LIFE AND ESTATE PLANNING

FOR YOU

AND

FOR YOUR FAMILY

THE INFORMATION PROVIDED IN THESE MATERIALS IS GENERAL IN NATURE AND WAS CURRENT AT THE TIME IT WAS WRITTEN. WE CONSTANTLY UPDATE THIS PACKET, BUT OUR COURTS AND LEGISLATURES OFTEN CHANGE THE LAW FASTER THAN WE CAN READ IT.

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I. LIFE AND ESTATE PLANNING DEFINED

Estate planning is the decision making process in which you decide:

- What is the best way for you and your family to manage assets and income during your lifetime?
- How to hold title to property for maximum asset protection.
- The making of medical decisions in the event of future incapacity.
- The best way to disburse assets at death.

Each person, household, and family is unique. Consequently each estate plan must be tailored to fit you and your family's needs and wishes.

The following general information is designed to help you prepare for our meeting and to inform you of the many estate planning options.

All planning is best accomplished through cooperative efforts with your attorney, accountant, financial advisors, insurance agent, and trust officer, if any. Not everyone has this many advisors. When possible it is best if at least one joint planning meeting can be scheduled. Remember, in this process you are always in charge, and we, your advisors, take direction from you.

Please inform me when you retain me as your lawyer as to whom I will be consulting with and authorize me to share plans and documents with them in order for you to have the most thorough and complete plan.

While we can take as much time as you need to make thoughtful decisions, I try to complete your plan in about one month from your first appointment. For most clients, our time frame for services is as follows:

- First appointment - discussion of family needs, estate and tax priorities, and fees.
- Receipt of draft documents – approximately two weeks after first appointment.
- Second appointment (if necessary) - to discuss drafts - approximately three weeks after first appointment.
- Third appointment - to sign documents - four weeks after first appointment.
- Fourth appointment (if necessary) - to sign transfer documents transferring assets to the Trust.

- Follow-up appointments -- as necessary. Additional fees may be charged for more complex planning and/or more than two drafts.

II. WHICH ESTATE PLAN IS BEST FOR YOU

One or more of the following documents will be needed to prepare a comprehensive plan for you.

A. LIFETIME DIRECTIVES/POWERS OF ATTORNEY:

1. Powers of attorney allow you to designate a spouse, trusted family member or friend to manage your financial affairs when you are unavailable or incapacitated. Powers of attorney must only be granted to the most trusted family member or friend.

2. Under Arizona law, emergency medical decisions may be delegated to someone you appoint via a power of attorney. You also may appoint alternates. Every person should have this document.

3. Arizona law requires that separate documents be prepared for business and medical decisions.

B. WILLS:

A last will and testament provides direction to the probate court and to your named personal representative as to how you wish your assets to be distributed at your death.

A will must be presented to a probate court to be "probated." Contrary to the many scare advertisements, probate need not be a negative or overly expensive process. Arizona is one of the few states that does not provide a set percentage fees for the personal representative and attorney. Fees are charged on a service provided or flat fee basis. Generally, an uncontested informal probate (no fighting among their heirs or will contest) will be completed in less than a year. A will contest or infighting among the heirs and personal representative will result in lengthy litigation and maximum fees. A well drafted will that is clear and concise can minimize the chances of a will contest.

If you have a simple, nontaxable estate and do not anticipate any disputes, a simple will may be the least expensive and best plan for you.

C. TRUSTS:

A Trust is a contract between you as **TRUSTOR** and either you (individually or as a couple) or a Trust company as **TRUSTEE.** The Trustee(s) manages your assets during your lifetime and distributes them to your named beneficiaries at your death.

A Trust also provides for the management of the assets transferred to the trust upon any

period of incapacity during your life. It distributes the assets in the trust at your death without any court proceeding or transfers them to another Trust or Trusts that can continue to hold property and distribute income to others. You set the time for distribution (Trusts may continue for children, parents, friends, or charities).

Trusts may be "revocable" (changed at any time) during your lifetime or may be "irrevocable" and therefore not subject to any changes. The successor Trustee nominated by you has the duty of distributing your assets at your death, or continuing to manage them as you direct in your Trust.

If an asset is overlooked or a creditor is not satisfied, you will have a backup will called a "pour-over will," which allows for a probate if necessary in the opinion of your family or fiduciary. Sometimes a probate of your will actually helps to protect your assets. It also will capture any assets that have not already been transferred to the trust and after payment of the probate expenses and creditors transfers those assets as part of the probate to the trust.

D. TRANSFERS BY CONTRACT:

Many assets will transfer automatically at death by contract. Examples include: life insurance, employee benefits, 401(k) plans, IRAs, joint tenancy real estate or bank accounts, and "payable on death" accounts or bonds. **Your choice of BENEFICIARY is crucial to the amount of taxes that will be due upon death.**

Since many married couples and long-time companions hold their common assets in these ways, **no** will may be necessary upon the first death. However, if the couple does not have the same choice of final beneficiaries, a Trust will be necessary to assure that their different choices are acknowledged fairly in the final distribution of assets belonging previously to both people.

III. THE STATE OF ARIZONA HAS A PLAN OF LAST RESORT

A. NO PLAN, NO WILL, NO TRUST, NO CONTRACT:

If you have neglected to implement your own plan to transfer your assets at your death, never fear, the state of Arizona has devised a statutory plan for you which is called **INTESTATE** (without a Will) **SUCCESSION** (all of your relatives step forward).

B. INTESTATE SUCCESSION:

After the payment of all taxes, costs of funeral and last illness, administrative fees, court costs, and creditor claims, the following blood, legally adopted, and illegitimate children/relatives will receive the balance of your estate via a formal court probate:

(1) Surviving husband/wife (if he/she was your one and only);

then to children in equal shares;

OR

A. One-half to husband/wife (second or subsequent married to you at the time of your death); the other half equally among all of your children legitimate, illegitimate, and adopted;

B. If you are survived by neither spouse nor children, then to your parents;

C. If you are not survived by your parents, then to your brothers and sisters if deceased, to their children, etc.;

D. Then to nieces and nephews. If none, then to aunts and uncles. If none, then to cousins etc., etc., etc.;

E. If no living relative can be found, then to the state of Arizona.

IV. UNDERSTANDING AND IMPLEMENTING TRUSTS

A. THE REVOCABLE OR LIVING TRUST:

The name of this type of Trust implies that it is to benefit you (and anyone else you choose) during your lifetime. You may revoke (cancel/void) it at any time. You also may amend and change it whenever you wish.

If you wish, you may name yourself or yourselves as Trustee(s) or name another individual or an institution as Trustee or as Co-Trustee. You have total control and authority of a revocable Trust. If it is a community property Trust, you share control with your spouse.

The Trust will provide who is to receive the income (including yourself while alive), as well as who will receive the assets at your death or at later intervals that you choose (rather than the legal age of 18--when children would receive assets if there is no will or trust).

A Trust continues to manage your assets for your benefit if you become incapacitated. You may nominate a committee of family members and physicians or trusted friend to decide when you are unable to make competent monetary decisions. Without a Trust or Power of Attorney, a Court will declare you incompetent and then will name a guardian and conservator to make your decisions for you. This proceeding is the most expensive administrative proceeding at the courthouse because of annual audits, required fiduciary bond, and supervised administration.

Once you establish a Trust, you then must transfer your assets to the Trustee (usually yourself) in order for the Trust to be operable without further court supervision upon

incapacity or death. This is why a Trust is more expensive than a simple will. You are expending the effort and expense of transferring your assets during your lifetime.

B. THE IRREVOCABLE TRUST:

An irrevocable Trust is a Trust that cannot be changed or modified once it is signed.

The purpose of an irrevocable Trust is usually related to making a completed gift to a family member or charity that qualifies for income, estate and/or gift tax credit. It takes the asset out of your estate for tax purposes at the present time so that the asset's appreciation in value will not figure into using up the credit that is available to you.

Irrevocable Trusts also are utilized to provide for the payment of estate taxes separately outside of your estate. These Trusts are usually funded with life insurance policies.

Family members with special needs, who will need to receive government aid or qualify for an entitlement program, also may benefit from an irrevocable special needs Trust.

The revocable Trust you establish during your lifetime becomes irrevocable at your death.

Your accountant's input is necessary in creating a tax advantaged Trust.

1. CHARITABLE TRUSTS:

Bequests to charities with an IRS **501**(c)3 designation may be made through Revocable or Irrevocable Trusts which may qualify for a tax deduction on either income or estate tax returns or both, depending on how and when the gift is made. Charitable Trusts can also function as an annuity for a named surviving beneficiary.

Again, your accountant's advice will be essential.

2. INSURANCE TRUSTS:

An insurance Trust is funded with a specific life insurance policy or policies. It usually has a narrow designated purpose, such as education for children or grandchildren, providing for a family member with special needs, funding a buy-sell business agreement, or payment of future estate taxes.

Your insurance broker is an essential member of the team in the design and drafting of an Insurance Trust.

3. **TRUST LIMITATIONS:**

There is no minimum estate value in order to establish a Trust; however, banks and trust companies do set their own different minimums of asset value before they will agree to serve as agent of the Trustee, Co-Trustee, or successor Trustee. The asset values generally range from a minimum of $100,000 to $500,000 of liquid manageable assets.

Most lending institutions will not lend to a Trust. This means that if you wish to refinance a residence that has been transferred to your Trust, you must transfer it back to your individual ownership before refinancing. The residence may then be returned to the Trust.

4. **ASSET PROTECTION TRUSTS:**

Asset protection Trusts are established to protect your asset from future creditors or legal judgments. They must be irrevocable, and you cannot serve as your own Trustee. For maximum protection, they are often held by a Trustee outside of the United States. They are much more expensive and complicated to establish and maintain.

C. QUALIFIED DOMESTIC TRUST:

A qualified domestic Trust is a planning tool for U. S. Non-citizens.

V. WHAT A WILL AND LAST TESTAMENT IS AND ISN'T

A. WHAT IS A WILL?

1. A will is a written, witnessed, and notarized document that directs your named PERSONAL REPRESENTATIVE and the probate court as to how to distribute property that you owned at your death. The ONLY property that you may give away through your will is:

   A. Your solely owned property;
   B. If married, your one-half of community property not held with rights of survivorship;
   C. Contracts that name your estate as beneficiary;
   D. Partnership interests.

2. You may not pass the following types of property through your will:

A. Property held in joint tenancy with rights of survivorship;
B. Property held/titled in a Trust;
C. Payable on death ("P.O.D.") accounts;
D. Life insurance proceeds with designated beneficiaries;

E. Employee benefit/retirement plans with designated beneficiaries;
F. Individual retirement accounts with designated beneficiaries.

These above-described properties pass by the terms of the contract that you signed when you acquired the property, assets, or account.

B. WHAT HAPPENS TO YOUR WILL AT YOUR DEATH?

1. If you have property described in a. A.1., above, or disputed debts or lawsuits, then the Personal Representative, who you named in your will, files a petition with the Probate Court in the county where you lived at your death. The petition requests that the Court declare the Will to be your last Will, admit it for probate, and issue Letters of Representation to your Personal Representative.

2. Usually a few days after the petition is filed, **Letters of Representation** are issued and your Personal Representative can proceed to pay your bills and taxes, collect your assets, and then distribute them according to preset statutory time periods of four to nine months, plus tax required periods.

3. The beneficiaries and certain relatives that you name in your will must receive copies of everything filed with the court.

4. In Arizona, you do not have to provide for anyone in your will; this includes your spouse and children, but your personal representative must give your immediate family notice of all probate proceedings.

5. Your spouse and minor children are entitled to certain statutory family allowances, up to $50,000. They must petition the court to have these paid first before paying creditors or other beneficiaries.

VI. CHOOSING A FIDUCIARY

A. WHO IS AND WHAT IS A FIDUCIARY?

A fiduciary is someone you have named to act on your behalf, such as:

1. A named agent per a power of attorney;
2. The personal representative under your Will;

3. A Trustee nominated in your Trust;
4. A court-appointed guardian for yourself, a child or incapacitated adult;
5. A court-appointed conservator for the funds for a minor child or incapacitated adult.

B. HOW TO CHOOSE YOUR FIDUCIARIES:

1. **DURABLE POWER OF ATTORNEY**. Your agent per a power of attorney must be a very trusted and responsible individual. He or she will have the power to make life and death medical decisions for you, as well as manage your assets totally if you were to become incapacitated. Who should you choose? Married couples and long-time companions have each other. Trustworthy adult children or best friends are usually the next best choice. Parents are sometimes chosen, but the age difference and emotional fortitude to make health care decisions may be too difficult for them.

2. **PERSONAL REPRESENTATIVE.** Your Personal Representative has the business and tax responsibilities for administering your probate estate. Only someone experienced and trustworthy should be considered. Again, a spouse or long-time companion is an easy first choice. Adult children or two of your adult children may be appropriate if they love and respect each other. Sole beneficiaries are fine. Multiple heirs, troublesome families, complicated estates, and multiple creditors are all good reasons for you to choose a bank or trust company to be your personal representative.

3. **TRUSTEE**. Trustees and successor Trustees should be chosen based on the value and complexity of the Trust assets. You also should consider the age and ability of a surviving Trustor and beneficiaries. Small Trusts require the choice of the most trusted family member or friend. Larger Trusts are best managed by a professional trust company. Giving the management of a complex Trust to a grieving spouse or family member is not a gift.

4. **GUARDIAN**. A guardian of the person is the individual who will be entrusted to make your life decisions, raise your children and/or care for a developmentally impaired sibling or aging parent. This is probably your hardest estate planning decision. Only real people can serve as a guardian (not institutions). A guardian must be appointed by the court.

5. **CONSERVATOR**. The conservator of the estate (assets/income) of a minor or incapacitated adult also must be appointed by the court. This job is also limited to the size of the asset. Individuals, known as "private fiduciaries," serve the smaller estates; professional institutions are usually chosen for the complex larger estates. All individual conservators must be bonded by law. Conservators must report to the court and file accountings annually. Conservatorships are very expensive

court procedures to be avoided, if possible.

6. Arizona has made financial exploitation of an incapacitated or vulnerable adult a crime, subject to both criminal and civil penalties. The statute states:

A. A person who is in a position of trust and confidence to an incapacitated or vulnerable adult shall act for the benefit of that person to the same extent as a Trustee pursuant to title 14, chapter *7*.

B. A person who is in a position of trust and confidence and who by intimidation or deception knowingly takes control, title, use or management of an incapacitated or vulnerable adult's asset or property with the intent to permanently deprive that person of the asset or property is guilty of theft and is punishable as provided in **§** 13-1802, subsections c and d.

C. A person who violates subsection a or b of this section is subject to damages in a civil action brought by or on behalf of an incapacitated or vulnerable adult that equal up to three times the amount of the monetary damages.

D. A person who violates subsection a or b of this section forfeits all benefits with respect to the estate of the deceased, incapacitated or vulnerable adult, including an intestate share, an elective share, an omitted spouse's share, an omitted child's share, a homestead allowance, an exempt property allowance and a family allowance. If the incapacitated or vulnerable adult died intestate, the decedent's intestate estate passes as if the person who committed the violation disclaimed that person's intestate share.

VII. COST, DEBTS AND TAXES

A. DEBTS:

Unfortunately, even in death we must pay our debts and taxes. Why do you care? Because your spouse, joint tenant, personal representative, or trustee must pay them.

Arizona law (A.R.S. § 14-3805) sets the priority for determining the order in which debts after death must be paid:

1. Costs and expenses of administration.
2. Reasonable funeral expenses.
3. Debts and taxes with preference under federal law.
4. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
5. All other claims.

B. TAXES:

1. INCOME TAXES

A. Income taxes are due for the year in which the death occurs. A surviving spouse may still file jointly for that year. Thereafter, if your estate (probate or trust) generates income, a fiduciary return must be filed for each year the estate is not distributed to the beneficiaries. Estate returns may be filed on a non-calendar year basis.

B. The requirement of filing income taxes will delay the final distribution of the estate until after the first of the following year.

C. All IRA's, tax deferred annuities, certain retirement plans are subject to income taxes as of the date of death unless the named beneficiary is a spouse or a charity regardless of the size of the estate. Certain beneficiaries have five years to defer and pay the taxes.

2. **CAPITAL GAINS TAXES**

All community property and your separate property receives a full step up in basis at your death for the fair market value as of the date of death.

Jointly held property receives only a proportionate step up in basis per each join tenant's contribution.

The estate does not pay capital gains tax. Your heirs will pay capital gains taxes when they sell the asset based on the estate's date of death valuation.

3. **ESTATE TAXES**

An estate tax return must be filed with the IRS and Arizona Department of Revenue within 9 months after the date of death for taxable estates.

All real and personal property, life insurance, employment benefits, securities, including property held by a Trust, etc. is included in the gross value of an estate at death. All assets of a taxable estate must be professionally appraised for the federal estate tax return.

A married individual may pass unlimited wealth tax-free to a spouse. There are limitations for non-citizen spouses.

Bequests to institutions or charities which have the IRS 501(c)(3) designation pass tax-free of federal and Arizona estate taxes.

The federal and "piggy back" Arizona state estate taxes are both graduated taxes that must be paid on your adjusted gross estate before any distributions are made to your beneficiaries and/or heirs.

After the payment of income taxes, your IRA, tax deferred annuity and retirement plans are still subject to estate taxes.

But there is an exemption for gifts made during your life depending on when they were made and for estates under certain values.

Year	Exemption
2010 and prior	$1,000,000
2011	$5,000,000
2012	$5,120,000
2013	$5,250,000
2014	$5,340,000

2015	$5,430,000
2016	$5,450,000

The exemption in future years will depend on inflation since the exemption is indexed for inflation.

C. COSTS OF ADMINISTRATION FOR WILLS, TRUSTS AND JOINT TENANCY PROPERTY:

1. Trust administration is based upon the complexity of the assets, number of beneficiaries, size, number and complexity of tax returns, number and type of successive Trusts for spouse, children, grandchildren, etc.

   Total costs may be as little as one consultation with the attorney and cost of preparation of final tax return to a three year advisement period involving attorney, accountant and others on the planning team until all required tax returns are filed and accepted by the internal revenue service for taxable estates.

2. Joint tenancy property and rights of survivorship property require notification, an affidavit, death certificate and Arizona tax waiver to transfer. (Estimated current fee: $500 - $1,000, depending on number of affidavits and tax waivers.)

3. Probate of an uncontested will. An informal uncontested probate usually costs about one to two percent of the value of the assets to be transferred in the probate.

4. Probate of a contested probate or complicated estate may cost five to ten percent of the value of the estate, depending on the length and intensity of the court litigation.

VIII. ASSET PROTECTION AND SAFEGUARDS

There is much written and discussed today about protecting and safeguarding our assets from unwanted lawsuits, creditors, and financial disasters.

The following are some examples of assets that are protected automatically:

A. The state of Arizona grants an automatic statutory homestead exemption which protects up to $150,000 of home equity in your residence.

B. A family partnership can preserve and give added protection to certain types of assets, including stock and real estate.

C. An irrevocable trust will stave off all creditors although under some irrevocable trust government entities providing services to a trust beneficiary may have a right to recover a portion of the trust assets.

D. All forms of employee-funded or employment benefit accounts, including qualified retirement plans, individual retirement accounts, 401(k) plans, and 403

plans are protected from creditors but are always subject to deferred income taxes.

A REVOCABLE TRUST IS NOT PROTECTED FROM CREDITORS OR TAXES.

IX. MEDICAL DIRECTIVES AND LIVING WILLS

Arizona and the federal government have both enacted medical directive and living will laws. Arizona allows you to designate a surrogate decision maker in the event of your incapacity. It further allows you to refuse life-prolonging treatment and nourishment. The new federal law requires that upon entering a hospital you are provided with federal versions of these documents.

Our courts have ruled that the last set signed is the set followed. If you already have such documents, your doctor and the hospital should have copies before you go in for treatment.

We include these documents at no charge when we prepare your estate plan.

X. SHARING AND CHOOSING AN ESTATE PLANNING LAWYER

CAN ONE LAWYER REPRESENT MORE THAN ONE MEMBER OF THE FAMILY?

There is great debate among lawyers as to whether or not members of the same family should share the same lawyer.

Traditionally, the family lawyer has been just that--the lawyer to the whole family. Today with people having mixed families, step families, relationships, and alternative lifestyles, our role is not always as clear as it once was.

If I have, or am, or will be representing any other member of your family, you must be totally comfortable in the confidential relationship we will all share. Everything that one of you tells may be shared with all.

However, everything you confide in me will be kept in the strictest confidence as to everyone who is not one of my clients.

If, for any reason, you feel that you have different wishes, concerns, or confidences than other family members, you may wish to have your own lawyer. When you have these feelings, you should have your own lawyer, and I will totally support you in this decision.

When a couple or different members of a family choose to use my services for estate planning, you must each waive confidentiality as to each other, because I cannot prepare joint or mutual estate plans unless everyone is fully open with each other. In other words, you may not share the same lawyer and have a secret or cross-purpose. This creates a conflict for me and prevents me from serving either of you. By signing the retainer

agreement to retain me, you are waiving confidentiality

Between yourselves and waiving any conflict I have in advising a married couple, companion, or multiple family members.

Please discuss these issues with me if you wish further clarification.

XI. LONG TERM CARE

A. As this is being written, the law, government programs, and availability of long term care are rapidly changing.

B. If you need to explore long term care for someone else, a special consultation can be scheduled.

C. If you are planning for the possibility of your own long term care, the following are current options that we can discuss:

1. Long term care insurance for home care and nursing home care.
2. Life insurance/annuity conversion policies that are relatively new products being offered by insurance agents and financial planners.
3. Residential facilities that provide life care.
4. Government entitlement programs which have income and asset value qualifications. Very few people actually are entitled to receive this type of government aid. The transfer of assets to other family members is subject to strict scrutiny and possible penalties in anticipation of qualifying for Arizona long term care assistance.

XII. WHERE TO SAFEKEEP YOUR DOCUMENTS

A. COPIES OF YOUR DOCUMENTS

We will provide you with one set of original set of documents for your safekeeping.

The best place to safekeep your original documents:

1. The bank safety deposit box;
2. A home safe that will protect against fire;
3. The safety deposit box or safe of your named successor Trustee or personal representative.

Where you should <u>not</u> safekeep your documents:

1. A shoe box in the garage;
2. A safety deposit box in Kansas City where you nor anyone you know lives

or lived;

3. The magazine rack in your den;

4. A hat box in your closet.
(My clients have chosen all of the above.)

B. COPIES OF YOUR DOCUMENTS

1. You will be provided with one copy of your documents for your use and referral;
2. I will retain one copy in your permanent file;
3. At your request, we will provide a copy to your personal representative and/or Trustee;
4. Extra copies of our medical directives for your physician and agent will be provided for you to give to them.

XIII. FINAL PLANS

Planning for the funeral is one of the most emotionally charged events for a family and friends. If you can make the necessary decisions now, you will reduce their anxiety and conflict.

Like all of your other worldly goods, your body belongs to the living by Arizona law. Your legal "next of kin" have the right to make decisions as to your cremation or burial plans. "next of kin" is defined by Arizona law in our intestate succession statutes (page 3). All the next of kin of one class must agree. If you only have one spouse, obviously his or her wishes control. If you have three children, they must all agree. This is why you should review these plans with your family and provide them with a copy of your wishes.

XIV. QUESTIONS

All questions are ***good*** questions. I look forward to answering yours.