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## *Tax & Financial Newsletter*

This *Tax and Financial Newsletter* is devoted to Estate Planning. It provides a basic overview of estate planning documents. It further discusses the fundamentals of Oklahoma probate procedure. The newsletter concludes with the use of Living Trusts and their benefits.

### INTRODUCTION – ESTATE PLANNING OBJECTIVES

A good estate plan will typically achieve three objectives. First, it ensures your property is distributed in the manner you desire which reduces the emotional stress for you, your family, and loved ones. Second, prudent estate planning reduces the time and money your survivors will spend settling your affairs. Third, a carefully designed estate plan saves taxes, thus allowing more assets available for distribution to your heirs or beneficiaries.

Good estate plans are tailored to meet each individual's need considering the size of the estate and other complexities such as blended families, business operations, and assets which are difficult to divide. Recently, the tax laws changed wherein only larger estates are subject to estate taxes. However, many excellent reasons, which do not involve estate taxes, exist to establish the need for an effective estate plan. Examples are avoiding Oklahoma's complex probate procedures, providing for minor or disabled children, income tax planning related to retirement plans, etc. The next section explains estate planning and some of the rudimentary estate planning procedures.

### WHAT IS ESTATE PLANNING?

Estate planning is arranging your affairs utilizing the pertinent estate laws to carry out your wishes for distribution of your property. Estate laws include the laws of taxes, wills, insurance, property, trusts and family law. Estate planning can be as simple as titling assets in joint tenancy or utilizing "POD" accounts with your bank. These are simple and very inexpensive common estate planning techniques. However, these very simple procedures have a tendency to exasperate the unanticipated. They do not protect against a joint tenant who does not survive you, or if the joint tenant has creditor problems, or if he or she goes through a divorce. If these problems develop, the inexpensive estate plan can become a financial disaster resulting in litigation, and/or your assets potentially becoming the property of those you did not intend. Fortunately, a Will can solve some of these problems.

### A WILL - THE BASIC DOCUMENT

A Will is a written document by which you make provisions for the disposition of your property upon your death. Most Wills also appoint a personal representative and provide for the payment of your debts and taxes. The personal representative will

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gather your property and make distributions according to the provisions of your Will. However, Wills should be coordinated with property that passes “outside” the Will. For example, joint tenancy assets, life insurance, and pension plans are generally not subject to the provisions of a Will. Thus, all of your property, including property that is subject to your Will, as well as property passing outside of your Will, should be coordinated so the ultimate plan of distribution coincides with your wishes.

*A GOOD RULE OF THUMB IS: A WILL ONLY CONTROLS PROPERTY THAT IS OWNED IN YOUR NAME INDIVIDUALLY AT THE TIME OF YOUR DEATH OR IS OTHERWISE PAID TO YOUR ESTATE BY THE SPECIFIC PROVISIONS OF A CONTRACT, SUCH AS AN IRA, ANNUITY, OR LIFE INSURANCE POLICY.*

Although a Will can solve many estate issues, and is better than doing nothing at all, a Will has its disadvantages. First, a Will has to be probated. Probate is slow, time consuming, and expensive. Second, a Will cannot provide for a plan for mental or physical disabilities while you are living. Third, a Will does not protect your privacy or that of your family. Fourth, a Will can be easily contested in a probate.

## PROBATE FUNDAMENTALS

Probate is a court-controlled legal process that transfers your assets pursuant to a Will, or pursuant to state law if a Will does not exist. It is an expensive public forum which is time consuming and can invite trouble. There are approximately ten legal steps or procedures

involved in order to complete a basic probate. These steps typically include: (1) at least two court hearings; (2) several public legal notices; (3) numerous mailings; (4) court filings relating to identifying heirs, and appointing a personal representative; (5) identifying and disclosing assets; (6) selling property; (7) determining creditors; (8) ascertaining who gets paid; (9) initial and final accountings; and, (10) beneficiary distributions, etc.

Moreover, probate publicly disseminates information about your assets and debts and has a tendency to “invite” problems. It can create an inexpensive ticket for an aggrieved party to initiate a legal battle. Without a doubt, other types of disharmony can also occur without being involved in probate proceedings. But, comparatively, probate proceedings provide more fertile ground for litigation. A good estate plan with a Revocable or Living Trust highly decreases the potential for probate issues.

## REVOCABLE OR LIVING TRUST

An excellent alternative to a Will is a “Living Trust” or an *inter vivos* revocable trust. A trust is a legal entity in which a trustee owns property for the benefit of beneficiaries. A grantor creates the Living Trust, transfers his or her property to the trust, and is usually the current beneficiary and the trustee. Thus, the Living Trust becomes operative during the lifetime of the grantor. The trust assets are managed by the trustee according to the terms of the trust. Upon the death of the grantor, a second person or entity becomes the trustee. The successor trustee distributes the trust’s

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assets according to the directions in the trust. Hence, a Living Trust is similar to a Will since after the grantor's death, his or her assets are distributed to designated persons or entities. Unlike a Will, however, the Living Trust does not require court supervision—i.e. probate.

## More Regarding Living Trusts

Avoiding Oklahoma's expensive probate process is the first advantage of a Living Trust. To avoid probate, The Living Trust must have assets transferred to it. This generally includes preparing and filing deeds, changing the style and heading of bank and brokerage accounts, and preparing assignments. A Living Trust can also be quite flexible and be drafted to meet your specific needs and desires. It can be amended or revoked if your circumstances change. The trust can further provide for the management of your assets should you become mentally incompetent or physically disabled. The successor trustee simply becomes the primary trustee. As such, your family avoids expending the time, emotional expense, and money of hiring a lawyer to request the probate court to appoint a conservator or guardian of your assets.

Moreover, if you have minor children, it is quite common for a Living Trust to provide for your children and prevent the probate court from managing their inheritance. This is accomplished by having a "minor's trust" within the Living Trust. A trust for your children can be created with directions for a trustee to provide for them. A minor's trust generally directs the trustee to pay for your

children's college or vocational school; and, if the trust has assets after their secondary education, your children receive their inheritance. Of course, many variations to this general framework exist and should be tailored to your specific requirements. But, be aware, just like a Will, the same types of property (joint tenancies, pension plans, life insurance, etc.) will not "pass" pursuant to a Living Trust unless the Living Trust is named as the beneficiary.

***Tax Tip!** Pension plans, including IRA's and 401(k)'s, can be subject to estate taxes and are subject to income taxes. Thus, charitable gifting of pension plan assets can save both income and estate taxes. Accordingly, a Living Trust should be coordinated with assets that are transferred by deed or other agreement.*

In summary, Living Trusts have several advantages and few disadvantages. They can solve many of the problems associated with "simple" estate plans. They are superior to a Will because they can provide for persons with disabilities, avoid the probate hassles, and protect your privacy. Living Trusts, however, do have drawbacks. First, they require more time to implement than a Will. Second, you must transfer your property to the Living Trust. Third, the legal fees to prepare a Living Trust exceed those to prepare a Will. Fourth, if the proper trustee is not selected, unanticipated problems can arise. And finally, if a person has sufficient assets, their Living Trust should be designed to save taxes and perhaps even be coordinated with other estate tax planning agreements and techniques.

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Some of the most popular methods to reduce estate taxes include: (1) effective utilization of the marital deduction; (2) gifting plans utilizing the \$14,000 annual gift exclusion, or the lifetime credit that shields \$5,250,000 of assets from estate tax; (3) organizing family limited partnerships which focus on discounting the value of assets; (4) trusts designed to hold life insurance to exclude the proceeds from an estate; (5) personal residence trusts that transfer a residence out of an estate at a low gift tax value; and, (6) charitable trusts that can also yield income tax deductions in addition to estate tax savings. Of course, there are numerous other methods to reduce estate taxes.

## CONCLUSION

In conclusion, the best method for assuring your assets are transferred to your intended beneficiaries is through proper estate planning. With all the different estate tax laws and planning tools, it is imperative that alternatives be explored, considering both non-tax and tax-related issues, and then implementing a well-thought and efficient plan. For example, family limited partnerships are excellent estate planning tools for oil and gas and real estate holdings even if estate taxes will not be due.

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Look for our mid-year newsletter which will provide an update on the federal tax laws, and will expand on estate tax savings ideas.

If you have any questions regarding your estate plan or circumstances, please contact me via email at [pburgess@barberbartz.com](mailto:pburgess@barberbartz.com) or at (918) 599-7755. As a C.P.A., I can efficiently evaluate “the numbers,” and as a lawyer, I can assist you with evaluating the legal alternatives. ✂

*The statements contained herein are basic overviews of the covered subjects. Most of these provisions have special rules, conditions, and exceptions. Further, the opinions of the author contained herein are to be viewed as opinions only. Please call 918-599-7755 to see how you can make the most of these suggestions, or if you need help arranging your personal and business affairs to pay as little tax as possible.*

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