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Your Estate -- Plan Its Transfer

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Every person who owns property has an estate that must be distributed at death and an estate plan created by a property owner --or the lack of one -- will determine who will inherit the property. Many Michigan residents will be surprised to find out how their property could be distributed after their death and the cost involved to make the transfer.

Most property is acquired during the earlier or middle years of life when attention is focused on lifetime uses instead of lifetime or death transfers. But the names on property titles have estate transfer implications, and changes in property ownership during lifetime or at death have tax impacts. How you transfer your estate, when you transfer your estate and what individuals will receive your estate should become important questions when property is acquired, not just when you develop estate plans. Thus, you should formulate estate planning goals early in life to guide lifetime holdings.

"Your Estate -- Plan Its Transfer" is a publication about alternative property ownership patterns and estate transfer methods. It should assist you in understanding how you own existing property, how you might own future property and how the property can be transferred during your lifetime or at your death.

Kinds of Property

To evaluate your estate position properly, it is necessary to understand the general meanings of several terms in regard to property ownership.

There are two kinds of property, real and personal. Real property or real estate is land or any improvements upon the land, including buildings, fences, growing crops, timber, oil and minerals. However, when timber is cut, crops harvested or oil recovered, it then becomes personal property. Evidence of ownership in real property is the deed recorded in the county register of deeds. The deed is a document that describes the property, the persons who are relinquishing ownership of the property, the persons who are acquiring the property and the ownership rights being conveyed to the new owners.

Personal property is everything other than real property -- a moveable item. It can be classified as either tangible or intangible.

Tangible personal property is physical property in the nature of goods, wares, or merchandises, such as clothing, furnishings, livestock, harvested crops, machinery and equipment. Some personal properties have titles, such as automobiles and trucks, showing who owns the property. The ownership of other tangible personal property is evidenced by the bill of sale or other documents. For example, a father and son may be involved in a farm partnership where the partnership agreement spells out ownership of personal property by the partnership with the father and son owning a share in the partnership.

Who owns tangible personal property becomes an important question when a death occurs and the decedent's estate is transferred and subject to taxation. For example, assume a farmer has taken one or two children into an undefined family farm business arrangement. They all work together and take from a common income source. Who owns the farm personal property? When the father dies, unless there are records to the contrary, it probably will be assumed that he owns all the farm personal property and the estate will be transferred and taxed accordingly. The same question is important for a husband and wife team. What share of the personal property is part of his estate? What share is part of her estate?

Intangible personal property is a claim capable of being enforced on or against other individuals or entities. It is paper property such as securities, notes, bank accounts, contract obligations, mortgages, copyrights and patent rights. A piece of paper shows who owns the property. Passbook and certificates of deposit at your local bank or savings and loan associations are examples of intangible personal property where the ownership is designated on the document.

What is Property

Property in ordinary usage refers to the thing that is owned or held. Thus, a car or land is referred to as my car or my land. For present purposes, think of property not as something owned, but as the intangible and invisible rights, powers, privileges and responsibilities of the owner.

What is commonly called property really involves a number of separable rights. In a piece of land, these rights represent the right to sell, to lease, to grant a mortgage, to grant easements, etc. As property owner you have the responsibility to pay taxes and to use the

property for its regulated purpose. Think of these rights as strands in a cable running from the property to the owners. Each of these rights can be separated from the others and exercised separately. For example, a property right of access could be transferred to the power company for maintaining power lines, the property could be mortgaged and a security right given to the mortgage holder to insure payment of the remaining debt balance and at the same time lease the land to the neighbor for growing crops.

Obviously more than one individual can own rights in property, together or separately. The rights in the property are often referred to as economic interests in the property. These economic interests can be transferred for a time period or until an event happens. For example, an owner of land and a house could transfer (sell or give) the property to another with the original owner reserving the right to live in the house and receive a rent income from the land. These rights could be shared by the original owner and his spouse and only relinquished at the death of both parties. This example is commonly referred to as a life estate or life lease. Other examples exist where economic interests are shared in some manner.

The economic interests or rights in property which are held by an individual become part of the estate to be transferred at death. The value of those economic interests is part of the taxable estate. If the decedent owned all the property rights, the value is usually higher than if only a few rights are held. Taxation of estate transfers is explained in other extension bulletins. Please refer to these publications for details.

Ways to Hold Property Rights

The holding of property rights is given to an individual through the property title, contract or other evidence of ownership. A title or evidence of ownership is more than a piece of paper conveying ownership of a tractor or 100 acres of land. It isn't something to be stuck in a drawer and forgotten. Rather, a title is an important part of your total estate plan. In fact, an adequate estate plan cannot be constructed separate from the titles involved and the information on them.

The names on the titles can affect how property rights are transferred, who gets them, and the eventual costs of estate settlement and taxes. All of these results depend on the way the property title is held --sole ownership, joint tenancy, tenancy by the entirety, or tenancy in common. Each of these methods has its advantages and disadvantages and must be weighed in light of specific estate management plans.

Fee simple (sole) ownership is ownership of property by one person who has an unrestricted right to sell, mortgage, or otherwise dispose of it. A will is needed to direct transfer of the property at death of the owner. When property in sole ownership is held by a married person, however, the will transferring interest is subject to the surviving spouse's dower, homestead and other special rights in the property unless it is waived by the surviving spouse. Without a will, state laws will determine who receives the property.

Under sole ownership, full control of the property remains with the owner until death. During lifetime, all property rights can be transferred through sale or gift, or only some of the rights can be transferred.

Joint Tenancy

Joint tenancy with rights of survivorship is a form of co-ownership between two or more individuals in which property passes from the deceased tenant to the survivor(s) with only a small amount of legal formality. This type of co-owner-ship may exist between related or unrelated persons and cannot be broken without the consent of all concerned parties.

Tenancy by the entirety is a special kind of joint tenancy that can exist only between husband and wife. This type of tenancy cannot be broken by either spouse without the other's consent.

Property held in these types of co-ownership will pass to the survivor(s) even though the deceased joint tenant has directed by will that his or her equity in the property should go to someone else.

On the death of one joint tenant, full ownership of the property vests immediately in the other(s). It does not pass as part of the deceased's estate. This avoids probate and administration on this part of the decedent's estate, thereby reducing cost and delay.

During lifetime the joint owners can transfer property rights to others.

Tenancy in Common

Tenancy in common differs from joint tenancy mainly in that there is not right of survivorship. The co-tenants have a right to transfer their own undivided interest by selling it, giving it away, or by transferring it to persons of their own choice at death. If not disposed of by will, at death the interest goes to the heirs according to the state laws.

Methods to Transfer an Estate

Distribution of property at death usually takes place four ways --through contracts, title transfers prior to death, joint tenancy, and probate procedures. In practice all four methods may be used to transfer an estate, or one method may be used to transfer part of the estate. Each is described in more detail:

Part of each estate will probably be distributed through contractual arrangements with others. An example would be a life insurance contract on the deceased in which beneficiaries have been named to receive the insurance proceeds. By contract, this part of the estate passes directly to the named beneficiary. If no beneficiary is named in a life insurance policy or

the beneficiary has previously died, the proceeds become part of the probate estate of the insured and are distributed according to the will, or if there is no will, according to state law.

Annuities and death benefits from a retirement program could be other contractual arrangements where part of the estate is transferred directly to named beneficiaries. It is important to keep the designation of beneficiaries up to date so heirs who you intend to receive the proceeds of life insurance and retirement plans will receive this property.

The transfer of property title prior to death reduces the amount of property in the estate to be transferred at death. Transfer during lifetime, can take two general forms -- complete severence of ownership rights in property, or transferring title ownership but retaining rights during lifetime. A lifetime gift or sale of property results in the owners transferring property rights to others. However, a sale in realty is a transfer of one type of property for another. For example, land may be sold and the proceeds invested in savings accounts at the bank or savings and loan association. A lifetime transfer through gift has gift tax implications and a sale has income tax implications so check the tax rules before a transfer is made.

The transfer of title ownership, but retaining rights in the property during lifetime, can be accomplished in several ways. The most common are a living trust where title is transferred to a trust fund with a trust agreement directing retained rights and eventual distribution of those rights to the beneficiaries or a life estate where title is transferred to others and the previous owners having life interests or rights in the property. Life estates are generally created by deed or in a will.

The third way property can be transferred at death is through joint ownership of the property with one or more persons. The main advantage of joint tenancy is that ownership of the property vests immediately in the other owner(s) upon the death of a joint tenant. Joint ownership (tenancy by the entirety) is the most common way married people own their property.

All property in the estate which is not transferred by one of the above methods is part of the probate estate and transfers according to the terms of the will or state laws, in cases where there is no will.

What is Probate?

Probating an estate is the legal procedure used to (1) determine that a person is dead, (2) gather together all of the property of the deceased person, (3) pay all of his or her valid debts, including final taxes, and (4) distribute legal title of what is left to the person's heirs.

The three groups most interested in the probate proceedings, therefore, will be the heirs, the creditors, and future owners of the property. Many people incorrectly associate probate with death taxes and for this reason want to avoid probate. This is not a valid reason to avoid probate. Death taxes may be levied even on property which is not probated. The rules determining death taxes are separate issues from the probate process.

Probate was developed down through the years as a forum where all conflicting claims of these three groups can be resolved in an equitable manner. Probate comes from the Latin word meaning "proof." Originally probate referred only to wills, but now it has come to mean the process of settling an estate.

Probate forms an important link in our legal system. Without court administration, there would be no official record of whether the deceased left a valid will, who the heirs are, or the property interest of each heir. Also, in our system, title to real estate would be clouded without this official record. Prospective buyers would hold off until the title was cleared. A probated will can be shown in any court as the basis of rights to property. An unprobated will has no legal standing.

Without provision for legally limiting the time for paying claims, creditors could continue to assert them against the property, heirs, or even later purchasers of the property. Also, if death taxes are not computed and paid, they become a lien on the property and accumulate interest.

Without court supervision and approval of an estate's closing and distribution, only chaos would exist. Objections, claims, and clouded titles would plague the heirs for years to come.

What is a Will?

A will is, very simply, a legal set of instructions by which a person disposes of his or her property, to take effect at death. It affects only assets held in the deceased's sole name or the share of ownership of assets held in tenancy in common. It does not include things like life insurance policies or joint property, which are passed by other methods.

A will is one of the oldest instruments known to man and one of the most difficult to destroy legally. In the thousands of years of its development, a language of wills has developed. Words convey very specific meanings to judges who have the responsibility of probating wills. For this reason it is highly advisable to have a will drawn up by a competent attorney with experience in drafting wills.

A will is just one of the many tools of estate planning. Through preparation of a well-designed will, you can insure that your property will be distributed at your death as you wish. One of the main advantages of a will is that it can help you plan for the unexpected and look after the welfare of your family.

Once the single copy of the will is signed and

witnessed as required by law, put in a safety deposit box, or file it with the probate court or your trust company so it will be safe. Remember that it isn't a finished product, but should be reviewed regularly. Wills should be changed as conditions change. Kids grow up. Friends and relatives die. You accumulate more property.

Who should have a will? You should.

Property Distribution Without A Will

In the absence of sound plans worked out by the deceased and reflected in a will, property will be distributed at death according to a rigid formula of law contained in the revised probate code. They apply only when there is no will and are arbitrary and inflexible.

The state of Michigan has made these laws to meet the ends of impartial justice. They supposedly reflect how the Legislature thinks the "average" property owner would like to have his property distributed among his heirs. However, because these rules are arbitrary and inflexible, seldom will the wishes of the deceased be carried out.

The law specifies different ways of distributing the estate, depending on what heirs survive the deceased.

Married with children -- Property distribution for a married person with child, children, or descendants is divided between the surviving spouse who receives the first $60,000 plus one-half the remaining balance of the property and the children who receive one-half the property divided equally.

Married without children and without parents -- All property to the surviving spouse.

Married without children, but with at least one parent surviving -- The surviving spouse receives the first $60,000 plus one-half the remaining balance of the property and the parent or parents receive one-half the property

Widow or widower with children -- All property to children divided equally. Grandchildren take their deceased parents' share.

Unmarried -- In cases of an unmarried person, or widow or widower without children or descendants, the distribution is as follows: If the parents survive, all to the parents or survivor. All property goes to brothers and sisters, divided equally, if no parents survive. Nieces and nephews take their deceased parent's share. If no parents, brothers, or sisters survive, the property divided equally is received in equal degree by next-of kin. If no-kin, all to the state.

Your Choice

You have choices to make in property ownership patterns and transfer methods. These decisions should be based upon the established goals for your estate. What do you want to accomplish? In what order should you tackle them? Goals should be based around people and their wants and needs. Things have value only in their relationship to people.

When you have evaluated your present estate plan or lack thereof, your goals, and the changes that would need to be made to attain them, the next step is to seek skilled, experienced assistance. There are many professionals working in the estate planning field -- attorneys, accountants, life insurance representatives, trust officers and investment counselors. They are all important if you need their assistance. Most families will not require the services of all five of the main types of professionals, but some may.

Once your estate plan has been carefully worked out and legally formalized, review your plan every year or at the most every other year for possible changes that may be needed because of changes in family situations or objectives. Plans should be written for a three-to five-year period and reviewed and changed to meet changing conditions. Don't attempt to develop an estate plan that will last the rest of your life.

You have an estate plan. Now it is up to you to make sure it is the best possible plan for you, your spouse, and your family.

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