Why do I need an estate plan?

- Disposition of assets at death
- Tax planning
- Asset protection planning
- Incapacity planning
- Special needs planning
- Business succession planning
- Pass on values and goals
The “Core” Estate Plan

- Health Care Directive
- Power of Attorney
- Will
- Trusts
  - Revocable Trust
  - Irrevocable Trusts (for insurance, gifting, and other tax planning)
- Beneficiary Designations
Incapacity Planning

• Health Care Directive
  – Designates a health care agent
  – Provides instructions to health care agent and doctors
  – Burial arrangements and organ donation
  – HIPAA

• Power of Attorney
  – Designates attorney-in-fact to make financial decisions
  – “Durable,” so continues during incapacity
  – Effective immediately
  – Ceases at death
  – Powerful powers
No Estate Plan?

Intestacy

- State law determines who will receive testator’s property
- Married with children, still could have issues
- Singles and unmarried couples, should have concerns
- Couples in second marriages, need to address potential issues
Will

- What does a will do?
  - Directs distribution of “probate assets”
    - Includes all property held in testator’s name alone
    - Does not include property owned in joint tenancy, held in trust, or governed by beneficiary designation (including POD, TOD)
     - Can authorize separate list for personal property
  - Names guardian for minor children
  - Names personal representative
  - Can create “testamentary trusts”
Trust

• What is a trust?
  – Grantor + Trustee + Beneficiary + Property = Trust

• Common types of trusts
  – Revocable
    • Established and in effect during lifetime
    • Can be amended or revoked at any time
    • No separate tax identity until death
    • **Advantages**: avoid probate, maintain privacy, incapacity planning, continuity of management of assets
    • **Disadvantages**: Complexity of “funding” trust during lifetime and upfront costs
  – Irrevocable
    • **Intervivos**: established during life
    • **Testamentary**: established by the terms of a will or revocable trust upon death
Testamentary Trusts

• What are testamentary trusts?
  – Irrevocable trusts created upon the death of the testator, typically under the terms of a will or revocable trust

• Common testamentary trusts created under a will or revocable trust:
  – Marital Trust
  – Family Credit Trust
  – Trusts for Children
Myth: All I need is a will

• Beneficiary designations
• Health care directive
• Power of attorney
• Personal property list
• Other instructions/letters
Myth: If I have a will, my estate won’t go through probate

• Non-probate assets
  – Joint tenancy assets
  – Beneficiary designation assets (retirement accounts and life insurance)
  – Most trusts

• Probate assets
  – Anything titled in your individual name

• Revocable “Living” Trust
  – Can avoids probate and protect privacy
  – Facilitates asset management during incapacity
Probate Property
- No Beneficiary Listed
  - Passes through a Will
    - Examples:
      - Bank accounts
      - Investments
      - Real estate (non-joint)
      - Personal property

Non-Probate Property
- Beneficiary Listed
  - Passes outside a Will
    - Examples:
      - Joint real estate/accounts
      - Retirement accounts
      - Life insurance
      - TOD/POD accounts
      - Property owned in trusts
Probate Process

• Court involved proceeding
• Personal Representative/Executor is named in your Will and is the liaison to the Court
• Publish in a newspaper the prescribed time period that creditors can file claims against the estate and to give notice to interested persons
• Inventory assets
• Court may need to approve distribution
• Fees – filing fees, attorney’s fees, etc.
• Still necessary if you don’t have a will
What is the difference between a will and a revocable trust?

- A will and a revocable trust can accomplish the same things—both can pass property to the people/organizations of your choice
- Only a will can nominate a guardian for a minor child
- A revocable trust can direct the distribution of non-probate property
- A revocable trust can hold property in other states
- Property in a revocable trust avoids probate
- Both documents can create irrevocable trusts for children/family and involve tax planning
Key indications you may want a revocable trust:

- You own property in other states
- Privacy is very important
- Incapacity is a distinct possibility soon
- You want a professional to manage your assets during your lifetime
Myth: Revocable trusts always avoid probate

- Transfer title of all assets
- Coordinate beneficiary designations
- Assign personal property
- Real estate
Myth: Trusts are only for the ultra-wealthy

- Irrevocable trusts (created during life or under the terms of a will or revocable trust):
  - Protection for surviving spouse
  - Risk management for children
  - Special needs children & grandchildren
  - Specific purpose trusts (e.g., education)
  - Family lake home or vacation property
Reasons for basic irrevocable trusts for children after you die:

- Even $1,000 is a lot of money to an 18 year old
- Minors cannot receive property outright, an expensive court proceeding may be necessary
- Creditor/divorce protection
- Family business protection
- Control over asset distribution
- Encourage growth of the assets
- Addiction/chemical dependency language
Specific considerations for second marriages and blended families:

• Marital Trust
  – Providing for children and descendants
  – Surviving spouse can change entire estate plan
  – Conflicts between children and second spouse
  – Unexpected changes in financial/personal life may create conflicts
Possible provisions in wills and revocable trusts:

- Tangible personal property list
- Irrevocable trusts for children/young adults
- Providing for care of pets
- Educational trusts
- Charitable giving
- Specific gifts to any individuals
- Choosing your fiduciaries
- Selecting guardians for minor children (wills only)
- Chemical dependency/addiction language
- Selecting beneficiaries of your assets
How do estate and gift taxes impact planning?

• Federal
  – 40% tax rate on assets at death
  – 40% tax rate on gifts during lifetime
  – For 2017, exemption of $5.49M per person; increases with inflation
  – Exclusion is portable between spouses
How do estate and gift taxes impact planning?

• Minnesota
  – Rate of 10-16%
  – Gift tax recently repealed
  – For 2017, exemption of $1.8M per person; will increase to $2.0M per person by 2018
  – No portability
Lifetime Gifts

• $14,000 per year per donee per donor ($28,000 for a married couple splitting gifts)

• Qualified transfers for medical care and education

• $5.49 million lifetime federal gift tax exclusion over and above annual exclusion gifts, indexed for inflation and tied to federal estate tax exclusion
Marital deduction

- Unlimited marital deduction on death of first spouse
  - Assets passing to spouse
  - Or, in qualifying trust for spouse (marital trust)
Charitable deduction

• Unlimited deduction on assets passing to charity
Qualified plan benefits

• Estate tax
• Income tax
• Best asset to leave to charity
• Benefits of naming a spouse
• Importance of incorporating trusts for children/young adults—minors cannot be beneficiaries
When should I list “my estate” as the beneficiary?

• Almost never on retirement accounts
• This designation can be useful for life insurance in order to pay expenses or fund specific gifts
• Check the specifics of your account, if you say nothing this may be the default designation
Best Times to Update your Estate Plan

• Family milestones
• Financial changes
• Business events
• Law changes
• Health events
• Check-up every 3 years or so