Legacy Planning: 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 Unitrusts (CRUT – Cousin of the CRT)
- Charitable Lead Trust (CLAT)
- Endowments
- Private Foundations
- Lifetime Gifting
Advanced Tax and Asset Protection Planning Tools

• Qualified Personal Residence Trust (QPRT)
• Irrevocable Life Insurance Trust (ILIT)
• Intentionally Defective Grantor Trust (IDGT)
• Spousal Limited Access Trust (SLAT)
• Partnership and LLC Valuation Discounting
• Self-Settled Trust for Asset Protection
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
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 schedules are available