What If I Die First?

A Discussion of Basic Estate Planning

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What If I Die First

Proper estate planning is the key to making sure that the legacy that you spent your lifetime building goes to the family members, friends or charities selected by you. It is a critical component to securing your family's future. Changes in your financial or family situation such as significant increases in net worth, marriage, divorce, or the birth of a child, as well as changes in estate and income tax law, can often make your estate plan obsolete. The result may be that a significant portion of your assets may pass to the government, rather than to your intended heirs.

Without estate planning the State of Florida has laws that determine who will receive your property and how it will be distributed. There are many techniques available to avoid the State rules and make your gifts possible in the manner you decide.
Two methods focused on here are the Last Will and Testament and the Revocable Living Trust.

What Is My Estate?

Your estate is everything that you own. Your estate consists of your home, other real estate you own, including any personal property you own such as the furniture in your home. It consists of your automobiles, any financial instruments you own including cash, stock, life insurance, and other investment products. If it is an item you can buy and sell, any item you have title to or a deed for or any item you can own, it is part of your estate.

Passing Away Without Estate Planning

Florida Statute Chapter 732 defines how your property is distributed if you have not created an estate plan to distribute your property according to your wishes. In general, if you are married and you die first without proper estate planning techniques in place, your spouse will receive your entire estate, provided you have no children. If you have children with your spouse and you and your spouse have no children other than the children with your spouse, your spouse will receive your entire estate. If you have children from a relationship other than your current spouse, your spouse is entitled to receive fifty percent (50%) of your estate. The part of your estate that remains after fifty percent is allocated to your

spouse is divided equally between your children and then on down to your grandchildren if necessary.

If your spouse pre-deceases you and you have no lineal descendants (more commonly known as children or grandchildren, and great grandchildren), your property is passed on to your heirs beginning with your mother and father, and then continuing to your brothers and sisters, and their lineal descendants. After attempting to locate your closest family, the rules continue to find people related to you in some manner so your property may be distributed. If no family can be found your property goes to the State of Florida.

While these rules attempt to get your property to some family member. There are still many problems that may arise with this type of distribution. The most common problem is property passing to a minor child or someone who is incapacitated. If this happens the State once again gets involved. A guardianship must be set up to manage the property owned by the minor and a guardian administers the property with oversight by a Florida Probate court. While this is a good system set up to protect the minor, the guardianship only lasts until the minor reaches eighteen years old and then the entire estate held for that minor may be distributed directly. As you can see this process adds un-needed cost, complexity and creates potential issues in the future when large sums of money are distributed to a teenager.

Fortunately, all of this can be avoided with estate planning.

Estate Planning Basics

The problem of "what if I die first" does not have to be a problem faced by any Floridian. Some simple techniques can be used to make sure you determine how your property is distributed upon your passing. Two items discussed in more detail below are the Last Will and Testament and the Revocable Living Trust. In addition to these items you may consider as part of your estate plan a very simple technique of using contractual items to pass your property to the people or charities you choose. Items with these contractual obligations pass outside of your estate. Some items that are in this category are life insurance with designated beneficiaries, annuities and retirement plans, also with beneficiaries. You can title real property and personal property as joint property with

each joint owner having rights to the property upon surviving the other joint owner. You can also create pay on death obligations on items such as bank accounts or certificates of deposit. Each of these techniques used in conjunction with Wills and Trusts will help ensure that your property passes only in the manner you desire.

The Last Will and Testament

A last will and testament is a legal document designed to tell the probate court how you wish to distribute your property at your death. A common misconception is that you may avoid the probate process if you have a valid will. This is not the case. Your will is the blueprint used by the probate court and your personal representative to make sure your property is distributed in the manner you want it distributed.

To create a valid Last Will and Testament in Florida your will must be in writing, signed at the end of the will, and two witnesses must acknowledge your signature at the time you sign the will while they sign their names in your presence. **It** is crucial that you and your two witnesses sign the will in each other presence or your will may be determined to be invalid if these requirements are not met.

Your will only governs the distribution of property that is left in your name at death. If property passes to a new owner at death, for example by a beneficiary designation or by joint tenancy with right of survivorship, than that property is not in the deceased person's name at his or her death. As discussed above, it is therefore not part of the probate estate and is not governed by the provisions of the will.

The will allows you to avoid many of the problems created by having no documents designated by you to distribute your property. **It** allows you to determine who will receive your property; it allows you to designate guardians for your minor children or an incapacitated or developmentally challenged person. Your will allows you to create trusts to hold assets for the benefit of anyone including a parent or a child. You can even create plans to make sure a loved one does not become in-eligible for government assistance programs because they suddenly inherit enough money to disqualify them.

With proper estate planning your Last Will and Testament can be a versatile document to be sure the people and organizations you care for are taken care of in the future.

The Living Trust

A revocable living trust is a trust created during the trust maker's life. The trust maker retains the right to amend or revoke the trust while alive. While the trust maker is alive and competent he or she can serve as the trustee and is the primary beneficiary of the trust. Like a Last Will and Testament, a living trust contains the maker's instructions for what is to happen to your property when you pass away. Unlike a Last Will and Testament, a Living Trust also contains instructions for what is to happen if you become disabled or incapacitated. In this situation the person you designate, as your successor trustee will be able to continue managing your property in the same manner as you have, because the trust owns the property, (not you personally), and there is no ownership change in the property. If you pass away or become incapacitated, your successor trustee automatically acquires the powers you had as trustee.

There are few reasons to consider using a Living trust in addition to a Last Will and Testament. Many people do not want to have a State Court involved in their affairs while alive or after passing away. A properly written and managed Living Trust will avoid the cost and public record created by the Probate Courts involvement, and provide privacy to you and your family.

One of the most common reasons for using a Living Trust is if you own property in more than one state. As discussed above, avoiding probate is an important estate planning goal. Unless you have transferred your property to a living trust, your estate may be subject to probate in each state where you own real estate. The main probate proceeding takes place in your home state, but ancillary probate proceedings must be opened in each other state where you own real estate. This adds more cost and time to the process. Your personal representative may need to hire a probate lawyer in each state, file certified copies of the main probate proceedings in the other states' courts and comply with other administrative requirements by each state. To avoid this problem your Living Trust may own all of your property and since the trust does not end when you pass away, the trustee you designate to serve after you, will have the authority to follow your instructions as designated in your Living Trust to handle each of your properties regardless of the state in which the property is located.

Conclusion

At Michael Stratton, P.A. we pride ourselves on first listening to your requirements, and then we work closely with you in a partnership to solve your needs. It is this personal approach that sets us apart from other law firms.

Michael Stratton, P.A. is a Florida based professional association practicing law in the areas of wills, trusts, probate, and business law. Our goals are our client's goals, whether we are assisting you in planning how to leave your legacy using the estate planning techniques available in wills, and trusts, or working with you through the tedious tasks of probate administration.

It is our mission to be available to our client's on a personal one to one basis. We are here to assist you with the everyday legal requirements of your family. You may contact us at 407-678-4LAW (4529) or on the World Wide Web at www.MichaelStrattonPA.com

Below we have provided you with a quick estate planning self-assessment test. It is our hope that you find it to be one helpful step in determining your estate planning requirements. For additional information please call 407-678-4LAW (4529) and we will provide you with Personal Attention & Superior Service.

Estate Planning Self-Assessment Test

Do you have a Will or Trust that has been reviewed in the past five years?
Yes No Not Sure

Do both you and your spouse have estate plans designed to take advantage of the available gift/estate tax exemption?
Yes No Not Sure

Have you designated beneficiaries on all of your life insurance policies, annuities and retirement accounts?
Yes No Not Sure

Are all of your beneficiaries or contingent beneficiaries over the age of 18?
Yes No Not Sure

Have you utilized an irrevocable life insurance trust to exclude insurance proceeds from being taxed?
Yes No Not Sure

Are you taking maximum advantage of the annual gift tax exclusion?
Yes No Not Sure

If you didn't answer "Yes" to all of the above questions, then you should call our office at 407-678-4LAW (4529) for an appointment to discuss your comprehensive estate plan.