You Can't Take It With You
but
You Can Control Where It Goes

Wednesday, March 2, 2022

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Overview

- Transfer of Property at Death
- Planning for Incompetency
- Tax Considerations
- Tax Efficient Charitable Planning
- Case Study
- Q&A

Transfer of Property at Death

- What Property Must Go Through Probate?
- Who Is Entitled to Probate Property if There Is No Will?
- What a Will Can Do
- Revocable Living Trusts

What Property Must Go Through Probate?

Assets Controlled by Will
(Probate)

Real Estate, Securities,
Household Goods, Cash, Business Interests
Held in Decedent's Name Alone

Undivided Interests in Property Without
Rights of Survivorship

↓

To Individual or Trust
Beneficiaries as Provided in a Will

What Property Must Go Through Probate? *(cont'd)*

Assets Not Controlled by Will
(Nonprobate)

Joint Property with Rights of Survivorship or Owned TOD or POD	Assets Owned by a Revocable Living Trust or Other Trust	Contractual Assets, such as Life Insurance, Employee Death Benefits, IRAs
↓	↓	↓
To Surviving Joint Tenants or Owner	To Individual or Trust Beneficiaries as provided in Trust Document	To Designated Beneficiaries

Who Is Entitled to Probate Property if There Is No Will?

- If a person dies without a will, the state decides who will receive his or her probate property. This is known as "intestate succession."
- In Oregon, the surviving spouse will receive all of the decedent's estate unless he or she had children for which the surviving spouse is not the parent. In that case, the surviving spouse and those children are each entitled to half of the decedent's estate.
- If the decedent has no surviving spouse, the decedent's children (or descendants of a deceased child) are entitled to all of the estate.
- If the decedent has no surviving spouse or descendants, his or her parents are entitled to the estate, or, if no parents survive, his or her siblings and their descendants.

What a Will Can Do

- A will is a legal document by which a person, called a **testator**, directs how his or her property will be distributed at death.
- Appoint a personal representative (executor) and waive bond.
- Set up a trust for beneficiaries, including minor or disabled children.
- Nominate guardians and conservators for children and a trustee for any assets in trust. Appointing a guardian for a child may also be done in a separate document.

What a Will Can Do *(cont'd)*

- Wills specify who will receive the probate property, but do not control who will receive nonprobate property, such as life insurance, retirement benefits, and joint property with rights of survivorship.
- If the decedent was married and lived in Oregon, his or her spouse is entitled to a minimum portion of the net estate regardless of what the will says, unless there is a valid premarital agreement.

Revocable Living Trusts

Assets held by the trustee of a trust are administered and distributed according to the terms of the trust, and can bypass the probate process

Purposes of Revocable Living Trust

- Will Substitute
- Asset Management Vehicle
- Probate Avoidance
- Assurance of Privacy
- Does <u>Not</u> Save Estate Taxes

Still need a will ("pourover")

Planning for Incompetency

Durable General Powers of Attorney

- Principal (person signing the power) designates one or more persons (each, an "agent") to handle finances when principal requests help or while principal is incompetent or otherwise unable to act
- Most clients are able to avoid having a court-supervised conservatorship for their assets
- Allows for tax planning in the event of incapacity
- Power of attorney ceases to be valid when principal dies

Planning for Incompetency *(cont'd)*

Advance Directive - An Oregon statutory form that combines the former Health Care Power of Attorney and Living Will documents

- Designate an agent to make health care decisions if the client is unable to do so
- Directs end-of-life instructions in specific situations
- May enable client to avoid a guardianship

Washington Health Care Power of Attorney and Health Care Directive can accomplish the same objectives

POLST – limited cases, working with attending physician

Federal Gift and Estate Tax System

Federal Estate Tax

- Escalating Exemption Amounts ($12,060,000 exemption in 2022)
- Unlimited Marital Deduction
- Unlimited Charitable Deduction
- Sunset Provision Causes Reduction in 2026

Federal Gift Tax

- Exemption Linked to Estate Tax
- $16,000 Annual Exclusion per Person per Donee
- Unlimited Exclusion for Tuition and Medical Expenses (if paid to provider)

Federal Gift and Estate Tax System *(cont'd)*

Basic Structure *(cont'd)*

- Generation-Skipping Transfer Tax
- Estate and Trust Income Tax, known collectively as the "fiduciary income tax"
- State Estate Tax
  - $1,000,000 Exemption in Oregon
  - $2,193,000 Exemption in Washington
  - Assessed based upon residency and location of property

Charitable Giving

- Tax Benefits
  - Estate, Gift, and Income Tax Benefits
  - Differences between Lifetime Gifts and Gifts At Death
- Split-Interest Gifts
  - Charitable Remainder Trusts (“CRTs”)
  - Charitable Gift Annuities
  - Remainder Interest in Residence
- Special Considerations for Retirement Accounts
  - Qualified Charitable Distributions
  - Income Tax Consequences to Beneficiaries

Charitable Giving At Death

Bequests and residuary gifts in wills and trusts should be specific and contain exact name of charity, address (at least city and state) and possibly tax identification number of charity

Beware of restricted bequests:

- Can the charity honor the purpose?
- Is the restriction necessary?
- Difficult to make future changes, even with changed circumstances.

Other Bequest-like Gifts

- POD and TOD designations
- Retirement Accounts and Life Insurance

Lifetime Charitable Giving

- **Charitable Gift Annuities**
  - Simple contract – provides income to donor for life, remainder to charity
  - Backed by all assets of charity
  - Generally, the older the donor, the higher the payout rate
- **Qualified Charitable Distributions from IRAs**
- **Gifts of Appreciated Properties and Securities** – *a double tax benefit*
- **Charitable Remainder Trusts**
  - Provides benefit to donor or others
  - Planning for capital gains, coupled with income tax deduction
- **Benefit of Seeing the Impact of Charitable Giving**
- **Income Tax Deduction & Reduction of Estate for Estate Tax Purposes**

Sample Blended Gift Case

Fact Pattern:

- A couple in their 70's wishes to update their estate plan
- They want to include gifts to their two children and to charity
- Knowing the tax advantages of gifting their children assets eligible for a step-up in cost basis (stock, real estate), they had previously named OHSUF a beneficiary of their qualified retirement accounts so that 100% of the funds will go to their charitable purpose
- They want to maintain a secure retirement and would like to update their plan with a goal of minimizing taxes, both income and gift . . .

Sample Blended Gift Case

Additional Considerations:

- They have a net worth of ~$3.5M ($2M in IRA and $1.5 in real estate, stock and personal property); they are in the 37% tax bracket for federal income taxes
- They want their charitable gifts to establish a named scholarship in Nursing and another for Dentistry
- They would like to start their named funds established (now) and move some funds out of their taxable estate
- They do not believe they will need additional retirement income but would like the *option* of taking additional income at some point in the future

Strategy 1 – Qualified Charitable Distribution

To get their named scholarship funds started now, they make a pledge of $250,000 to be paid over 5 years through **Qualified Charitable Distributions** (QCDs) from their IRAs and realize these benefits:

- Two named scholarship funds of $125,000 are created that have immediate impact on the mission of OHSU
- $250,000 is removed from their taxable estate
- Reduced income taxes (because the QCD bypasses income tax, reduces their AGI in the year of gift, and reduces their future RMD/AGI)

Strategy 2 - Life Income Gift

To increase their charitable impact, further reduce their taxable estate, and create options for additional income for retirement, they establish a deferred **charitable gift annuity** funded with $250,000 (cash or appreciated stock) and realize these benefits:

- $250,000 removed from their taxable estate
- An immediate income tax charitable deduction of $132,730*
- They will receive a guaranteed annuity payment for life beginning at age 80 of 6.7%* of $16,750/yr or $184,250* (assuming at least one lives to age 90)
- Upon the death of the surviving spouse, their named scholarship funds will receive $580,608*

*Assumptions: ACGA rates as of Mar. 2022; AFR 2%; Income & Appreciation of 7.0%; Est. Term=18 years

Strategy 3 - Future Income to Children/CRT

They retain their plan to gift any remainder of their qualified retirement funds to OHSU but designate these funds to a **testamentary charitable remainder unitrust** to benefit their children and OHSU realizing the following benefits:

- Reduction and deferral of income taxation on qualified retirement funds as compared to designation directly to their children
- Deduction for estate tax purposes
- Upon the death of the surviving spouse, their children will receive ~$45,500* each per year for 20 years
- When the CRT terminates, their funds at OHSU will receive ~$2.2M*

*Assumptions: Book value at CRT formation=$1.5M; Payout rate=5%; AFR 1.6%; Income & Appreciation of 7.0%

Questions?

Thank you for attending!