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Estate Planning 101

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Disclaimer

- This is not legal advice
 - When faced with a specific legal question, ask your attorney
 - If you don't have an estate planning attorney, I know one
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What is Estate Planning?

- A good estate plan accomplishes 3 things:
 - Avoids probate—minimizes taxes, administrative costs and time
 - Transfer of property at death—to whom, how much and when?
 - Protects against incapacity and disability



Types of Estate Plans

- No Plan
- Simplified Plan (e.g. beneficiary designations)
- Last Will and Testament
- Revocable Trust



No Estate Plan- Dying Intestate

- The Kansas Legislature has drafted an estate plan for you!
 - Maximizes court involvement, costs, and taxes
 - Local probate judge selects your executor/guardians
 - The legislature picks your beneficiaries*
 - Not the best choice

What is Probate?

- Court proceeding to determine the validity of a will or establish intestate heirs at law
- Pay valid claims of creditors*
- Transfers property
- Establishes Guardians for Minors
- Generally cannot close it for at least 6 months
- Can be costly and administratively burdensome



Simplified Estate Plan

- No written estate plan
- Assets pass due to titled ownership on assets and beneficiary designations
- Life insurance, pay-on-death, transfer-on-death, life estate
- *But, risky because:*
 - Deaths don't occur in order
 - Creditor/divorce concerns
 - Guardians for minors*



Last Will and Testament

- A written instrument in *proper* legal form specifying the disposition of probate assets
 - *Careful using online tools!*
- Governs only probate property
 - Does not govern property titled in joint tenancy, TOD/POD, or with beneficiary designations
- Can appoint Guardians for minors*
- Can create trusts based on various events



Revocable Trust

- What is it?
 - Creator—trustor or settlor
 - Trustee—initial & successor
 - Beneficiaries
 - Trust agreement
- Funding the Trust
 - Transferring title of probate assets to the trust
 - Designating the trust as beneficiary



Revocable Trust

- Benefits
 - Probate avoidance – both locally and in other states
 - Private and more difficult to challenge
 - Avoids conservatorship and incapacity/disability issues
 - Easier to execute, amend and keep current
 - Can plan for unique circumstances and for pets!
- Disadvantages
 - More work to create and fund
 - Only avoid probate if funded with assets



Planning for Disability

- Advanced Directives
 - Power of Attorney
 - Living Will
- Medicaid Eligibility
 - Special Needs Trust



Advanced Directives

- Durable Power of Attorney for Medical/Financial
 - Written document to appoint Agent to:
 - Consent, Withdraw Consent, Refuse for any type of medical care, treatment, service, or procedure & specific instructions regarding medical care
 - Handle your financial affairs in the event you are unable to do so
- Living Will
 - Written statement of your wishes regarding your medical treatment if you are in a terminal condition
 - Effective if two physicians have determined you are terminally ill



Medicaid Eligibility

- A Special Needs Trust (or Supplemental Needs Trust) is a trust that will most benefit a person with disabilities who is under 65
 - Designed to provide supplemental care over what the government provides without jeopardizing the beneficiary's eligibility for those benefits
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Advantages of Special Needs Trusts

- Doesn't jeopardize government benefits, including SSI, Medicaid, vocational rehabilitation, subsidized housing, and other state social services
 - Can receive gifts, inheritances, etc.
 - Available to those not currently receiving benefits
 - Protects assets from the claims of creditors
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Disadvantages

- Most special needs trusts must contain a payback provision

How They Work

- May not be used for basic needs
 - Created for the beneficiary's *supplemental care*
 - Can't be used to pay for housing, medical treatments covered by Medicaid, or clothing
 - Can't be used to pay for unauthorized items covered by SSI or Medicaid
- Supplemental care includes things like education, recreation, counseling, and medical expenses beyond what's covered by Medicaid

Three Types of Special Needs Trusts

- Third-Party Special Needs Trusts
 - Funded and managed by a third-party
 - Self-Settled or First Party Trusts
 - Funded by the beneficiary, managed by a third-party
 - Pooled Special Needs Trust
 - Funded and managed by non-profit organizations
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Questions?

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