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Why do people avoid estate planning?

• We don’t need a will; our family knows our wishes.

• We made our own will years ago, so we don’t have to think about it again.

• We don’t need a will to make an estate plan, all of our children will get equal shares.

What’s at stake?
Traditional Farm Succession Planning

Farm Succession Planning Today

• What works best for your operation and your family?

• Choices:
  • Creation of business structures;
  • Testate distribution through wills;
  • Option to lease;
  • Option to buy;
  • Trusts;
  • Gifting; or
  • All of the above!
Farm *Succession* Planning Today

- What works best for your operation and your family?
- Choices:
  - Testate distribution through wills;
  - Testamentary Option to Lease Farmland;
  - Testamentary Option to Buy Land;
  - Creation of business structures like corporations or LLCs;
  - Trusts;
  - Gifting; or
  - All of the above!
Probate v. Non-Probate Assets

Probate: Legal process to transfer assets at time of death

Probate
• Assets passed through a will.
• Assets passed through intestacy.

Non-Probate
• Life Insurance
• Joint assets with rights of survivorship
• Retirement accounts
• Trusts
Intestacy

Intestacy: An Estate Plan by Default

- Any person who dies without a will—about half of the U.S. population—dies intestate.

- States created laws to carry out the probable intent of the decedent.
  - Based on degrees of kinship.

- But what about second marriages, blended families, and family-like relationships?
Testate Distribution

Wills

• A will allows a person to distribute their property after death according to their intent.

• Elements of a will:
  • In writing;
  • Signed by testator;
  • Two witnesses; and
  • Testamentary Capacity.
No Time Like the Present: Testamentary Capacity

- Must understand:
  - The nature of the document;
  - The nature and extent of property;
  - Natural objects of affection; and
  - Effect of disposition.

- Attorney may take extra precautions.

Common Will Challenge

- Three siblings claimed their brother unduly influenced their father to enter into a below-market-rate farmland lease and to gift land to him.

- At the time, Iowa law defined “vulnerable elder” as a “person 60 years of age or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition.”
Common Will Challenge

• Court found that the father’s age alone could not support a finding that he was a vulnerable elder. There must also be proof of inability to self-protect, in addition to age.

• Medical records showed normal memory, judgment, and comprehension. Farmer was issued a driver’s license, managed his own finances, and served as the executor of his wife’s estate and a township trustee during the time at issue.

• The case is Struve v. Struve, 930 N.W.2d 368 (Iowa 2019).
Trust Elements

• In general, every trust document has:
  • A trustee;
  • Corpus (body); and
  • Beneficiaries.
Advantages of Trusts

- Separate assets (and management) from beneficiaries;
  - Utilize professional management services of investments.
- Minimize probate costs;
- Provide requirements for property transfers to minors or incapacitated persons;
- Increase privacy in property transfers; and
- (Potentially) Increased protection against will/estate contests.
  - But may make fights more complicated and more expensive!

Types of Trusts

Express Trusts

Testamentary

Revocable

Living

Irrevocable
Types of Trusts

- **Intervivos (Living Trust)**: established during lifetime.
  - Revocable – can be changed.
  - Irrevocable – cannot be changed.
- **Testamentary**: created by will at time of death.
  - Pour-over will establishes trust at time of death.
  - Charitable Remainder Trust
  - Life Insurance Trust

Revocable Trusts

- Widespread use due to flexibility.

- Biggest error is **failing to fund the trust**.
Revocable Trust

- Advantages:
  - Avoidance of ancillary probate where real property is owned in another state.
  - May simplify estate settlement costs after death.
  - Availability of assets at death.
  - Provides seamless property management during old age, incompetence, or disability.

Irrevocable Trusts

- Grantor gives up all control and power over the trust or trust property during his or her lifetime.
- Transfer of an asset into an irrevocable trust is a completed gift and could potentially cause federal gift tax concerns.
Primary Uses

- Specific estate planning goals:
  - Special Needs Trusts
  - Spendthrift Trusts
  - Be aware: Five-year look back for Medicaid.
- Estate value reduction for federal estate tax purposes.

Testamentary Trusts

- Trusts triggered at death by terms set forth in will.
- Retain complete ownership of asset until death.
- Primary uses:
  - Hold and manage assets for minors (until the become old enough to handle property responsibly).
  - Protect assets for vulnerable beneficiaries:
    - Special Needs Trust
    - Spendthrift Trust
Spousal Issues and Revocable Trusts

• A spouse in Iowa is entitled to the same 1/3 elective share from a revocable trust as from a will.
• In other words, you can’t disinherit your spouse Without a valid prenuptial agreement.
• Iowa law also provides that a spouse will be written out of a trust or will if divorce occurs. That is not true of all states.
  • But be mindful of beneficiary designations.

Beneficiary Designations
Taking Action on Beneficiary Designations

- Examples: Life insurance, retirement accounts, transfer on death accounts (if state allows), trusts, wills.
- Number #1 mistake: not naming a beneficiary.
- Check yearly to ensure beneficiary designations are up-to-date!
  - Spelling can also be an issue.
Gifts: Not an Inheritance

- Given with a “warm hand.”
- There must be valid delivery.
- Can be used as business transfer strategy or simply as an immediate benefit.
- Cons: loss of control, possible tax consequences.
- Currently, can gift $15,000 per year to any one person without having to file a Form 709.
  - $11.7 million life time exclusion.

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