

# PERSONAL INVESTMENT MANAGEMENT, INC

## White Paper #1

Estate Planning 101

By

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### **Introduction**

We often are called upon to render general advice about the most effective way of transferring assets to your intended recipients, pre and/or post-mortality. While Estate Planning necessarily involves a team, including estate tax and estate law professionals, we are happy to offer some basic, foundational knowledge that may assist you in framing the discussion and considering available alternatives.

Generally, there are four ways that property is transferred: 1) You may Gift property during your lifetime, 2) You may transfer property via Will (testate), 3) You may transfer property via Will Substitute, and 4) In the absence of any of the above (intestate), the state will distribute property following the Laws of Intestate Succession.

New legislation enacted in December of 2010 raised the lifetime exclusion for the transfer of property during life and at mortality to \$5 Million per person, \$10 Million per married couple. These exclusion amounts are valid for 2011 and 2012 only, barring extension and apply to Federal Estate Tax only, not State Death Taxes. As the avoidance of Federal Estate tax is less a concern for many, this White Paper focuses primarily on Estate Planning for Probate avoidance.

### **Will and Probate**

A Will is a document that specifies to whom estate property is to be distributed and much more. So much more that we will defer a discussion about the features and optional provisions of a Will to a later edition. To have a valid Will, generally one must be of the Age of Majority and have Testamentary Capacity (a demonstrated understanding of the Will document, of your own property and of your own family and interested parties). The Will must be in Valid Form (as determined by each State, not by the Federal Government) and must be Properly Executed (appropriate signatory, witnesses etc).

A Will is a Probate document; this may be a surprise to some. The provisions of a Will are administered by the Decedent's Personal Representative (Executor / Executrix) with oversight and approval of the Probate Court. So what is Probate?

Probate (Latin for "To Prove") has three main purposes: 1) Distributing the Decedent's

property according to the Will or if no Will, per the Laws of Intestate Succession, 2) Paying the legitimate claims of creditors of the deceased / estate and 3) Collecting taxes. The advantages to Probate are: 1) It is an orderly process, 2) The process provides certainty to interested parties and 3) Probate is a fair and impartial process. The disadvantages are: 1) Probate can be a costly process, 2) Probate can be a lengthy process and 3) Probate is a public process. Therefore, anyone wishing to avoid publicity in the settlement of his/her estate may wish to avoid the probate process.

The location of the probate process is worth noting. Probate for personal property takes place in the state where the decedent was domiciled (primary home). However, real property goes through probate in the state where the property is located. Therefore, if the decedent's primary residence is in Washington, and he/she has a vacation home in Arizona, the Arizona property will go through "Ancillary Probate" in Arizona.

### **Will Substitutes**

With a little planning, it may be possible to avoid the probate process. There are generally three ways to transfer property at death and avoid probate: 1) By Right of Survivorship (also called "By Operation of Law"), 2) By Beneficiary Designation (also called "By Contract"), and 3) The use of a Living Trust.

Right of Survivorship is a method of joint ownership which specifies that upon the passing of one tenant, his/her ownership interest automatically passes to the surviving tenant(s), without probate. A common form of this type of ownership is "Joint Tenancy With Right of Survivorship".

The Beneficiary Designation principle applies to many types of assets: government savings bonds, POD (payable on death) bank accounts, TOD (transfer on death) accounts, pensions, IRAs, annuities, life insurance policies etc. We highly recommend you confirm that your primary beneficiaries are correct and also that contingent and even tertiary beneficiaries are correct and current. If these beneficiaries are not correct or current, the particular assets could become probate property and may be distributed in a manner inconsistent with your intentions or even by the laws of intestate succession.

Living , or ("Inter Vivos") Trusts are popular for many reasons. Assets placed in a Living Trust avoid probate. Assets of a Trust established by the decedent's Will, called a Testamentary Trust, are probate assets and thus, do not avoid probate. In addition to probate avoidance, other compelling reasons to employ Living Trusts in an estate plan are: 1) Privacy (as opposed to the public probate process), 2) Stronger lifetime disability planning (the assignment of a Disability Trustee is a stronger legal mechanism than a normal financial power of attorney), 3) the ability to designate multiple and various kinds of beneficiaries (beneficiaries of Trust Income, beneficiaries of Trust Assets, beneficiaries of a Current Interest, beneficiaries of a Future Interest, etc.), 4) It is more difficult for a disgruntled heir to challenge the validity of a Trust than the validity of a Will, and 5) The assignment of a qualified Trustee to manage trust assets on behalf of

those beneficiaries either not legally able to do so or considered lacking the capacity to do so (minors, persons inexperienced at managing assets or other special circumstances).

Example:

To illustrate the importance of will substitutes, consider that Washington is a Community Property State. The implications of this seem clear enough. Spouses are deemed (with some exceptions) to be 50% / 50% owners of all their marital assets regardless of the level of specific financial contribution of either spouse. Yet, Community Property rules do not exempt the estate of a decedent from the probate process, UNLESS (and barring any additional planning), there is also an overarching community property agreement between the spouses, such as a “Community Property With Right of Survivorship Agreement”. With such an agreement in place, the marital property will pass to the surviving spouse by operation of law and will avoid probate altogether.

**Summary**

The estate planning process is complex, and each client’s circumstances are unique.

The Estate Planning process includes important subjects not covered herein, such as the development of health care powers of attorney and directives regarding the care of minor children.

Should you determine that any of the preceding narrative warrants further consideration we specifically and enthusiastically recommend that you consult your estate planning attorney for a review of your current strategy and documents, including wills, trusts, property ownership and beneficiary designations.

Should you need a referral to an estate planning attorney, we will be happy to facilitate an introduction and if helpful, accompany you to an initial consultation.