

## Estate Planning Terminology

### I. Wills

A **will** is a document that will transfer probate property upon your death. It is inoperative during life. A **will** can also be used to designate a personal representative to manage your estate after your death, and can designate a guardian for any minors who are under your care at your death.

A **will** is a basic estate planning tool that can be used in conjunction with other tools such as a trust to insure that an individual's wishes regarding their property distribution is honored upon their death. It also can offer direction to family members who are left behind to facilitate an orderly administration of your estate with minimal inter-family conflicts.

### II. Trusts

A **trust** is an independent entity which owns property, and provides that the property it owns is managed by a fiduciary, or responsible person, who is known as the **trustee**. A **trust** will set out the people that should receive the income and assets of the **trust** under certain circumstances. For example, you may wish to use property during your life, and then distribute it to your children at your death. A **trust** can accomplish this by setting out the way in which the property is managed, and to whom it is distributed.

A **trust** can also be used as part of a **will** to provide adult management of property if a minor receives property after your death. For example, if a grandchild receives money under your **will**, and is 14 years old, a **trust** can provide that a **trustee** will manage that property until the child is an age you select, such as 21, to insure that the grandchild is capable of managing the property when he receives it. You can further provide that the **trustee** can use the **trust** assets for any suitable purpose such as education, or health care, while making sure that the money is spent wisely.

### III. Probate v. Non-Probate Assets

#### A. Non-Probate Assets

Generally, **non-probate** assets are those assets that are not part of an individual's estate, do not pass under his will, and usually are transferred automatically upon death, or according to the terms of a contract or trust. The most common **non-probate** assets include:

1. Property held as **joint tenants** with right of survivorship.

**Joint tenancy** property will transfer automatically upon death and does not become part of an individual's estate. The most common examples of **joint tenancy** property are real estate, bank accounts, and investment accounts owned jointly by a husband and wife. Because there are many ways to own these assets, it is important to know whether or not these assets are owned as **joint tenancy** property, or in some other manner.

## 2. **Life Insurance**

**Life insurance** is **non-probate** property unless your estate is designated as a beneficiary. It is unusual to designate an estate as a beneficiary on a life insurance contract unless the beneficiary is a minor or suffers from a disability. Life insurance proceeds are distributed directly to the designated beneficiary according to the insurance contract, and therefore, never become part of a person's estate.

## 3. Life Estate Property in which an individual has only a **Life Interest**.

An example of property where a person has only a **life interest** is real estate that was transferred to a person's children while retaining a **life estate** for the parent. Because in this example the parent's life interest dies with the parent, the property never becomes part of that person estate, but rather belongs to the children immediately upon the parent's death.

## 4. Certain trust property which is transferred outside of an individual's estate.

## B. **Probate Assets**

**Probate assets** are generally all other property that will become part of an individual's estate and be distributed according to the terms of a will, or if an individual does not have a will, under the laws of intestacy. The amount of property you own that will be probate or non-probate property can be changed as part of the estate planning process.

It is important to recognize the difference between probate and non-probate property for purposes of estate planning. Creating joint tenancies can be a useful tool to simplify property transfers upon death, and can reduce the costs of administering an estate. There are some circumstances, however, when it is advantageous to change joint tenancy property to another type of ownership, such as owning real estate as tenants in common. It is also important to know what property will and will not be part of your estate when you are making a will so that you can effectively distribute that property as part of the estate planning process. These advantages and disadvantages are specific to each individual's circumstances.

## IV. Health Care Directives

A **health care directive** is a document in which you can make decisions regarding future medical care and treatment, and in which you can designate an individual to act on your behalf in the event you cannot make your own health care decisions. By making these decisions before you are actually suffering from a debilitating or terminal illness, you can know that your wishes regarding medical care will be followed. You can also assist those people who will be asked to make medical decisions for you in making tough medical choices.

**Health care directives** are particularly important when determining what treatment you do and do not want in the event you are suffering from a terminal illness. This is especially true if you personally feel strongly about being sustained by heroic measures or medical equipment such as respirators, feeding tubes, and other measures. As part of this process you can designate which treatments you want to receive, and which you do not want in certain circumstances.

One of the greatest advantages of a **health care directive** is the ability to decide who will act for you in the event that you cannot make your own decisions. In designating an individual to act for you, you should designate someone you trust completely, someone who will be able and willing to follow your wishes regarding health care, and if possible, someone who shares your philosophy regarding medical treatment.

By stating in writing your decisions regarding health care, you can know you have control over your health care, and will also assist those you care about in making tough decisions. In addition, by designating an individual to make decisions for you, you may eliminate conflicts between friends or relatives regarding medical decisions, and who is responsible for making those decisions. Finally, in stating your wishes regarding when medical treatment should be withheld, you can remove a tremendous burden from family members who would otherwise be asked to make that decision.

Creating a **health care directive** is a process that you should do after consultation with your physician and family members, and after carefully considering your health care wishes. When you know what you want to include in a **health care directive**, it is then appropriate to consult an attorney who can help you with the proper form and execution of the document. Once completed, the **health care directive** should be given to your health care providers, placed in your medical files, and given to the individual or individuals who are designated to make decisions for you. You should also keep a copy with your personal papers.

## UNIFIED ESTATE AND GIFT TAX

Year of Gift or Death	Federal Exclusion Amount (How much you can give away or die owning)	State of Minnesota Exclusion Amount
2008	\$2,000,000	\$1,000,000
2009	\$3,500,000	\$1,000,000
2010	Taxpayer Election	\$1,000,000
2011	\$5,000,000	\$1,000,000
2012	\$5,000,000	\$1,000,000

### **RECOMMENDATIONS FOR REDUCING A TAXABLE ESTATE**

- Increase your annual gifting.** The IRS allows you to give away \$13,000 per donee per year tax free. Depending on your comfort level making outright gifts, and on the number of people to which you would make such gifts, this is another effective way to begin to reduce your estate.
- Lifetime exemptions.** Utilize your one million lifetime gift exclusion and future appreciation in such assets will accrue to the benefit of the Donee.
- Increase your charitable gift amounts upon your death.** Increasing the amounts given to charities is an effective way to reduce the taxable portion of your estate. Charities benefit from such gifts as they suffer no tax consequences, and our estate may utilize a charitable deduction.
- Increase your charitable giving during your lifetime.** Charitable giving during lifetime is also an effective way to reduce the taxable portion of your estate. Charities benefit from such gifts as they suffer no tax consequences, and you may utilize a charitable deduction on your income tax return.
- Enjoy yourself.** The above four options all involve giving your money away to someone else. You may also want to consider spending your money on yourself. If you have something you have always wanted to do, learn, or experience or somewhere you have always wanted to travel, fulfilling these wishes is a wonderful way to spend down your estate.

## **WARNING REGARDING QUALIFIED RETIREMENT PLANS**

Monies in Qualified Retirement Plans- ie. IRAs, 401ks, 403(b)s- that exceed the above Exclusion Amount are subject to a huge tax liability. The amount exceeding the Exclusion Amount is first subject to an income tax, and then subject to an estate tax. This means the beneficiaries of this excess amount will receive anywhere from 5 cents to 23 cents on the dollar depending on the amount exceeding the Exclusion Amount. There is an opportunity to roll over these accounts to a surviving spouse and the spouse can then withdraw funds during the lifetime of the surviving spouse.