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## **Estate Planning Basics**

Estate planning is a very complicated area of the law. The following is not intended to be legal advice, and should be used as a starting point for conversation with an estate planning attorney.

### **The Basics**

The average Minnesotan will probably never have to worry about complex estate planning. Minnesota law provides for a one million dollar estate tax exemption. This means if you were to die with an estate of less than one million dollars (under the present law), your estate wouldn't have to pay any estate tax to the State. The Federal exemption for 2009 is three and a half million dollars, and in 2010 is actually *unlimited* under present law; however, as of 2011, the Federal exemption will reduce to one million dollars.

This overview is geared toward a basic estate plan, for individuals with estates below the one million dollar exemption amount. A basic estate plan will include three essential documents: a Will, a Power of Attorney, and a Health Care Directive. More advanced estate plans may include additional elements, such as trusts or annual gifting. When going through a divorce, the reasons you originally had for executing these documents might change dramatically, and revisiting them during and following your divorce is always advisable.

### **Your Will**

Your Will is the most basic of estate planning documents and will allow you to designate disposition of your assets following your death, including specific gifts to persons or groups after your death. Under Minnesota law, at the completion of a dissolution any mention of your spouse in your will is disregarded. For example, gifts to a former spouse, or naming that spouse as a personal representative would no longer be valid. However, it is still advisable to update your Will to clarify your intentions regarding dispositions of assets, appointment of guardians and a personal representative, etc.

### **Power of Attorney**

A power of attorney is a very useful tool that should be included in any estate plan. It allows you to name another individual as an 'attorney-in-fact', designating that person to act on your behalf, with specific direction as to which transactions he or she is authorized to execute. Spouses will often name each other as attorneys-in-fact, so that in the event of incapacity of one spouse, the other may still manage assets and control property. During and after a divorce, you should have another individual appointed for these purposes.

The law recognizes that there is a great risk for abuse of this process. Under Minnesota law, a spouse appointment as an attorney-in-fact is automatically terminated upon commencement of a proceeding for dissolution, separation, or annulment.

### **Health Care Directive**

Similar to a power of attorney, a Healthcare Directive allows you to nominate another person to make health care decisions on your behalf should you become incapacitated. The Healthcare Directive is another important tool in an estate plan.

The law also recognizes that once a dissolution, separation, or annulment proceeding has been commenced, an individual may no longer want his or her spouse to be making such decisions, and thus the healthcare directive is automatically revoked upon commencement of any of those proceedings.

### **Remarriage**

Remarrying involves additional estate planning challenges, including providing for any children from a previous marriage, while specifying intentions for disposition of property to a new spouse in the event of death. In addition, a prenuptial agreement can address disposition of assets, support payments and other issues, in the event of death or divorce. Should you die before your new spouse, it is possible that your children from your previous marriage would recover a limited amount of your estate if assets are jointly held and/or the new spouse elects to receive their minimum share of your estate by statute.

### **What Should I Do?**

Once you have made the decision to commence a divorce or are being petitioned for divorce, you should revisit your estate plan. State law will automatically disinherit former spouses, however, you should update your will to ensure that it is still in accord with your wishes and actual property. You also should update all of your beneficiaries of any accounts. The parties are prohibited from changing insurance beneficiaries in contemplation of a divorce or during the divorce proceeding unless specifically allowed by the Court. While your former spouse may not have rights under your Will, Federal law (ERISA) allows them to receive from retirement accounts if they were still named as the beneficiary. When a divorce proceeding begins, any Health Care Directive or Power of Attorney that empowered a former spouse became null, requiring a new Health Care Directive and Power of Attorney.

If you have minor children, you will want to speak with an estate planning attorney regarding how you want your money managed after death. Without a plan in place, it is likely the Court would allow your former spouse, as the surviving parent, to manage those funds on behalf of the children.

### **Proceeding with a Plan**

We can help you evaluate your needs in this area and determine the documents which should be executed and/or updated. If your plan may involve trust or other supplemental documents, we will assist you in locating an attorney specializing in complex estate planning.