

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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I am going to share with you my personal estate plan! I do this for a couple of reasons. You may want to consider what I have done in my own situation and see if it makes sense for you as well. The main thing, though, is that if you don't have your estate plan in order YOU NEED TO DO SO!

My estate plan. My Will leaves assets outright to my wife, Rhonda; but at my death (assuming that I predecease her, which, statistics say should happen), she has the right to “disclaim” part or all of my half of our community property and any separate property I may own – in which case it goes into a “disclaimer bypass trust” of which she is the trustee and beneficiary. If this “disclaimer by pass trust” is triggered by her decision to “disclaim” (ie: refuse to accept my estate) she will have the right to all income my half generates for her lifetime and the right to get the principal of the trust for 4 reasons: her health, education, maintenance and support. At her death (again assuming she “triggered” the disclaimer bypass trust by disclaiming at my death) the balance of the “disclaimer bypass trust” will go to our children, Morley and Camille –BUT IT WILL NOT GO TO THEM OUTRIGHT!! Rather, Morley's half (and Camille's half) will continue to be held in trust for their lifetimes. Morley will be trustee of Morley's trust; and Camille, will be trustee of Camille's trust. (You have heard the old saying “he's his own grandpa”? That's sort of like these trusts for Morley and Camille.) The beauty of my estate plan is that when Rhonda and I are both gone, Morley and Camille, will each have control of his or her own trust –the power to decide what he or she wants to invest in; the power to say, under his or her own Will, what he or she wants to have happen to what is left in his or her trust at death (this is called a “power of appointment” – perhaps they want what's left to go to their spouse; or to be retained in trust for their children; or to go to charity).

Why do I like this plan? Several reasons. It is, relatively speaking, pretty simple. It is cost effective since Morley and Camille won't have to have an “outside trustee” with the attendant trustee's fees. It is flexible—Morley and Camille can have access to their trust for 4 reasons: health, education, maintenance and support—without having to ask an “outside trustee” for a distribution. (This is sometimes called an “ascertainable standard” –

however, practically speaking, if each child is trustee of his or her own trust, who is there to complain if he takes assets out of his trust?) . Each one also has the power to make distributions to his or her children for the same 4 reasons. And, LAST, BUT CERTAINLY NOT LEAST, the assets in their trust will be protected from creditors, should they for whatever reason be sued (eg: perhaps one of them gets involved in a bad car wreck and his or her liability coverage doesn't cover the claimed damages; so long as the trust is properly set up, the assets in the trust should be protected from a judgment creditor). Is the plan that I have the best one for everyone? No. It depends on your own situation. If a child is a “spendthrift” or not a good money manager or simply doesn't want to deal with managing his or her assets, a third party trustee may be the best option. Or, maybe you feel that the trust is not needed: simply let them have it outright. (Although, I would propose, if you are contemplating leaving the assets outright that you consider having a “short term trust” in your Will and distributing it in thirds: 1/3 at the time of your death; another third, say, 5 years after your date of death; and the final third 10 years after the date of death. (That way, if they “blow” the first third; there are still two-thirds left in the trust).
Some other suggestions.

- Be open as to your succession plan if a business is involved. Say to your kids: “your brother Joe has been working in the family business for 20 years and we are leaving it to him; you will get other assets of equivalent value”. Don't make them wonder what your plan is until you die. Prepare them!
- Make a handwritten “holographic” codicil that covers your valuable personal property (when you're gone, you don't want them fighting over who gets the diamond rings).

Other important documents that I have in my plan. A “statutory durable power of attorney” to allow Rhonda to make financial decisions over my property should I become incapacitated. A “medical durable power of attorney” to allow Rhonda to make medical treatment decisions (including life support decisions)

should a doctor determine I am not competent to make medical treatment decisions. A "HIPAA Release" to allow Rhonda to talk to my doctor, pharmacist and other health care providers should the need arise.

One more thing. We have some land in Oklahoma. I am in the process of drafting a "revocable trust" to which we will transfer title to this Oklahoma property. Why? So as to avoid having to do what is called an "ancillary probate" in Oklahoma when we pass away.

Well, that's the "down and dirty" on my estate plan. Hope you have one in place that you are happy with

as well. How often do I recommend that you review your estate plan? Probably about every 3 to 5 years. More often if there is a "significant life change": a birth (perhaps of a child or grandchild) or adoption; children attaining their majority; a death; a divorce; a large inheritance; a change in the estate tax laws. There are probably others as well but these are some that come to mind.

Well, that's it for now! Hope you have a great spring (although, with it already reaching 102 degrees, it seems like it's already summer).

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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