Practical Life & Estate Planning Issues for Service Members & Retirees

Helping Your Clients Avoid the Minefields

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Overview of Life & Estate Planning

- Life Planning
  - Durable Powers of Attorney/Rev Living Trusts
  - Advance Medical Directives
  - Do Not Resuscitate Orders (DNRs)
  - Medical Orders for Scope of Treatment

Overview of Life & Estate Planning

- Estate Planning
  - Wills/Revocable Living Trusts
  - Estate Planning Issues
    - Estate Tax Planning
    - Beneficiary Designation Issues
    - Planning for Families with Disabilities

Life Planning Options

- Durable Power of Attorney
  - Springing vs Immediately Effective
  - Naming Multiple Agents (Attorneys-in-Fact)
  - Gifting Powers
  - Multi-state Issues (witness provisions)

Life Planning Options

- DPOA vs. DPOA +Revocable Living Trust
  - Avoidance of Courts in Multiple States
    - Guardianship/Conservatorship
    - DPOA <u>may</u> be revoked upon guardian appt
  - Avoidance of Delays in Asset Management
  - Privacy

Life Planning Options

- Advance Medical Directives
  - Living Will
  - Health Care Power of Attorney (HCPOA)
  - State Forms vs Custom
  - When activated?
  - Conflicts btw Health Care Agent & AIF under DPOA

Estate Planning Issues

- Will vs Pour-Over Will + Rev Living Trusts
  - Will alone
    - Simpler, cheaper
    - Testamentary Special Needs Trust for Surviving Spouse
    - Downside: Probate, Need to Update When Moving

Estate Planning Issues

- Will vs Pour-Over Will + Rev Living Trusts
  - Will + Rev Living Trust Positives
    - Avoids Probate & Ancillary Probate (other states)
    - No Delay in Administration if Co-Trustee
    - Privacy
    - Less updating (when moving to new state)

Estate Planning Issues

- Will vs Pour-Over Will + Rev Living Trusts
  - Will + Rev Living Trust Negatives
    - Must fund trust to avoid probate
    - Less understood by clients
    - Cashing checks at grocery store
    - Overhyped, sold as means to get financial info by fly-by-night “financial advisers”

Typical Trusts in Wills & RLTs

- Holdback Trusts
- Special Needs Trusts
  - Spousal (must be under Will, not RLT)
  - Special Needs Trust for Children
- Credit Shelter (A/B) Trusts Tax Planning

Typical Trusts in Wills & RLTs

- Spendthrift Trusts
- Planning with Retirement Benefits
  - Leaving IRA Outright
  - Conduit Trusts
  - Accumulation Trusts

Payback Special Needs Trusts

- Under Age-65 Payback SNT
  - 42 U.S.C. §1396p(d)(4)(A)
- Pooled Charity-Managed SNT's
  - 42 U.S.C. §1396p(d)(4)(C)
  - Life Plan Trust, Inc. (one example)
- Income Cap or <u>Miller</u> Trusts (not an option in NC)

Developing Issues in NC Estate Planning and Fiduciary Law

- Acceptance of Out-Of-State Attestations
- Digital Assets (What happens to your Facebook, Pay Pal Accounts?)
- Probate & Real Property Issues

Finding an Estate Planning Attorney

- NC Bar Elder Law & Estate Planning Sections

  www.ncbar.org

  Elder Law Attorneys

  www.naela.com
- Bailey Liipfert
  - www.craigebrawley.com
  - 1.336.917.3236

Finding a Special Needs Planning Attorney

- Special Needs Alliance
  - Network of disability and public benefits planning attorneys
  - www.specialneedsalliance.org
  - 1.877.572.8472
- Bailey Liipfert
  - www.craigebrawley.com
  - 1.336.917.3236