

## **ESTATE PLANNING FOR THE UNMARRIED CLIENT**

**Fendrick & Morgan, LLC**  
1307 White Horse Rd., Bldg B, Ste 200  
Voorhees, NJ 08043  
(856) 489-8388  
www.fendricklaw.com

Often our estate planning clients are unmarried individuals. Some of them were married, but their spouse predeceased them, some are divorced, and some have chosen never to marry. Estate planning for the unmarried client presents special considerations. Without proactive planning, the assets which took a lifetime to accumulate may be subject to Federal Estate Tax at a rate of thirty five percent (35%) and New Jersey Estate tax at a rate of possibly as high as Fifteen Percent (15%). Therefore, while it is important for everyone to take steps to insure that his or her lifetime intentions are enacted at the time of death, it is especially crucial for the unmarried client to plan proactively.

Properly drawn estate planning documents address specific financial, health, and family situations. They protect finances both during life and after death. This eases the administrative burden of managing the assets for the planner and his or her family. Through certain documents, individuals have the opportunity to make personal and financial decisions which otherwise might require court orders.

### A. Documents to Consider

1. Last Will and Testament - A Will provides for the legal transfer of assets after death, names a person to settle the estate, names a trustee to administer any trust established, and names a guardian for any minor children. A Will is the first, but not the only, estate planning document to be considered. The legal term for not having a Will at the time of death is "intestacy". In situations when a person dies with out a Will, the state writes a Will for the decedent, and state law controls who inherits from the estate. New Jersey intestacy law provides that assets initially go to spouses and blood relatives, i.e. children, parents, grandchildren, and siblings. Accordingly, if a person does not have a Will, he or she cannot designate who receives their assets. Furthermore, without a Will, a person cannot designate a personal representative (i.e. Executor), trustee, or guardian. In intestacy, the statute designates who will fill these positions.

2. Durable Power of Attorney - A power of attorney document authorizes another person to act as an agent on your behalf for financial and business transactions. It usually gives a named financial agent access to bank accounts, brokerage accounts, the power to sell property, deal with insurance companies, and handle any other financial transactions. Most people tend to give their agent broad authority; however, this is not required. An agent's power can be limited to specific acts. The power of attorney can be revoked at any time assuming the grantor of the power is competent.

Unless a document specifies otherwise, a power of attorney is effective upon execution. However, a document can be drafted that does not become effective until the principal becomes incompetent or disabled. If a power of attorney has a delayed, or “springing”, effect, it only becomes effective upon certain conditions set forth in the power of attorney. If a person becomes disabled or incompetent before establishing a power of attorney, a court will appoint a guardian. A guardianship procedure can be time consuming, expensive, and a humiliating procedure, whereby a person is judged to be “incompetent” in the public forum of a court. It can be avoided by having a power of attorney.

3. Health Care Power of Attorney - A health care power of attorney, which is a form of a living will, is a document to prepare for the following situations:

- a. Providing instructions for the conditions when life-sustaining procedures should be utilized;
- b. Designating who will make the health care decisions;
- c. Ensuring that the individual chosen to make these decisions has access to the principal and his or her medical records during incapacity.

In the absence of a health care power of attorney, the medical profession sometimes ignores even family members in decision making. Therefore, it is imperative that everyone have a health care power of attorney that designates to what extent life should be prolonged in the event that there is no reasonable hope for recovery or regaining a meaningful quality of life. A health care power of attorney should stipulate what medical treatments should be provided, whether feeding tubes should be used, and whether organs are to be donated. It should designate a health care representative to make these decisions on behalf of the principal. Without a living will, there is no authority, outside of a court proceeding, for a doctor to discontinue artificial life sustaining treatment. Assets may be used for unnecessary and costly life support.

## B. Tax Issues

Many people think “estate” only applies to the wealthy, yet an “estate” comes into being whenever any individual dies owning any property. An estate consists of the property owned at the time of death. This property includes, but is not limited to, bank accounts, real estate, stocks, bonds, mutual funds, life insurance policies, the value of retirement accounts, annuities, all personal property (i.e. cars, jewelry, furniture), and any business interests.

Federal law provides that every person is entitled to an applicable exemption of \$5,000,000. Any amounts over \$5,000,000 are subject to an estate at a rate of Thirty Five percent (35%). The government gives married individuals the benefit of an unlimited marital deduction. Therefore, any bequest made by one spouse to another is exempt from

estate tax, regardless of amount. However, this unlimited marital deduction is not available for an unmarried person.

Furthermore, the State of New Jersey has an Estate tax on any amount in excess of \$675,000. The State gives married individuals the benefit of an unlimited marital deduction. Therefore, any bequest made by one spouse to another is exempt from New Jersey Estate tax, regardless of amount. However, this unlimited marital deduction is not available for an unmarried person.

In addition, it is possible that a New Jersey inheritance tax may apply to all property left to an individual at death. This inheritance tax applies to real and personal property as well as the liquid assets received. New Jersey law exempts all transfers from a decedent to his or her spouse. Any transfer to children, parents, or grandchildren is also exempt under New Jersey law. A transfer to a sibling, niece, nephew, or unrelated individual can be subject to an inheritance tax as high as 16 percent.

For our unmarried clients who have assets over \$675,000, some commonly used tax planning techniques are listed below:

1. Gifting - The federal estate gift tax rules entitles each person to give \$13,000 a year to an unlimited number of individuals. Gifts made within these limits are not subject to tax either by the person receiving the proceeds or the person making the gift. The Internal Revenue Code provides that only married couples can transfer an unlimited number of assets back and forth between each other without triggering any gift tax consequences. Accordingly, if someone makes a gift to a person other than a spouse that exceeds the \$13,000 exclusion, a gift tax return must be filed. Although usually no tax will be due, the excess amount of the gift will reduce the exemption allowed at death. For example, if a single individual gave \$50,000 during the course of one year to one person, the receiver would not have to pay any tax on the proceeds. The person making the gift would not have to pay any tax either, but a gift tax return would have to be filed indicating that \$37,000 over the exclusion was given during the year. This \$37,000 would be taken off the individual's \$5,000,000 lifetime exemption. Therefore, at the gift giver's death, he would only be entitled to exempt \$4,963,000 from the Federal estate tax.

2. Irrevocable Life Insurance Trust - Life insurance can provide ready cash for estate taxes. However, life insurance is included in the policy owner's estate. A majority of our clients with life insurance policies designate the insured as owner and a family member as beneficiary of the policy. Accordingly, the value of the life insurance policy is included in the person's estate. To avoid this problem, you can shield the life insurance proceeds from estate tax by placing the policy into an irrevocable trust. The trust becomes both the owner and beneficiary of the policy. When the insured dies, the trustee collects the insurance proceeds on behalf of the trust and reinvests or distributes the money in accordance with the terms of the trust. The trust can remain in effect after death or distributions can be made outright. Beneficiaries of an Irrevocable Insurance Trust can be children, grandchildren, parents, nieces, nephews, or any other individual.

Although a life insurance trust saves estate taxes, it has certain drawbacks. For instance, the life insurance trust is irrevocable. The terms cannot be altered or amended once executed. Second, the previous owner of the policy must relinquish control over the insurance. That means that the insured cannot be the trustee. We typically recommend that a family member, bank, or trust company be named trustee. If you have an estate in excess of \$675,000 and have life insurance it makes sense to establish an irrevocable trust to be the owner and beneficiary of your insurance policies. Consequently, this insurance can be removed from your estate.

3. Qualified Personal Residence Trust - A qualified personal residence trust can be used to reduce estate taxes on a primary or secondary residence, or both. To establish a qualified personal residence trust, a homeowner must transfer title of a residence to a trust, the terms of which provide that the trust grantor retains the use of the residence for a specified period of years. Thereafter, the residence will pass to the designated beneficiaries. For a qualified personal residence trust to work, the person establishing the trust must outlive the term of the trust or the house will be included in that person's estate. The establishment of a personal residence trust provides a means to leverage gifting and to potentially remove appreciation from an individual's Estate.