



*August 27, 2007*

*Dear Reader:*

***Essential Estate Planning: Wills, the Durable Power of Attorney, Health Care Directives, and Tax Considerations.***

With so many things happening in our daily lives, we often overlook planning for the future. If you have not prepared your will, a durable power of attorney, or health care directive, rest assured, the process is quite easy. The purpose of this article is to answer some basic questions so that you can get started.

***Will:*** A will is a document that explains how you want your estate distributed after your death. The will does not become operational until your passing. You can change a will as many times as you want during your life. In fact, most people often do make changes. In your will, you can also nominate a guardian for minor children.

***Trust:*** There are many types of trusts, however, in this article I only discuss testamentary trusts. A *testamentary trust* is a trust established under your will. Such a trust may be used to provide for minor children, other family members, a charity, or a pet. The trust can be funded by many sources, including the proceeds from life insurance, the sale of a home, or investments. A trust is managed by a *trustee*, normally a person you appoint in your will. The trustee is directed to invest the assets of the trust in a prudent manner, and to ensure that the beneficiary of the trust is receiving the benefits in the manner desired by the creator of the trust.

***Nomination of Guardian for Minor Children, Disabled Adult Children, and Pets:*** If you are a parent, you must be aware of how to provide for your children in the event that you or your spouse predeceases them. Under a will, you may nominate a guardian. The nomination is subject to court approval. Normally, a trust will accompany the nomination of the guardian. You can direct your guardian how to use the funds to care for your children.

***Durable Power of Attorney:*** A durable power of attorney authorizes somebody, appointed by you, to act as your “attorney in fact.” This person may be authorized to conduct banking transactions on your behalf, to make health-care decisions for you, and to handle your business dealings. An attorney in fact may *not* amend or alter your estate will. A power of attorney is “durable” in that it will remain valid upon your incapacitation.

***Health Care Directive:*** A health care directive is a document recognized under Washington State law that permits you to refuse medical care or surgical treatment in the event that you are

placed in a permanent unconscious condition or diagnosed with a terminal condition and you are unable to give direction with regard to such treatment. This document memorializes your intentions and prevents another family member from having to make a difficult medical decision on your behalf.

***Tax Considerations:***

The Estate Tax, also known as the “death tax”, is a tax on the fair market value of your estate at the time of your death. The tax is generally in the 40-50% range at the federal level. These taxes can be minimized under certain circumstances. Here are some things you should know:

- (1) A deceased spouse can pass along his or her entire estate, regardless of its value, to the surviving spouse, without any estate tax implications. This is known as the unlimited marital deduction. However, when the surviving spouse dies, his or her entire estate will be subject to the estate tax.
- (2) Under the current federal tax code, the “unified credit” permits a person to pass the first two million dollars of his or her estate free from federal estate tax. This credit increases to \$3.5 million in 2009. There will be no estate tax in 2010. The Unified Credit will be reduced to \$1 million in 2011 absent legislative intervention by the Congress.
- (3) A husband and wife may create in their wills a unified credit shelter trust. Under this tax planning device, the couple can help to help minimize the tax burden of their estate. Assume that the husband leaves up to the amount of his or her allowable unified credit in trust (\$2 million for 2007) to his surviving wife. When the husband dies, \$2 million of his estate will fund a trust for the benefit of his wife. The wife can enjoy the income from the trust until her death. Upon her death, the trust will terminate and be distributed to named beneficiaries (i.e. surviving children). Utilizing this plan, the wife will not pay any estate tax on the \$2 million left in trust to her for benefit. Had the trust not been created, she would have had to pay estate taxes on this entire amount. This credit shelter should be considered by any married couple with an estate in excess of \$2 million.

As noted in the opening paragraph, the purpose of this article is to get the reader to start thinking about estate planning matters. This article does not substitute for legal advice. Once you have decided to proceed, you should seek the counsel of an attorney who practices in this area.

Sincerely,

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