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JMBM Taxation and Trusts & Estates Groups

A Basic Guide to Estate Planning

What's Inside?

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You probably know that Wills and Trusts are fundamental parts of an estate plan even if you do not already have a Will or a Trust. What you may not realize is that even if you have not prepared an estate plan with a Will and possibly a Trust, you have an estate plan—the one created under the California Probate Code. Unfortunately, the plan created for you by the Probate Code is inadequate for most people for one or more of the following reasons:

1. Assets may not pass according to your wishes upon your death;
2. Your heirs may needlessly pay estate taxes to the federal government; and,
3. Your family and friends may suffer undue inconvenience.

This booklet will describe many of the important estate planning issues and introduce some of the principal estate planning techniques that can help avoid these problems.

Even if you have not prepared an estate plan with a Will and possibly a Trust, you have an estate plan — the one created under the California Probate Code.

Estate planning raises difficult issues. Unfortunately, if you ignore these issues now, you may cost your family thousands or even millions of dollars later, as well as cause considerable anguish. Few people are uninterested in minimizing the taxes payable upon their death, especially after a lifetime of paying income taxes (federal, state and local), sales taxes, property taxes, excise taxes, etc. Most people who create an estate plan have two goals: first, preserve as much of their wealth for their family members as possible and second, provide for an orderly disposition of their assets to designated beneficiaries. We routinely add a third goal—avoidance of probate.

Proper estate planning takes far less time and effort than most people imagine. Most revocable trusts can give you peace of mind that you have done the right thing. There are often solutions and alternatives for the most difficult problems. The only mistake you can make is to ignore the need for estate planning.

Saving estate taxes, which can consume over half of an estate, is one of the main concerns of estate planning. A basic knowledge of the estate and gift tax system, together known as the wealth transfer tax system, is essential to understanding the benefits of careful estate planning.

Tax Legislation

The American Taxpayer Relief Act of 2012 made significant changes to the estate and gift tax rules for 2013 and after. In 2016, the amount that an individual collectively can transfer free of tax during lifetime and at death (to a donee other than a spouse who is a U.S. citizen and/or certain charitable organizations) is $5,450,000. This amount is indexed for inflation. The top tax rate for transfers exceeding this $5,450,000 credit is 40 percent. The generation-skipping transfer ("GST") tax exemption is also $5,450,000 per individual. The American Taxpayer Relief Act of 2012 also makes permanent the "portability" provisions, so that a deceased spouse's unused estate tax exemption (but not GST exemption) may be used by a surviving spouse.

Year	Top Estate Tax Rate	Applicable Exclusion Amount
2016	40 percent	$5,450,000

Annual Gift Tax Exclusion

In addition to the credit described above, every individual can make gifts during life of up to $14,000 per recipient per year without paying gift tax. This amount will increase to adjust for inflation.

Unlimited Marital Deduction

Finally, an unlimited amount of property can be transferred to a spouse (who is a U.S. citizen) without estate or gift tax and without reducing the available Applicable Exclusion Amount.

Estate Planning Under Estate Tax Regime

Beyond the tax-free amounts mentioned earlier, most gifts and transfers at death in 2016 and beyond are taxable. If the assets of your estate are not liquid enough to pay the estate tax, your beneficiaries may have to sell some assets to raise funds to pay the tax. Because of the high rates of tax, you should take full advantage of the tax-free amounts. The remainder of this section assumes that the estate tax rules are in effect with a $5,450,000 Applicable Exclusion Amount and a tax rate of 40 percent.

> In addition to annual gifts of $14,000 to any beneficiary, direct payments to educational and health care providers are tax-exempt in any amount.

Non-Taxable Gifts

A familiar strategy to minimize estate taxes is lifetime gifting, using the annual exclusion. A married couple with children can make annual gifts of $28,000 ($14,000 per parent per child) to each child without paying any tax or even filing a gift tax return. In addition, direct payments to educational and health care providers are tax-exempt in any amount for the benefit of any person. Further, contributions to qualified charitable organizations are tax-exempt gifts. Over the course of five years, a married couple with three children can transfer $420,000 to their children, thereby removing the transferred funds from their estate. At the same time, the couple can directly pay for their children's (and grandchildren's) school tuition and health care, all without paying any gift tax.

Once a gift is made, all appreciation on the gifted asset is out of the donor's estate. Therefore, if you own stock of low value that you expect to appreciate in the future, you could make a gift of that stock now (either as an annual exclusion gift or as a taxable gift, which is still tax-free if less than your available Applicable Exclusion Amount); if the stock's value doubles or more by the time of your death, all of that appreciation would not be part of your taxable estate.

Taxable Gifts

Tax-free gifts described above are often the simplest way to remove assets from your estate at no transfer tax cost. However, taxable gifts (i.e. those on which you must either pay gift tax or apply your credits) are a more tax-efficient way to transfer assets than transferring assets at death. This is because the gift tax is tax exclusive (i.e. the amount of gift tax due is not included in the taxable gift). However, the estate tax is tax inclusive (i.e. the tax due is part of the taxable estate). Therefore, it is more expensive to pass assets at death.

Example

Assuming a tax rate of 40 percent and you have used your entire $5,450,000 gift tax credit, if you wanted to make a $500,000 gift to a child, you would need $700,000: $500,000 for the gift and $200,000 for the taxes.

By contrast, to pass $500,000 to a child at death, you would need approximately $830,000: $500,000 for the bequest and $330,000 in taxes on the $830,000 necessary to make such a bequest.

Effective Use of Applicable Exclusion Amount

The above gifting techniques require that you relinquish control over the transferred property. Although gifting is effective from a tax standpoint, it can be disruptive during life. There are certain ways to place some restrictions over the transferred assets, but such arrangements (like trusts) can be expensive to implement. Because of these issues, most people find it difficult to make outright gifts and must rely on planning to avoid the estate tax upon their death.

However, even without making any lifetime transfers, a married couple can save hundreds of thousands of dollars (or much more) in estate taxes through proper estate planning. For example, assume that a married couple can transfer $10,900,000 of assets tax-free (i.e. two $ 5,450,000 Applicable Exclusion Amounts). However, to do so, they must ensure that the marital deduction and the Applicable Exclusion Amount are both coordinated and fully used. The following examples of similarly situated married couples demonstrate the proper usage of these tax benefits for a married couple with a net community property estate of $12 million.

Everything to Surviving Spouse

In the first scenario, assume a husband dies and decides to leave his entire estate ($6 million, or half of the community) to his wife. There is no tax upon the $6 million because of the unlimited marital deduction. Shortly thereafter, the wife dies with a net estate of $12 million ($6 million from the husband and $6 million of her one-half interest in the former community). At a 40 percent tax rate her estate will owe $2,620,000 in estate tax ($12 million estate less $5,450,000 of Applicable Exclusion Amount multiplied by 40 percent).

Subject to the discussion below on portability, this large tax liability (approximately 22 percent of the estate) is the result, in part, of wasting the husband's Applicable Exclusion Amount. The husband's Applicable Exclusion Amount was wasted because he left all of his assets to his wife tax-free under the marital deduction, but left none of his estate to beneficiaries (other than his spouse) who can receive assets up to the Applicable Exclusion Amount tax-free.

Use of Applicable Exclusion Amount

In the second scenario, upon the husband's death, his Will/Trust transferred $5,450,000 of his estate (the Applicable Exclusion Amount) to a "Bypass Trust" (sometimes known as a family or credit-shelter trust) for the benefit of his family (i.e. his wife and children) and transferred the remaining $550,000 of his estate to his wife. Again, no estate tax is due upon his death because of the Applicable

Tax on Second Death (Scenario 1)		Tax on Second Death (Scenario 2)	
Gross Estate	$12,000,000	Gross Estate	$6,550,000
Less Applicable Credit	$ 5,450,000	Less Applicable Credit	$5,450,000
Taxable Estate	$ 6,550,000	Taxable Estate	$1,100,000
Tax	$ 2,620,000	Tax	$ 440,000

Exclusion Amount applied to the $5,450,000 and the unlimited marital deduction applied to the remaining $550,000. Upon the wife's death, her net estate would be $6,550,000 (the $550,000 received from the husband and her $6 million interest in the former community). The $5,450,000 in the Bypass Trust established at the husband's death is not part of the wife's estate, because her use of the assets is restricted (as discussed below). The estate tax on the wife's estate would be $440,000, a savings of more than $2.1 million from the first example.

Subject to the discussion below on portability, without a Bypass Trust, the husband's Applicable Exclusion Amount is not used at all because his assets pass tax-free to his wife under the marital deduction. Assets which could have passed tax-free to their children (or other non-spouse beneficiaries) are instead included in his wife's estate. Using the Bypass Trust, the first $5,450,000 of the husband's assets are never taxed, because they are exempt from tax on his death and not included in his wife's estate on her death. Additionally, we have assumed here that the assets transferred to the Bypass Trust did not appreciate after the husband's death. If the assets appreciate, the benefits of keeping them out of the surviving spouse's estate is even greater.

Limits on the Bypass Trust

To achieve this result, the assets of the Bypass Trust are not transferred outright to the wife. Instead, her rights in the Bypass Trust are limited. The wife may receive all of the income and may also receive principal of the Bypass Trust if necessary for her health, maintenance, support and education—there are fairly broad standards intended to maintain the standard of living the couple shared when both were living. Because her

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rights are restricted, the assets in the Bypass Trust are not considered part of her estate. Upon her death, the assets in the Bypass Trust would go to their children (or elsewhere, if so directed) and could even be held in trust until those children reach specified ages.

> The portability provisions allow a surviving spouse to use a deceased spouse's unused estate tax exemption.

This division of the estate upon the death of the first spouse to save estate taxes is often referred to as an "A-B Trust." The B Trust is the $5,450,000 Bypass Trust that passes assets free of estate tax to the couple's children, with certain benefits for the surviving spouse. The A Trust is the survivor's trust which includes the survivor's interest in property, plus all property of the deceased spouse that passes tax-free to the surviving spouse because of the marital deduction.

Marital Trust

A deceased spouse's estate in excess of $5,450,000 can pass either to the surviving spouse or to a separate trust ("Marital Trust"), similar to the Bypass Trust but includible in the survivor's estate. Transfers to a surviving spouse in a properly structured Marital Trust are not subject to estate tax upon the death of the first spouse. All income of the trust must be distributed to the surviving spouse for the remainder of the surviving spouse's life. The use of a Marital Trust (sometimes referred to as a QTIP Trust) assures that the portion of the deceased spouse's assets remaining after the death of the surviving spouse will pass as directed by the deceased spouse, during his or her lifetime. While the surviving spouse can change the beneficiaries of the survivor's trust, the surviving spouse generally cannot change the beneficiaries or the other terms of the Marital Trust.

Portability Between Spouses

The American Taxpayer Relief Act of 2012 continued a recent concept in the estate tax laws called "portability." The portability provisions allow a surviving spouse to use a deceased spouse's unused estate tax exemption. For instance, assume a married couple has a net community property estate of $8 million. Upon husband's death, he leaves his entire estate to his children ($4 million). No estate tax is due because the Applicable Exclusion Amount is applied to his $4 million estate. But $1,450,000 of husband's $5,450,000 Applicable Exclusion Amount has not been used. In past years, that $1,450,000 would have been wasted. However, under portability wife can elect to use that $1,450,000 at her death. This would increase wife's estate tax credit to $6,900,000 which is helpful if she lives many years and her estate appreciates substantially.

Similarly, in the foregoing examples (married couple with $12 million net estate), if the husband left his $6 million estate to his wife and did not create a Bypass Trust to shelter his $5,450,000 Applicable Exclusion Amount, the wife could elect to use husband's $5,450,000 credit on her death (provided she makes such election on a timely filed federal estate tax return following the husband's death). When the wife later dies, there would be $10,900,000 of Applicable Exclusion Amount available (husband's $5,450,000 plus wife's $5,450,000). The tax result is essentially the same as under the second scenario (creation of Bypass Trust). However, portabilty allows a step up in basis on the second death for all of the assets and reduces some complexity by creating fewer trusts after the first death. Despite this, the Bypass Trust has many advantages over portability, as follows:

- Like the Marital Trust, the Bypass Trust assures the deceased spouse that his/her assets will eventually end up with his/her beneficiaries after the second death. Portability does not provide this because the deceased spouse's assets remain within the surviving spouse's control.
- Assets in a Bypass Trust may appreciate after the deceased spouse's death and the entire Bypass Trust, including appreciation, will pass to the beneficiaries without any estate tax.
- The deceased spouse's GST tax exemption can be allocated to the Bypass Trust but is lost with portability.
- Portability is more complicated if the surviving spouse remarries.

Much of estate planning focuses on avoiding probate. Although probate is an everyday occurrence and an Executor or Administrator, with the assistance of a competent attorney, can complete the probate process without major inconvenience, it is an unnecessary disruption that should almost always be avoided if possible.

What is Probate?

Probate is the process of identifying a deceased person's property, paying any debts, identifying who is entitled to his or her assets, and distributing the property to his or her beneficiaries/heirs. An Executor (usually named in the Will) does this work, often with the assistance of an attorney. Unlike most trust administrations, the probate court supervises this entire process. If your assets must go through probate, the beneficiaries that you designate by your Will must wait for the assets while the probate process unfolds in court.

Advantages and Disadvantages of Probate

Probate has advantages and disadvantages. The advantage is that the process is court-supervised. This ensures that property is accounted for and distributed as intended. But probate has several significant disadvantages, which are summarized below.

Expense

Probate can be an expensive process. The Executor and his attorney are each entitled to a statutory fee according to the schedule below:

Gross Value of Estate	Executor's Attorneys Fees
First $100,000	4 Percent
Next $100,000	3 Percent
Next $800,000	2 Percent
Next $9 million	1 Percent
Next $15 million	0.5 of 1 Percent

For all calculations above $25 million, a reasonable amount is to be determined by the Court.

In addition to the above, the Court may allow additional compensation for extraordinary services in an amount the Court determines is just and reasonable.

Under this schedule, the probate of a gross estate of $1 million (this amount is a gross figure that does not exclude debts) will cost more than $40,000. In addition, attorneys and executors may get "extraordinary" fees over and above the above amounts if an estate is complex.

Time

Probate is time-consuming. Even if affairs are in order, it can be at least six months to a year before the beneficiaries obtain their bequests. Frequently, probate can take years to conclude.

Publicity

Probate is a public process. After a person dies, his or her Will becomes a public document. Proceedings are held in open court. This may be especially distressing to individuals who try during their lives to protect their families from the media or would simply like their affairs to remain private. Probate can provide the media access to information about family finances and other personal matters.

Inconvenience

The combination of these disadvantages makes probate a very inconvenient process. Those who have gone through the process often are dissatisfied with the procedure and will probably tell you that it is a waste of time and money. In the end, probate is unnecessary. There is no need to be in court, and careful planning can avoid probate court entirely.

Avoiding Probate

The following methods of holding title can be used to avoid probate. Keeping assets out of probate does not exclude them from your taxable estate.

Retirement Accounts

If you have an IRA or Keogh, or contribute to a 401(k) account through your employer, you can name beneficiaries who will receive these assets upon your death. If you are married, you should generally name your spouse as primary beneficiary of these plans. Regardless of who you name, these assets pass without going through probate. If you want to put these assets in trust for your beneficiaries, you might consider naming your Living Trust (explained below) as beneficiary of your retirement accounts. However, this requires careful planning to avoid adverse tax consequences.

Life Insurance

Life insurance proceeds go to the persons named on the policy's beneficiary designation form. These proceeds are not subject to the probate process, but can be included in the gross estate of the deceased.

Joint Ownership

If you own valuable property (i.e. your residence) with someone else, you can avoid probate when the first owner dies. For instance, assets held in joint tenancy pass to the survivor without probate. You can also transfer assets held as community property to your surviving spouse without probate. When one owner dies, it's easy for the survivor to transfer the property into his or her name alone, without probate. After that, however, the survivor will have to find another method to avoid probate on his or her death.

Create a Living Trust

A Living Trust is the most flexible probate-avoidance technique. In fact, it was created to enable people to avoid probate. A Living Trust is a separate entity which owns your property. The Living Trust's ownership of property has virtually no legal or tax consequences while you are alive, because you control the Living Trust.

However, after your death, the successor trustee transfers property owned by the Living Trust to the family or friends you designate, without probate. The terms of the trust instrument, which are similar to a Will, authorize this transfer. Probate courts generally do not supervise property that is owned by a trust. The other features of the Living Trust are discussed next.

In the Introduction, we noted that your estate plan should direct the disposition of your assets according to your wishes and limit the taxes, costs and inconvenience of transferring your assets upon death. In the past, a Will (alone, without a Living Trust) was used to accomplish these transfers. For instance, your Will can direct the transfer of the assets that you are legally entitled to dispose of in any way you want. Under a Will, you can bequeath assets in trust or outright, you can make bequests to charity or to friends and you can establish an A-B Trust to reduce estate taxes. However, if your assets exceed $150,000 in value or if you own real property, a formal probate proceeding is required, with all of the disadvantages discussed above.

Because the Living Trust is revocable, it is disregarded for most purposes during your lifetime.

Living Trusts Overview

A Living Trust is a special entity that you, as "grantor," create by preparing and executing a formal trust document, declaring that you are holding certain property "in trust." You retain the right to revoke or amend the trust at any time, or to take the property back out of the trust.

Because the Living Trust is revocable, it is disregarded for most purposes during your lifetime. You pay taxes on any Living Trust income during your lifetime, and your creditors could seize trust assets to pay your debts as if you continued to own those assets directly without a Living Trust.

However, at your death, a portion of the Living Trust becomes irrevocable (since you are no longer around to revoke it), and takes on new life as a truly separate entity. Any property owned by the Living Trust is not subject to probate, because it is not owned by you or your estate at all. However, the probate court has authority to resolve disputes about the Living Trust, and the Living Trust usually remains liable for your debts (including any estate taxes). Like any other decision, the decision to have a Living Trust has its advantages and disadvantages.

Advantages

The major advantage of a Living Trust is that it can accomplish almost all of your estate planning goals in a single document. First, it directs the disposition of your assets as you desire. Second, if properly administered, your beneficiaries will avoid the cost and inconvenience of the probate process. Third, upon your disability, a successor trustee can manage the Living Trust for your benefit during your lifetime, thereby possibly avoiding conservatorship. Finally, if you are married, a properly drafted Living Trust can save hundreds of thousands of dollars or more in estate taxes upon death.

Disadvantages

The only disadvantage is the slight inconvenience and cost of establishing and administering a Living Trust. To take full advantage of the probate avoidance goal, you will have to retitle your valuable assets (i.e. your home, bank accounts and other real estate). However, this small initial cost will completely avoid larger costs that would be imposed later, if you did not have a Living Trust.

Management of Trust Assets by Trustee

Grantor as Trustee

You are in complete control of the Living Trust's assets during your life. You are the grantor, beneficiary and trustee of the Living Trust and you can use Trust assets in any way you see fit. If a married couple creates a Living Trust, both spouses can be named as co-trustees. If one spouse is unavailable to act as co-trustee, the other spouse can act as sole trustee with complete control over Living Trust assets.

> There are often compelling reasons to have a corporate trustee as a successor trustee.

Successor Trustee

Should you become incapable of managing your assets, the successor trustee named in the Living Trust instrument can take over the management of the assets without the requirement for a court-appointed conservator.

Individuals as Successor Trustees

Your successor trustee(s) can be children, other relatives or friends who are responsible and in whom you have confidence. If the successor trustee is also the beneficiary of the Living Trust at the grantor's death, the successor trustee's only duty may be to distribute

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the property to himself or herself at that time.

Corporate Trustee

The successor trustee can also be a bank or other financial institution. There are often compelling reasons to have a corporate trustee as a successor trustee. First and foremost, corporate trustees usually possess the professional skills and expertise to administer the Living Trust appropriately. Second, if you rely on individual trustees, you may have to name numerous successors to serve in the event that any individual serving is unable or unwilling to continue. Third, the use of corporate trustees generally results in lower overall administrative costs to the trust, since a corporate trustee typically provides accounting and investment advisory services, along with trust administration for a single fee.

> Corporate trustees usually possess the professional skills and expertise to administer the Living Trust appropriately.

Upon Death

Upon the death of the grantor, assets pass according to the provisions contained in the Living Trust. The Living Trust may provide for assets to be distributed outright to children, or to be held in trust until the children reach certain ages. Money could be distributed outright to a charity or friends. These dispositive provisions accomplish exactly what a Will can accomplish, while at the same time avoiding probate on assets in the Living Trust.

Married Couples

When a married couple creates a joint revocable Living Trust, both husband and wife generally act as trustees during life. The community or separate property character of the couple's property (assuming they live in a community property state, such as California) should not be altered by placing the property in trust. Each spouse has complete ownership interest in his or her separate property and a one-half ownership interest in the community property during marriage and at death or dissolution of the marriage. However, if either spouse becomes incapacitated, the other spouse, as sole trustee, can take all actions relating to community property, without resort to conservatorship or powers of attorney.

Trust Funding

If you create a Living Trust, it is essential to "fund" it, by transferring assets into it during the life of the grantor. Only assets held in the name of the Living Trust can be managed by the trustee and ultimately pass at the grantor's death without probate. You can freely add to or withdraw assets from the Living Trust at any time without amending the Living Trust. Once transferred to the Living Trust, the assets will continue to be held under trust until consumed, sold, or removed from the Living Trust, at the grantor's discretion. Amending the Living Trust will not affect ownership of the assets, so assets do not have to be re-confirmed as belonging to the Living Trust after an amendment.

You can freely add to or withdraw assets from the Living Trust at any time.

The funding process includes: (1) executing new deeds to your real estate conveying each parcel to the Living Trust (2) retitling your bank and brokerage accounts in the name of the Living Trust and (3) making sure that all of your valuable assets are held by the Living Trust.

A Living Trust can dispose of all of your property in the same way as a Will. However, a proper estate plan should contain a "Pour-Over" Will. This is a backup document to the Living Trust. It will pass (pour-over) any property in your estate at death into your Living Trust which you did not transfer into the Living Trust while you were alive.

Therefore, if you failed to transfer certain assets into the Living Trust while you were alive, your Will directs that all property not already in the Living Trust at the time of your death will be transferred to the Living Trust.

However, transfers made pursuant to a Will are generally subject to probate if the assets you hold directly and not under trust exceed $150,000 or if you hold real property directly. In addition, the Will is the document in which you nominate guardians for your minor children. The guardians are the people your minor children (under the age of 18) will live with upon your death. Typically, a married couple nominates the surviving spouse as the guardian of any minor children. However, it is also necessary to nominate successor guardians who will serve if both spouses have died. The appointment of a guardian (other than a natural parent) is subject to approval by the court.

Disability

Estate planning also involves planning for disability. The best planning device for your assets is the Living Trust, since the trustee manages the assets. If you are unable to manage your own property, the successor trustee will do so. Certain documents allow those close to you and trusted by you to make decisions. The principal type of document is a Power of Attorney.

A Power of Attorney gives the person you designate (your "attorney in fact") the power to act for you in certain transactions. If a power is "durable," it continues to be effective even if you become incapacitated. By contrast, a "non-durable" Power of Attorney ceases to be effective when you become incapacitated. There are two typical types of Powers of Attorney. One deals with decisions relating to health care, while the other deals with financial decisions, including asset management.

Advance Health Care Directive ("AHCD")

An AHCD gives the person you designate (the "agent") the power to make health care decisions for you if you are unable to do so yourself. The agent can be a spouse, other family member or friend, but cannot be a health care provider or operator of a residential care facility.

Under an AHCD, the agent must exercise his or her power according to your desires which you have made known in any manner. Subject to your expressed desires, the agent has broad powers to make health care decisions for both your physical and mental care, including terminating extreme measures for life support.

You can revoke an AHCD at any time. An unrevoked AHCD will remain in effect indefinitely unless you specify an expiration date. Statutory form AHCDs are widely available, but certain formalities, such as having the document witnessed or notarized, must be followed when executing an AHCD. To ensure that an AHCD is legally effective, you should follow these procedures precisely. As with a Will or Living Trust, you should consult with an experienced attorney if you have any questions.

General and Special Powers of Attorney

These types of Powers of Attorney deal with various financial decisions and give your attorney in fact the power to handle property and make management transactions in your place. This can be a simple, inexpensive way to arrange for someone to make your financial decisions. Although not accepted in all situations, a Power of Attorney can become extremely important if you are unavailable to act for any reason.

A financial Power of Attorney can become effective immediately when you sign it or on a contingency such as your incapacity (the latter form is called a "springing power" because it is not effective immediately). The Power of Attorney can be revoked at any time, but will remain in effect indefinitely unless you specify an expiration date.

The powers given to your attorney in fact can be narrow or broad, depending on your needs and wishes as expressed in the document creating the Power of Attorney. Some powers, however, are not available to the attorney in fact unless you expressly authorize them in the Power of Attorney. For example, an attorney in fact may not make gifts on your behalf unless you specifically authorize him or her to do so.

The attorney in fact under a General Power of Attorney is usually authorized to make decisions in the areas of (1) property management (real property transactions, tax matters, banking transactions) and (2) personal management (paying for health care, food and shelter).

A General Power of Attorney can be an effective method of avoiding a conservatorship if you become incapacitated. Even if you already have a Living Trust, there may be property management matters which fall outside the scope of the Living Trust for which a General Power of Attorney would be effective.

A Special Power of Attorney is more limited in scope than a General Power of Attorney. For example, we typically recommend Special Powers of Attorney that authorize the attorney in fact to transfer your assets to your Living Trust. This power could be exercised in the event of your incapacity, so that no assets remain outside of the Living Trust at your death. Such a Special Power of Attorney can create a last minute opportunity to fund the Living Trust and avoid the probate of assets not transferred to your Living Trust.

Special Powers of Attorney can be prepared to allow an agent to handle an almost infinite variety of specific or limited tasks. Special Powers of Attorney are appropriate when you prefer not to grant a broad range of authorities to your attorney in fact.

Your Needs Are Unique

This brochure describes some basic aspects of estate planning. Wills and Living Trusts are the necessary foundation of any estate plan. However, there are many other elements of estate planning that are beyond the scope of this summary. For some clients there may be specific family needs that must be addressed. For others, there may be liquidity concerns. And of course, for many clients, there are a variety of techniques available to reduce the overall estate tax burden. Please call us to discuss the type of estate planning appropriate for you and your family.

Visit us online at

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