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The Essentials of Estate Planning

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It is fairly common for clients to dismiss the need for estate planning by stating that it is too complex or that they are too busy to deal with it until later. Fortunately, most people do not have to employ complex or expensive planning techniques to accomplish their goals. In fact, the following documents are considered essential to the implementation of any estate plan.

Durable Power of Attorney. A Durable Power of Attorney (“DPOA”) allows a person (the “Principal”) to appoint another person or entity (the “Agent”) to handle the Principal’s financial affairs. Colorado allows DPOAs to become effective upon one of two events. First, DPOAs can be drafted as becoming effective upon the incapacity of the Principal. The second option is to draft a DPOA that becomes effective immediately upon the Principal signing the document.



An Agent can engage in any activity authorized by the DPOA without the need for court oversight or approval. DPOAs are often drafted to provide broad authority. Given this broad authority, it is important that only trustworthy and reliable persons or entities be named as Agents.

The reason that DPOAs are important is that they avoid costly court proceedings. Without a DPOA, if the Principal becomes sick or is otherwise incapacitated, the Principal’s family or friends will be required to file a petition with the local court to be appointed as the conservator (the person responsible for taking care of the Principal’s financial affairs). This process often costs several thousand dollars just for the initial appointment as conservator. After appointment, the conservator is required to obtain court approval for expenditures made on behalf of the Principal. Of course, this results in even more costs and attorney fees. Obviously, it is wise to pay a relatively small fee for a DPOA rather than risk thousands of dollars in legal fees and court supervision of your financial affairs in a conservatorship proceeding.

Medical Power of Attorney. A Medical Power of Attorney (“MPOA”) allows the Principal to name an Agent to make medical decisions upon the incapacity of the Principal. Again, it is always wise to name an alternate Agent in case the primary Agent is unable or unwilling to act. Without an MPOA, there is a chance that the court will have to appoint a guardian to make medical decisions on your behalf. The costs of a guardianship are similar to those in establishing a conservatorship. In other words, it is expensive.

Living Will. In Colorado, a living will enables a person to state whether or not they want artificial means of life support removed should they be terminally ill. The person creating a living will makes this decision rather than delegating this decision to someone else. This saves your family and friends from the agony of making this decision.

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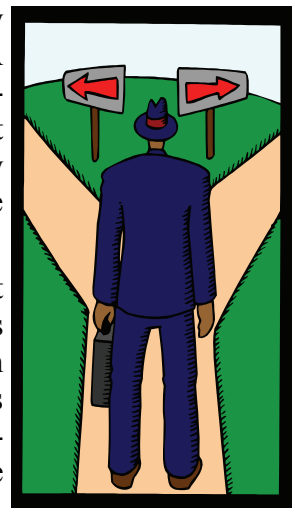
The Essentials of Estate Planning, Cont.

Wills. A will is the most recognizable estate-planning document and is essential for every adult, regardless of age or wealth. A will dictates the persons or entities that will receive a decedent's assets at death. A will also designates the persons responsible for transferring a decedent's assets to their heirs at death. Without a will, a decedent's estate is distributed according to the laws of the state where the decedent lived. Needless to say, it is not advisable to rely upon a government-imposed schedule of distribution.

An often-cited criticism of wills is that they are subject to probate. Although probate is a costly and lengthy process in many states, Colorado's probate system is extremely efficient and cost-effective. In addition, probate can be a valuable method of extinguishing creditor claims against the decedent's estate.

Trusts. A basic trust achieves the same result as a Will by distributing your estate to the beneficiaries of your choosing. A common misperception is that a basic trust provides estate tax savings. Although that can be true with special drafting, a basic trust does not provide any more estate tax benefits than a properly drafted Will. There are two types of basic trusts: (1) revocable living trusts, and (2) testamentary trusts.

The main benefit provided by a basic revocable living trust is probate avoidance. In states with high probate costs, this achieves significant cost savings. A revocable living trust can also be tailored to provide creditor protection to trust beneficiaries and avoid attachment by a beneficiary's spouse in divorce proceeding. The trust creator can maintain control of the trust while they are alive and all trust income is reported on the creator's individual tax return.



A testamentary trust is created by a decedent's will upon death. Testamentary trusts work the same as revocable living trusts except they are not funded until death and they are subject to probate. In states with relatively low probate costs, such as Colorado, some attorneys believe that revocable living trusts are not necessary due to the lower cost of creating a will containing a testamentary trust.

Estate Taxes. Most people do not think of themselves as wealthy. What they do not realize is that their perception of "wealthy" is entirely different from the IRS' definition of "wealthy." Currently, an estate tax of up to 46% is imposed on estates exceeding \$2,000,000. The estate tax exemption is scheduled to increase to \$3,500,000 in 2009, be repealed in its entirety in 2010, and then re-imposed for estates of \$1,000,000 or more in 2011. If this is not complicated enough, there is talk about the federal government changing the estate tax exclusion amount prior to 2010.

What does this mean for people trying to plan for estate taxes? That's a good question. At this time, the best advice is to plan as though the estate tax rates will be in place as planned but be ready to amend your estate planning documents if the law is changed. If your estate is currently subject to estate tax, many effective techniques, such as annual gifting, credit shelter trusts, irrevocable life insurance trusts, charitable trusts, and family limited partnerships can be utilized to reduce the estate tax burden imposed upon your heirs. Please contact our office to discuss these options in more detail.

"Currently, an estate tax of up to 46% is imposed on estates exceeding \$2,000,000."

2006 Tax Year - Telephone Tax Refund

The IRS has decided to refund approximately \$10 billion of telephone taxes collected as a one-time refund to taxpayers. It will be available on your 2006 individual income tax return as a credit or refund.

“...you are eligible for the refund if you paid long distance tax on service billed between February 28, 2003 and August 1, 2006.

According to an IRS news release in August, 2006, (available at <http://www.irs.gov/>) you are eligible for the refund of tax if you paid long distance tax on service billed between February 28, 2003 and August 1, 2006. This refund applies to long-distance taxes paid on a landline, cell phone, and VoIP services.

To save you from gathering 41 months of bills, the IRS has calculated a standard amount for refunds based upon the number of exemptions you claim on your 2006 tax returns as follows:

- One exemption, the standard refund amount is: \$30
- Two exemptions, the standard refund amount is: \$40
- Three exemptions, the standard refund amount is: \$50
- Four exemptions or more, the standard refund amount is: \$60

If you choose to base your refund on the actual amount, the calculation becomes tedious. Not eligible for refund are taxes paid on local-only service, federal access charges and state or local taxes and charges. Taxpayers who do not itemize their deductions will be eligible for this refund.

IRA and Charitable Planning Update

Generally, favorable tax benefits can be achieved by gifting highly appreciated assets to charity. The donor receives a charitable income tax deduction equal to the fair market value of the gifted asset and avoids income tax on any gain. If done correctly, donors are eligible to receive an income stream for life from the gifted asset and obtain significant estate tax savings.

Unfortunately, the IRS has treated IRA assets differently than other types of appreciated property. Specifically, most types of highly appreciated assets are treated as

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Who's Who at Mallgren & Ferrell, P.C.

Nathan S. Silver, J.D.

Nathan Silver grew up in Minneapolis. He obtained his undergraduate degree in political science from Knox College in 1977, his M.B.A. from the University of St. Thomas in 1989, and his law degree is from William Mitchell College of Law in 1997. After Knox College, Mr. Silver served two years as a lieutenant in the Army at Ft. Silt, Oklahoma. After receiving his M.B.A., Nathan was a budget analyst in the office of the Comptroller of N.A.S. Whidbey Island. Since becoming a Colorado attorney in 1997, Mr. Silver has concentrated on commercial and construction litigation. He also does transactional work in commercial real estate, including due diligence and title analysis, and construction contracts.

In his spare time, Nathan enjoys traveling around Colorado and is active in Toastmasters.

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Our goal is to provide cost-effective legal assistance to help our clients achieve their personal and financial goals.

IRA and Charitable Planning Update, Cont.

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being gifted to the charity. This does not result in any tax liability to the donor. However, the IRS views the charitable gift of an IRA as a taxable distribution of the IRA to the donor and then a gift of the proceeds to the charity. Due to limitations on charitable deductions, this has generally resulted in adverse income tax consequences to the donor even though the donor receives an income tax deduction for the charitable gift. Because of this fact, lifetime gifts of IRA assets to charities were discouraged for tax planning purposes.

Fortunately, Congress appears to have rectified this problem to a certain extent. On August 17, 2006, President Bush signed into law the Pension Protection Act of 2006. One provision of this Act allows IRA owners, after age 70 ½, to contribute up to \$100,000 in IRA assets to charity without including the gifted assets as income. This allows these IRA assets to obtain the same favorable tax benefits as other highly appreciated assets, such as stocks, bond, and real estate, when contributed to a charitable organization. It should be noted that this provision is scheduled to be effective only for the 2006 and 2007 tax years.

Feel free to contact our office at 303-341-0700 if you have any questions about this new provision or the income and estate tax benefits available from charitable gifting of any other type of asset.

“On August 17, 2006, President Bush signed into law the Pension Protection Act of 2006.”