



# Estate Planning Basics

Presentation for The Museum of Flight

Amanda Nathan, Attorney at Law

February 22 & March 2, 2024

# Overview

- What is estate planning?
- Planning for your death: Wills and living trusts
  - Assets that pass without a Will
- Planning for incapacity
  - Durable Powers of Attorney
  - Health Care Directives (a.k.a. “Living Will”)
- Estate tax planning
- Gifting

# What is Estate Planning?

- Planning for the future
- During life: contingency plans for incapacity
- After death:
  - What happens with your assets?
  - Estate tax liability?
  - What about your other responsibilities?
  - Shape your legacy

# Estate Planning “Hotspots”

- Estate exceeding tax exemption limits: \$2.193 million in Washington, \$13.61 million federally (per person)
- Stepchildren
- No children
- Disinheriting children
- Incapacity
- Children with special needs or other considerations

# Key Estate Planning Documents

1. Last Will and Testament
  2. Durable Power of Attorney (Financial)
  3. Durable Power of Attorney (Health Care)
  4. Health Care Directive
  5. Disposition of Remains
- Other documents for specific circumstances, e.g.:
    - Community Property Agreement
    - Living Trust

# What does a Will do?

- Choose your executor (“personal representative”); trustees and guardians if necessary
- Personal property (heirlooms, art, cars, furniture...)
- Specific gifts
- Remainder
  - Testamentary trusts (e.g., tax saving trusts for spouse, trusts for minors or young adults, special needs trusts)
- NOTE: must have original Will for probate

# How do you update your Will?

- Revisions can be made with “Codicil”
- Used only to make changes to an effective Will
- Requires all formalities of a Will:
  - Two witnesses (not family or beneficiaries)
  - Notarization
  - Execution formalities

# What does the Will NOT control?

- Assets that pass directly to beneficiaries
  - Retirement accounts
  - Life insurance
  - Joint accounts
  - Accounts with a beneficiary designation (TOD/POD)
  - Assets in trust, e.g. living trust
  - Transfer on Death deeds
- Common issues:
  - Adding kids to bank accounts
  - Outdated beneficiary designations



# Community Property Agreement

- Only spouses
- Converts separate property to community; clarifies that all property is community
- A contract
- Passes property without probate
- Problems:
  - Not recommended for taxable estates
  - Not recommended for couples with stepchildren
  - Can't be revoked by only one spouse

# Revocable Living Trust

- Used to transfer ownership of assets into a trust during life.
- If incapacity or death, successor trustee(s) take over.
- Assets can pass without probate to heirs
- Some downsides to living trusts; not for everyone
- More detail in Core Session 2: “Trust Planning Basics”

# Probate Avoidance

- Yes, you can plan to avoid probate through a combination of tools (beneficiary designations, joint accounts, community property agreement, living trusts)... BUT:
  - Designations can end up unfair
  - Washington's probate process is simple and efficient; clears creditors
  - Complicated probate avoidance plans usually aren't worth it (for a Washington resident)

# Durable Power of Attorney for Finances

- Designates an “Agent” to make financial decisions for you during life
- Avoids guardianship; reduces stress for you and your family
- Choose carefully!
- Only effective during your life

# Durable Power of Attorney for Health Care

- The Agent you designate can assist in daily health care decisions (or not), and check on you if incapacity
- Access to health care information
- Communicate your wishes to this person (especially around end-of-life care)
  - Book recommendation: *Being Mortal: Medicine and What Matters in the End*, by Atul Gawande
  - End of Life Washington (<https://endoflifewa.org>)

# Health Care Directive ("Living Will")

- Communicate your wishes regarding artificial life support when there's no hope
- Complements other documents you may have filled out with a doctor
- Formal document complies with state law; not much flexibility. Important to communicate with your health care Agent.
- Different from a POLST, which is prepared by your physical and more specific

# Disposition of Remains

- Default in Washington is burial (interment)
- Other options as of 2024: cremation, organic reduction, hydrolysis
- Without an Authorization form, funeral home would likely require agreement of all family members to cremate
- Can instruct where remains shall go, and to whom the funeral home should release your remains

# Choosing Fiduciaries

- Fiduciaries = people who will use your Power of Attorney documents, execute your Will, and supervise your trusts
- Good business/financial sense; trustworthy. Do you have confidence in their judgment?
- Proximity? How busy are they?
- Preferable not to have two people share the job
- Importance of designating alternates (preferably 1<sup>st</sup> and 2<sup>nd</sup> alternates)



# Fiduciary Checks & Balances

- Concerned parties may ask questions about how assets are being managed by any fiduciary
  - Examples: family members, beneficiaries, neighbors in certain situations
- POAs have led to some elder law exploitation
- POAs can be specific about scope of authority (e.g., what gifts are allowed or not)

# Avoiding Disputes

- Distribute estate equally among children
  - If not, plan *very* carefully!
- Formal Will execution
- Regularly review beneficiary designations
- Think through possible scenarios, especially with stepchildren
- “No Contest” provisions can help deter a frivolous claim, but will not stop a good-faith Will contest
- More suggestions in Interest Session 3: “Preparing Heirs for Wealth Transfer”

# Estate Tax Planning (very briefly)

- \$2,193,000 exemption from Washington estate tax
  - No gift tax in Washington
  - Graduated tax rate 10-20%
- \$13,610,000 unified credit for Federal estate and gift tax
  - Tax rate 40%
- When is estate tax planning important?
  - Single people and married couples with \$2+ million net worth
- More details in Interest Session 4: “Estate Taxes 101”

# Gifting Considerations

- Outright gifts vs. gifts in trust
- Unlimited deduction from estate/gift tax for gifts to charities and to spouse
- File gift tax return if gift exceeds annual exclusion (\$18,000 in 2024)... but no gift tax due, unless you've used all your Federal exemption
- NOTE: If your net worth is declining, consider Medicaid planning consult; **NO GIFTING!**

# Charitable Gifting

- Many ways to give:
  - Name charity in Will or Living Trust
  - Name charity as beneficiary under IRA or 401k
  - Qualified Charitable Distribution from IRA or 401k
  - Donor-Advised Fund
  - Outright gifts during lifetime
  - Charitable Remainder Trust
  - Charitable Gift Annuity
- ... and more!
- Consider income tax efficiency – consult with CPA
- More detail in Interest Sessions 1 & 2: “Charitable Giving Strategies” and “Utilizing Donor-Advised Funds”

# Questions?

## **Presented by:**

Amanda M. Nathan, Attorney at Law

Gordon Thomas Honeywell LLP

- Tacoma office: 1201 Pacific Ave, Suite 2100
- Seattle office: 520 Pike Street, Suite 1515

Email: [Anathan@gth-law.com](mailto:Anathan@gth-law.com)

Direct: (253) 620-6453