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Responses to Questions from

LEGACY & ESTATE PLANNING WEBINAR

SPECTRUM INVESTMENT ADVISORS

I was pleased to hear that there were a lot of questions submitted as a result of the Legacy & Estate Planning webinar. Enough that made it a little difficult to answer them one-by-one. In response, this document hopefully benefits not just those who asked questions, but others who may have similar concerns or questions, too. Some of these topics are covered in greater detail in the *Little Book of Estate Planning* document that is available as part of the resources from the webinar recording on the GuideSteps website at www.guidesteps.com. (See Recordings under Resources tab.)

Here are some summaries of various questions posed and brief responses:

- What are the key differences between a trust and a will?

  A Will is a document that governs the probate process and the primary tool to name guardians for minor children. It is also a document that only takes effect at death.

  A trust, on the other hand, is an arrangement that can be effective before death and does not require court oversight or involvement. Since the trust can survive its creator, the trust can also be used as a way to avoid probate and provide a more robust way to distribute assets to the intended beneficiaries.

  Both documents can provide for an orderly disposition of your property. The trust usually can be implemented more efficiently when the time comes, in part because there can be additional costs and time delays that go along with any court process.

  There are, as you might suspect, many other differences – but the above is what I would identify as the "key" differences.

- What role do powers of attorney play in estate planning?

  Powers of attorney can be created for financial matters or for health care decisions. The agents appointed in these documents would be able to act for the person who executed them with respect to the relevant subjects during that person's lifetime. They are therefore useful in making sure that any assets owned personally can be managed in the event of an incapacity and that proper health care decisions can be made when you cannot make them yourself.

- Who should have a copy of your estate planning documents?

  This depends a bit – but in general, it is a good idea for not only you to have copies but also for your backup trustees or agents under a POA and the like. You may also want to provide copies to your other important advisors in addition to your lawyer's retention of a copy.

  If original documents are lost, there are ways to implement them – including a lost Will. Currently, electronic, or other copies of estate planning documents are generally sufficient – except for Wills. At present, Courts still want to see the hardcopies. If a physical original of the Will cannot be located, the heirs would need to establish that the Will had not been revoked during lifetime and was still what the decedent intended to apply at death.

  Although the practice may be more common in same jurisdictions, and many states will have a facility for you to file estate planning documents with a government office, such filings do not normally occur during lifetime.

- Someone asked about a comment I made about how joint title, beneficiary designations, and trusts were effective probate avoidance strategies "unless an estate is at play" or some words to that effect. What I meant by that is that if, say, a life insurance policy lists the beneficiary as the insured's "estate," the proceeds would be payable to a probate estate. To put it another way, while life insurance can pass free of probate, naming the estate as beneficiary would result in a probate when one could have easily been avoided.

- ❑ What if a spouse goes into a nursing home? What is protected for the other spouse? What can be protected from the government for your own care needs?

  I would love to provide a satisfying answer to this type of question – but it is a complex topic, and the answer does vary from jurisdiction to jurisdiction. At least to an extent. There can be preferences for homes, vehicles, life insurance, annuities, and other assets for the "healthy spouse" in a married couple situation – but there is not a one-size-fits-all answer. Same for unmarried situations, although the preference levels might be lower. Best to get specific advice to your situation if these issues are of concern.

- ❑ How about taxes and trusts?

  There were a few questions about trusts and taxes. Let me give a couple of general thoughts:

  > If a trust is revocable at death, the assets held by the trust do get a cost basis adjustment at death. This often allows for the heirs to sell at a higher cost basis, and therefore have reduced capital gains tax, than the original owner would have incurred. That said, if the asset goes down in value, the adjustment can go the other way.
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  > For higher estates, trusts can be used to reduce or eliminate gift, estate and generation-skipping transfer taxes. That's a big topic, but a potentially big reason to utilize trusts.
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  > Trusts have their own income tax system – sometimes referred to as the fiduciary income tax. Although too much to explain here, distributions from trusts can be used to manage the income taxation of interest, dividends, rents, and other income items on trust property.

- ❑ Could you briefly comment on the difference between revocable vs irrevocable trusts?

  The short version is revocable trusts can be changed by their creators and irrevocable trusts cannot. Irrevocable trusts are usually used during

lifetime when there is a tax advantage to them, a creditor protection benefit to the trust beneficiaries, or some other benefit to allocating funds for the benefit of others.

- There were a number of questions regarding when to use trusts beyond taxes. Trusts can be great tools to provide for the right kind of management or transition for beneficiaries that might have certain "issues" – whether they are minors or not mature enough to receive an inheritance, have physical or mental disabilities or challenges that would make a direct inheritance problematic, are in shaky marriages or have creditor issues, and the like, can all suggest that a trust could be useful.

- Likewise, there were a lot of questions on beneficiary designations and POD/TOD designations. Some of them were in the vein of "should I name" this beneficiary or that. You really should be getting tailored advice, but it certainly might dovetail with the Will vs. Trust discussion earlier on.

  Beneficiary designations and POD/TOD designations can be great tools to avoid probate. They can also integrate well with trust planning. What fits best for you will vary.

- Should you have Financial & Health Care POA's for your young adult children?

  This is a great question. I do recommend putting powers of attorney in place for young adult children. While the likelihood of incapacity or the need for a substitute decision-maker is lower earlier on in life, if the situation arises having POAs in place will avoid a great many issues.

- Does a spouse automatically have POA or do they need to be assigned?

  I think this came up in our discussion, but the short version is a spouse does not have automatic power of attorney for financial or health care matters. Married persons should have POAs, too. Plus, if the spouse cannot serve, a POA can name preferred successor agents, too.

- Are there services for the Health Care POA instead of having a family/friend making the decisions?

  This is becoming a more common question. There are such services out there, although I would not say that the "industry" is mature. So there may or may not be good options for third party health care agents in your neighborhood – but if not, keep looking.

- Several of you asked questions that relate to what I might refer to as the default rules that would apply in certain circumstances. For instance, if an unmarried parent dies with one or more children, who would the beneficiaries of the estate be? Are the rules different if you only have one child? If you have not made provision in your estate plan for who gets what and when, each state will have statutes that are referred to as "intestacy statutes." They basically answer that question for you – but do so through the probate court system. If there is no spouse, most or all state statutes would provide for an equal division among the deceased person's children. If there is, the rules vary state-to-state and there are some other factors that can come into play.

  The default rules are usually not the best to rely on. While they may result in the right people getting the assets, they do not always work that way. They also generally result in the least efficient transfer process. But if you can figure out how they would apply to you and you are comfortable with the result, then perhaps you could choose to let things play out under the default rules. Proceed at your own risk, though!

- Lastly, let me try to respond to a variety of questions regarding primary residences. Giving away the house is something that is recommended frequently by non-attorneys. The notion is that this will protect the house from nursing home costs down the road – as long as enough time goes by – or avoid the need for probate. While that can be true, it might also be problematic if the house is "given away" but not really "given away." If you are not going to move out, or pay rent, or really change your connection to the house in any meaningful way, there is a real question as to whether the house has been given away.

  A house is often a primary asset, so it is natural that many would have questions about how a home might be handled in an estate plan. But it is

also true that everyone's situation is at least a little bit different – so it is hard to answer so many questions individually without knowing the background. That said, most of the time I think people can think through the way the house is handled by thinking of it as dollars instead of a single asset. Unless one or more of your beneficiaries would move in after your death, it is highly probable that the house would be sold, and the proceeds distributed to whomever you name as beneficiaries. In that case, the house is not a terribly difficult asset to fold into the rest of your estate plan.

This document, of course, provides content at a level of general discussion. There can always be factors and circumstances that may impact how those questions would be answered for you and your particular situation. I encourage you to seek out appropriate legal, tax, financial, and other advisors to contextualize the above to your needs – but also hope this enables you to do that more effectively.

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