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QUESTIONS AND ANSWERS CONCERNING ESTATE PLANNING IN NEW HAMPSHIRE

IF I DIE WITHOUT A WILL, DOES ALL OF MY PROPERTY GO TO THE STATE?

ANSWER: Most likely not. Section 561:1 of the New Hampshire statutes determines the distribution of the estate of a decedent without a valid will. To give a brief summary of RSA 561:1, the surviving spouse will be entitled to the entire estate if the decedent died leaving no children or parents. If there are surviving parents or children (who are also the children of the surviving spouse), the surviving spouse will be entitled to $50,000.00 plus half of the remaining estate. If there are surviving children who are not also the children of the surviving spouse, the spouse is entitled to half of the estate. If there is no surviving spouse the estate will pass to children and/or grandchildren; if there are no children or grandchildren, the estate will pass to parents; if there are no surviving parents, the estate will pass to siblings and/or nieces and nephews; and if there are no surviving siblings, nieces or nephews, the estate will pass to grandparents, aunts, uncles or first cousins. If there are no surviving takers as defined above, the estate passes to the state of New Hampshire.

IF THE NEW HAMPSHIRE STATUTES PROVIDE FOR A DISTRIBUTION OF MY ESTATE, WHY SHOULD I HAVE A WILL?

ANSWER: First of all, you need a will if you wish to distribute your estate other than as provided in RSA 561:1. However, even if you are satisfied with the distribution scheme provided in RSA 561:1, you will simplify the probate procedure (and reduce the costs of administration) by having a will. The general goals of Estate Planning are (1) proper application and distribution of property, (2) minimizing or eliminating death related taxes, and (3) minimizing the costs of administration at the time of death.

DOES HAVING A WILL MEAN I WILL AVOID HAVING MY ESTATE PROBATED?

ANSWER: No. If title to property you owned at the time of your death is to pass according to the terms of the will, the will must be probated. Two ways to avoid probate are through the use of joint tenancies and revocable and irrevocable trusts.

I HAVE DECIDED THAT I NEED A WILL. WHAT DO I NEED TO CONSIDER?

ANSWER: First of all, you will need to appoint an executor of the estate. This is the person who distributes your assets in accordance with the provisions of the will. Also, if you have minor children, you will need to determine who will have custody of them if

both of their parents die before they reach the age of majority (the guardian). You will also need to determine who will handle the assets left to the children (the trustee). The executor, guardian and trustee can, but need not, be the same person.

You should make sure you have copies of the deeds to any real estate you may own and comprise a list of all of your assets and how they are held. The information checklist attached to this handout can be used for this purpose.

I HAVE RECENTLY MOVED HERE FROM ANOTHER STATE AND ALREADY HAVE A WILL. DO I NEED A NEW HAMPSHIRE WILL?

ANSWER: Not necessarily. Under the laws of the State of New Hampshire, a will that was valid in another state at the time of its execution may be proved and allowed in the New Hampshire Probate Courts (RSA 551:5).

WHAT IS A TRUST?

ANSWER: A trust is a vehicle through which an individual (the donor or settlor) transfers legal title to property to a trustee who manages the property for the benefit of others (beneficiaries).

WHAT PURPOSES DOES A TRUST SERVE?

ANSWER: A trust can be used to avoid probate; provide for the management of assets for minor children, grandchildren or those incapable of managing assets; and avoid or minimize Federal Estate and Gift Taxes.

ARE THERE OTHER WAYS TO AVOID PROBATE?

ANSWER: Yes, any property that is owned jointly with one or more other people with rights of survivorship (joint tenants) passes directly to the other joint tenants upon death. This is a useful and simple estate planning tool for couples whose combined assets do not exceed the federal estate tax exclusion. The estate tax exclusion for persons dying in 2012 is currently $5,120.000.00. However, in 2013 the exemption will be $1,000.000.00.

WHAT ARE A TESTAMENTARY TRUST AND AN INTERVIVOS TRUST?

ANSWER: A testamentary trust is a trust that is established by will and takes effect upon the death of the testator (the individual who made out the will). It exists under the jurisdiction of the probate court and the trustees must file annual accountings with the court. An intervivos trust is established during the lifetime of the settlor (the individual who established the trust) and can be either revocable (able to be terminated by the settlor) or irrevocable (unable to be terminated by the settlor). Both types of intervivos trusts can be used to avoid probate. If an individual is not concerned about the estate taxes and is merely using a trust to avoid probate, a revocable trust allows him or her to maintain more control over the assets of the trust and is often the preferred estate planning tool for this type of individual.

HOW CAN I AVOID ESTATE TAXES?

ANSWER: Estate taxes are applied to property you transfer at your death. The federal estate tax exclusion is currently $5,120,000.00 but will be $1,000,000.00 in 2013. Additionally, there is an unlimited marital deduction for any property that passes to your spouse. In other words, no estate tax will be applied to property that passes to a surviving spouse. Also, an individual can make annual gifts of $13,000.00 to anyone

without incurring a gift tax. This is a useful estate planning tool for elderly people who want to reduce the size of their estate prior to death.

MY WILL PROVIDES THAT MY ENTIRE ESTATE WILL BE LEFT TO MY SPOUSE, DO I NEED TO BE CONCERNED ABOUT ESTATE TAXES?

ANSWER: The lifetime exclusion will be in $1,000,000.00 in 2013. Therefore, if you and your spouse's combined assets exceed the applicable lifetime exclusion amount you may need to be concerned about estate taxes.. For example, assume both you and your spouse have $1,000,000.00 in assets and your wills provide that everything goes to the surviving spouse and if the spouse is not surviving it goes to the children. If you die first (assume in a year in which the lifetime exclusion is $1,000,000.00), your spouse will get your $1,000,000.00 estate tax free. However, if your spouse also dies in that same year with $2,000,000.00 in his or her estate, the first $1,000,000.00 will be excluded from the estate tax but the remaining $1,000,000.00, which passes to your children, will be subject to an estate tax of up to 55%. However, if you had used your $1,000,000.00 lifetime exclusion at your death, your spouse would have died with $1,000,000.00 in his or her estate, which would pass to your children free of the estate tax.

I DECIDED THAT I AM CONCERNED ABOUT ESTATE TAXES. HOW CAN I USE THE LIFETIME EXCLUSION AND STILL PROVIDE FOR MY SPOUSE?

ANSWER: Through the use of a credit shelter trust. The factor that determines whether or not assets of a trust are included in one's estate is control. You can set up a credit shelter trust and name your spouse or a trusted third party as trustee. The spouse can enjoy the income stream of the trust for life. As long as the spouse's access to the principal of the trust is limited by an ascertainable standard (e.g. for the health, maintenance and education of the spouse) and the spouse cannot amend or revoke the trust, the principal amount will not be part of the spouse's estate and the assets of the trust which pass to the children upon the death of the spouse will pass free of the estate tax.