THE BASICS OF ESTATE PLANNING

What is involved in an estate plan?

Everyone knows that everyone should have an estate plan, even if it is very simple and even if the estate currently is not very large. But what does it mean to have an "estate plan?"

Basic Estate Plan Documents.

- ✓ Revocable Trust/Will. A revocable trust disposes of your assets at your death without the need for probate (court involvement). A will disposes of your assets using the probate (court) system. The most common estate planning configuration is a revocable trust and a backup will that provides that any assets not already in the revocable trust will be added to the trust (a "pour over will"). Assets in the revocable trust avoid the court system (probate) on death.
- ✓ Advance Health Care Directive. An advance health care directive appoints an agent to make medical decisions for you in the event you are incapacitated.
- ✓ Financial Power of Attorney. A financial power of attorney appoints an agent to manage your assets (not held in trust) in the event you are incapacitated.

Planning Considerations.

- ✓ Naming Guardians of Minor Children. If you have children under the age of 18, this will be your top priority. If the parents are not living, a guardian will need to be named to raise your children in their home.
- ✓ Naming Fiduciaries. You will need to name trustees to manage your assets if you cannot do it and an executor of your will. On trustees, you will need a successor trustee in case you are living but incapacitated, and you will need trustees for any trusts that arise on your death (e.g., for your children).
- ✓ Gifts Outright or In Trust? You can make gifts outright (no trust) to your beneficiaries, including your children, or you can make them in trust for your trustee to manage. Most clients choose trusts for their children, at least until they are old enough to manage the assets themselves.
- ✓ Disaster Scenario. If all of the members of your immediate family die together, who are your backup beneficiaries? This can be extended family, charities, friends, or a combination of these and others.
- ✓ Beneficiary Designations. Retirement accounts (e.g., IRAs and 401(k)s) and life insurance do not follow your estate planning documents. Rather, they are paid on your death according to beneficiary designations you place on file with the financial institution. You can provide that the assets will be added to your revocable trust, but work with your attorney on that. It gets complicated.
- ✓ Tax Planning. If your estate is over the estate tax exemption amount ($5,450,000 or $10,900,000 for married couples in 2016) or is getting close, you will need to consider estate and gift tax planning. You should also consider tax planning if your estate is likely to increase dramatically (e.g., an upcoming IPO or business sale). In making this calculation, include life insurance and retirement accounts. Depending on your situation, additional trust planning might be warranted.