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FREQUENTLY ASKED QUESTIONS ABOUT ESTATE PLANNING

Question – What is meant by the term "estate planning" and what documents are involved?

Answer – "Estate Planning" is a term that generally refers to the planning process conducted during your lifetime to prepare for transferring ownership of your property and responsibility for any dependant family members upon your death or incapacity. The process involves preparing legal documents to govern the transfer of your property and the appointment of legal representatives such as an executor, guardian, and trustee to carry out your wishes. A solid foundational estate plan should include a Last Will and Testament, a Durable Power of Attorney for Property, a Georgia Advance Medical Directive, and a HIPAA medical authorization.

Last Will and Testament – This document governs how your property will be distributed after your death, and it also allows you to designate guardians for your minor children or other dependents. Your Last Will and Testament should be as comprehensive as reasonably possible and should provide back-up plans in case your primary wishes cannot be followed. In your Last Will and Testament, you may give property outright to one or more individuals or entities, or you may give property to a trust for the benefit of those individuals or entities.

Durable Power of Attorney for Property – This document allows you to nominate an agent (and one or more back-up agents) to serve as your legal representative to make financial decisions on your behalf if you become incapacitated and are unable to act on your own.

Georgia Advance Medical Directive – This document allows you to nominate an agent (and one or more back-up agents) to serve as your legal representative to make health care decisions on your behalf if you become incapacitated. This document also allows you to provide instructions regarding your health care preferences under certain life-threatening health scenarios.

HIPAA Authorization – This document allows you to select certain individuals and organizations that may have access to your medical records or test results if you are incapacitated. Under certain federal laws, a health care provider may not share a person's medical records or test results with others (including a spouse) unless the health care provider has specific authorization to do so.

For larger or more complicated estates, the planning process may include the preparation of a Revocable Trust or an Irrevocable Life Insurance Trust. You should consult an experienced estate planning attorney to explain your options and advise what type of planning is appropriate for you.

Revocable Trust – A Revocable Trust is an advanced planning technique that helps you streamline the estate planning and probate process by transferring all or most of your assets to a Trust for which you are the trustee and beneficiary. For Georgia residents, this technique is appropriate for those with a substantial net worth and property in multiple States. A properly funded Revocable Trust can allow you to avoid much of the time and expense of the probate process. A Revocable Trust also adds the benefits of privacy, incapacity planning, and estate tax planning, if necessary.

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Irrevocable Life Insurance Trust (ILIT) – An ILIT is a trust that is established to own life insurance on your life. If formed and funded properly, an ILIT allows you to remove life insurance death benefits from being part of your "Taxable Estate" (discussed below). The ILIT is a very useful and cost effective estate tax planning tool for those whose substantial life insurance policies expose their estates to possible estate tax risks.

Question – What "legal representatives" do I need to appoint in my estate planning, and what are the responsibilities of each position?

Answer – You need to appoint people to fill several different legal representative roles, and you should have at least one back-up for each position. You can appoint the same person to act in more than one legal representative role. The positions and general responsibilities of each are as follows:

Personal Representative – You designate your Personal Representative in your Last Will and Testament. This person is sometimes referred to as the "Executor" of your estate and he or she will be responsible for collecting your assets and distributing them in accordance with your Will.

Guardian – If you have at least one minor or dependent child at your death, then you must appoint a Guardian who will be responsible for the day-to-day care of your children.

Conservator – If you have at least one minor or dependent child at your death, then you should also appoint a Conservator for your children. Since minor children in Georgia cannot own property until the age of eighteen, the Conservator will be responsible for managing any property that you leave directly to your children until your children reach age eighteen. *Note*: If you have significant estate assets passing to your children, you should consider directing those assets to a trust for your children to prevent your children from receiving a windfall at age eighteen.

Trustee – If your Last Will and Testament includes the formation of any trusts for distributing your property after your death, you must select a Trustee to administer the trusts in accordance with the terms you set forth in the trust provisions of your Will. This Trustee will not have any authority to act until after you die and a trust is established under your Will. If you create a trust during your lifetime (such as a Revocable Trust or an ILIT), then you must select a Trustee to administer the trust starting on the date you form the trust.

Agents for Financial and Health Care Matters – Under the Durable Power of Attorney for Property and Georgia Advance Medical Directive, you must appoint agents to make certain decisions on your behalf if you are incapacitated.

Question – What is my "Estate", and how do I determine its value?

Answer – This question must be answered in parts.

1. Your "Estate" for federal estate tax purposes generally consists of all the property in which you have any ownership interest such as real estate, bank accounts, stocks and bonds, cars, tangible

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personal property, jewelry, insurance policies you own insuring your life or another's, retirement accounts (such as an IRA or 401(k)), and any other type of property or asset. For U.S. citizens, this includes assets both inside and outside the U.S. This broad group of assets is referred to as your "Taxable Estate" because the total value of these assets will determine whether your estate is subject to estate tax.

2. Your "Estate" for Georgia state law purposes generally consists of property in your name that *does not transfer automatically* at your death by operation of law or by private contract. Certain assets are specifically designed to transfer automatically after your death including (i) real estate owned by two people as 'joint tenants with rights of survivorship', (ii) bank accounts with a 'transfer on death' beneficiary designation, and (iii) life insurance policies that pay a death benefit to a named beneficiary. Your assets that do not transfer automatically at your death are collectively referred to as your "Probate Estate" because they are transferred under your Will in the "Probate Process" (discussed below).

When assessing the value of your Estate for estate planning purposes, the first value to consider is the Taxable Estate because this will determine whether estate tax planning will be necessary. During the estate planning process, it is wise to review the assets in your Probate Estate to determine whether title to such assets should be changed for estate tax or other estate planning purposes. It is also important to review your beneficiary designations on assets outside your Probate Estate (e.g. life insurance and retirement accounts) to make sure these assets transfer in accordance with your overall estate planning intent.

Question – What happens if I die without a Will, and how is it different if I have a valid Will?

Answer – If you die without a Last Will and Testament, this directly affects how your Probate Estate transfers to others. Surviving family members must petition the Probate Court in the appropriate Georgia County for authority to transfer assets from the Probate Estate of the deceased person. This process is generally referred to as the "Probate Process". The Probate Process is necessary whether you have a Will or not, but the process is more straight forward and less costly if you have a valid Will. Without a Will, your family must collectively agree on who will be the Personal Representative of your estate, and this can cause tensions and power struggles. If you have prepared a well organized estate plan, you can feel more confident that your property will be distributed according to your intent and, hopefully, with a minimum amount of conflict.

If you die without a valid Last Will and Testament, certain default state laws (called "intestacy" laws) will dictate how your assets are divided among immediate or extended family who survive you. If you are a Georgia resident who is married with at least one child, it is important to note that Georgia intestacy laws require your Probate Estate to be divided between your surviving spouse and children instead of being directed entirely to your spouse to control until your spouse's death. The is almost always inconsistent with the typical estate planning wishes of a spouse/parent for several reasons including possible adverse tax consequences and additional administrative complications and expenses. In addition, if you die without a Last Will and Testament, the Probate Court will typically scrutinize the administrative aspects of your estate's Probate Process more carefully, and this can make the Probate Process longer and more costly.

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Alternatively, if you have proper estate planning documents in effect at your death, the Probate Process in most Georgia Counties is relatively streamlined as compared with the process without a Will. Your Personal Representative can follow a fairly straight-forward process with relatively little interference or second guessing from the Probate Court. Your family can rest assured that the division of your property is in accordance with your specific wishes, and proper estate planning documents can also help your Personal Representative avoid or waive certain administrative duties and expenses throughout the Probate Process.

Your assets outside your Probate Estate (i.e. those that transfer automatically upon your death like life insurance) will transfer to the designated beneficiaries whether you have a Will or not. However, going through the estate planning process can ensure that those assets pass to beneficiaries in accordance with your overall estate planning intent and in the most tax efficient manner and with the least amount of administrative costs and burden.

Question – If my net worth is not millions of dollars, do I still need estate planning?

Answer – Even if you do not have "estate tax" issues related to a high net worth, every person who owns property and has a family has "estate planning" issues to consider. It is important to make your wishes known regarding whom will care for your family if you pass away and how your assets, regardless of value, will be used to benefit your family. The estate planning process also addresses what will happen if you become disabled or permanently incapacitated and cannot make financial or health care decisions. The provisions of your Last Will and Testament only become effective upon your death, so it is vitally important to plan for an incapacitating event so that someone is authorized to handle your financial and health care matters in accordance with your guidance.

Question – When should I start planning for the "Estate Tax"?

Answer – The over-simplified answer to this question is: You should begin to incorporate tax planning strategies into your estate planning when the value of your Taxable Estate (or combined Taxable Estate with a spouse, if applicable) begins approaching the "Estate Tax Applicable Exclusion Amount". Bear in mind, this rule of thumb is based on certain assumptions, and a more thorough analysis of your net worth should be conducted by a qualified estate planning attorney taking into account your particular financial circumstances and the current estate tax laws.

Question – What is the Estate Tax Applicable Exclusion Amount?

Answer – For the year 2009, each individual has an Estate Tax Applicable Exclusion Amount of $3.5 million. This generally means that an individual may have an estate worth up to $3.5 million without being liable for federal estate taxes, and a married couple with proper estate tax planning can have a combined estate of up to $7 million without being liable for estate taxes. If your personal net worth (or combined net worth with a spouse) is approaching $3.5 million, then

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you should contact a qualified estate planning attorney to discuss estate tax planning that would be appropriate for you. If an individual dies with an estate that exceeds the Estate Tax Applicable Exclusion, the excess will be subject to tax at a rate of 45%. Under current law, the Estate Tax is scheduled to be repealed in 2010 and then reinstated in 2011 with the Estate Tax Applicable Exclusion reset at only $1 million. If this happens, then individuals with a net worth of just $1 million and married couples with a combined net worth over $2 million will need estate tax planning.

Question – Is it true that if you are married, then estate tax is only due when the second spouse dies? If that is true, then can we delay our estate planning until after one of us dies?

Answer – An estate tax principle commonly referred to as the "Marital Deduction" generally allows estate taxes to be deferred until the death of the surviving spouse as long as potentially taxable assets pass to the surviving spouse. However, the value of estate tax planning for most married individuals is primarily derived from using trust planning to take full advantage of each spouse's Estate Tax Applicable Exclusion. The Marital Deduction is useful for estate tax planning and tax deferral purposes as a back-up after maximizing the Estate Tax Applicable Exclusion.

For example, assume a married couple has a combined net worth of $7 million in 2009 and the husband dies owning $3.5 million of those assets. If the husband's estate planning documents direct all $3.5 million in assets to a "Family Trust", the assets can be used for the benefit of the surviving family and sheltered from estate tax using the husband's Estate Tax Applicable Exclusion. If the wife dies later in 2009 owning the remaining $3.5 million of the couple's combined net worth, the wife's assets could also be placed into a trust for the benefit of the surviving children and sheltered from estate tax using the wife's Estate Tax Applicable Exclusion. Thus, the entire $7 million combined estate of the married couple could be sheltered from estate tax.

If the couple had no planning in place, then at the husband's death, the $3.5 million in the husband's estate would be divided among the wife and children under Georgia intestacy laws. The portion directed to the children would be subject to federal estate taxes. The portion directed to the wife would increase the wife's net worth above $3.5 million. At the wife's death later in 2009, $3.5 million of the wife's estate could be sheltered from taxes using the wife's Estate Tax Applicable Exclusion, but the excess would be subject to estate taxes. The total tax bill between the husband's estate and wife's estate would be over $1.5 million, but it could have been eliminated entirely with proper planning before the husband's death. In short, if you wait until after one spouse dies before engaging in estate and tax planning, then it may be too late.

It should also go without saying that this question entirely ignores the possibility that both spouses could die together leaving no opportunity for carefully considered estate or tax planning "after the first spouse's death".

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Question – Can I avoid the estate tax by simply giving my property away during life so that my estate will be below the Estate Tax Applicable Exclusion?

Answer – Maybe. The answer to this question will ultimately depend upon i) the amount of assets that must be given away in order to reduce your estate value to a level that is not subject to tax, ii) the amount of time available to give assets away, and iii) the number of individuals and organizations to which you desire to gift property. The good news is that your gifts will remove the gifted assets from your estate for estate tax purposes. The bad news is that if you try to give away too many assets too quickly, then instead of paying estate taxes at your death, you may pay "gift taxes" during your life. In 2009 a gift tax is due if you give more than $13,000 (the "Annual Exclusion Amount") in gifts to a particular individual during the year. The amount of gift tax owed is calculated by applying the estate tax rate (currently 45%) to the amount of the gift that exceeds the Annual Exclusion Amount. For example, if you give $20,000 to a friend or family member, the first $13,000 is not subject to gift tax, but the last $7,000 is subject to gift tax at a 45% rate.

Two ways to avoid the gift tax while trying to speed the reduction of your net worth for estate tax purposes are to (i) spread your gifts out over more time and only give up to the Annual Exclusion Amount (you can give up to the Annual Exclusion Amount to the same person year after year without gift tax), and (ii) give gifts up to the Annual Exclusion Amount to more people (you can give the Annual Exclusion Amount to as many people as you want in any given year).

Question – How can Albright, Houtsma & Clark, LLC help with my estate planning?

Answer – Albright, Houtsma & Clark, LLC has attorneys experienced in a range of specialized legal fields including estate planning. Please contact the firm, and an attorney will be happy to speak with you by phone at no charge to gather some basic contact information from you and to briefly discuss your estate planning needs. Following this initial phone call, the firm will send you a questionnaire to gather additional information about you, your family, your intended legal representatives and the assets and liabilities in your estate, and the firm will provide you with a fee estimate based on our initial understanding of your estate planning needs.

Once you have completed and returned the electronic questionnaire, an attorney will review your questionnaire and contact you about the next steps in the estate planning process. At a minimum, the firm will schedule a telephone conference for you (and your spouse, if applicable) and an attorney to discuss the details of your questionnaire and address any other questions or concerns that you or the attorney may have. If the attorney determines that your particular circumstances warrant a more detailed discussion or if you request a more detailed discussion, the firm will schedule an in-person meeting at a location that is most convenient for you. You may select one of the firm's many office locations throughout Metro Atlanta (a list of locations can be provided to you) or a meeting may be scheduled at your home or office. Following the conference call or in-person meeting, the attorney will confirm or revise the initial estimate of the legal fees to complete your estate planning. Fees vary depending upon the complexity and the extensiveness of the planning required, but rates are highly competitive within the Atlanta market.

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The attorney will provide you with an engagement letter setting forth the terms of the attorney-client relationship and the scope of the estate planning work to be performed. Before the attorney begins your work, you must sign and return the engagement letter along with payment of 75% of the fee estimate. Once the firm receives your engagement letter and initial payment, the firm will immediately begin your work, and typically within two weeks, the firm will deliver electronic drafts of your estate planning documents to you via email. When drafts are delivered, the firm will schedule a meeting for you to sign and execute your estate planning documents. Ideally, this meeting should take place about two or three weeks after delivery of the drafts to allow time for your review but to prevent extended delays in executing your finalized documents. After you review the drafts, please contact the firm with any questions or comments, and an attorney or another firm representative will be happy to address any outstanding issues before finalizing the drafts and preparing for the signing meeting. At the signing meeting, you will sign all the estate planning documents in accordance with the laws of the State of Georgia to ensure that all your documents are valid and effective. This will require the presence and signatures of two independent witnesses as well as a notary. If you request the signing meeting to be held at a location other than a firm office, then you will be responsible for ensuring that independent witnesses are available. After the signing meeting, you will receive your estate planning documents in a well-organized and personalized binder for your records and for easy review in the future. Payment of the final balance of the fee is due at the signing meeting.

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