

ESTATE PLANNING 101

By Shawn Christopher, Esq.

Estate Planning, put simply, is the process of arranging one's affairs for when they pass away. To most, the concept of estate planning sounds relatively straightforward. You probably feel that you should dictate how and to whom your assets are distributed, with little concern for any other issues that may arise.

The reality of estate planning, however, is not always so simple. There are extensive factors to consider as you make decisions regarding your estate plan, such as the value and types of your assets, your current and future income, your mental and physical condition, and your goals and distribution desires. In addition, you also may want to place certain controls over your assets that you may want to place on your heirs, as well as protecting your assets from creditors, including any of your heirs' creditors once your assets may pass to your heirs. Moreover, you can have other objectives, such as leaving a legacy, providing for a charity, taking care of your children or grand-children, or providing for someone with special needs.

These factors, including many other potential issues, must be considered as you create your estate plan. Only after thoroughly evaluating your situation and objectives can you determine how to best design your estate plan.

The most common estate planning instruments are wills and trusts. A will is document that you prepare that generally lists how you would like your estate and affairs handled. The process by which this is accomplished is called probate. Probate is a process whereby your will is submitted to a court for administration after your death. The court will oversee your estate and the distribution of your assets according to the terms of the will. This process typically takes a number of months to complete and usually involves your executor having to hire an attorney to handle the entire process. Since your will is submitted to the court, it becomes a public document for the entire world to see, which may be problematic for those who desire a sense of privacy over their financial affairs.

A trust is also a document that details how you would like your estate and affairs handled. However, unlike a will, a trust does not require your heirs to submit to the probate process. Typically, the terms of the trust describe how one's assets are to be distributed. Further, this distribution can take place over many years if you so desire, thereby allowing you to retain a measure of control over your assets even after your gone. You may also be able place other restrictions over your assets, which can help to protect the assets from creditors or to ensure that your goals and objectives are met. Moreover, since your trust is not submitted to a court, the terms of your trust are kept out of the public domain.

It is usually less expensive to prepare a will instead of a trust. Although, for those who own real estate or have even a modestly valued estate, this minimal savings is generally offset by the expense and burden of probate. Accordingly for these individuals, it is generally recommended to have a revocable living trust over a simple will. However, as with most things that deal with

your legal rights, your unique present and future state of affairs will dictate how you should best plan your estate.

**Shawn Christopher is an attorney licensed to practice law in Nevada and California. His practice includes, but is not limited to, the areas of estate planning and asset protection. He has offices in Green Valley and Summerlin, and can be reached at 737-3125.*