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Estate Planning Overview

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Because your estate planning documents contain legal provisions that are sometimes difficult to understand, this Estate Planning Overview has been prepared for the purpose of helping you better understand your estate planning documents. However, this Overview is only intended to provide a general summary of standard estate planning documents similar to the ones you have signed or may soon be signing. Depending upon the choices you make, your documents may differ from this description in certain respects. Of course, this Overview is not a binding legal document, and the actual language of the estate planning documents that you sign will determine the ultimate disposition of your estate.

Last Wills and Testaments.

In general, your Will provides for the distribution of property which is owned by you at the time of your death. For example, when you die, most financial assets owned in your name will pass under your Will either directly to the individuals you appoint, or to your Trust, where they will be held or distributed as provided in the trust document. In the latter situation, your Will is sometimes referred to as a “pour-over Will.” Tangible personal property (such as furniture, cars, and antiques) typically passes under the terms of the Will to the specified beneficiary, who is often the surviving spouse. The Will may also allow you to fill out a list at any time to identify the intended recipients of specific items of tangible personal property. To the extent your spouse does not survive you and you do not specify any other beneficiary, tangible personal property is usually divided up as agreed by your children or other beneficiaries.

Please note that some assets are not subject to the terms of a Will. For example, joint tenancy property, payable upon death accounts, retirement benefits (e.g., IRAs and 401(k)s), and life insurance proceeds generally do not pass under your Will, but instead become the property of the surviving joint tenant or the designated beneficiary. Also, assets that you transfer into trust during your lifetime do not pass under the terms of your Will.

Finally, in your Will you are able to nominate the persons that you would like to serve as guardians and conservators of minor or incapacitated children, and as personal representatives of your estate. If the appointment of such persons is actually necessary at the time of your death, it is accomplished by filing a petition in the Probate Court and obtaining an Order from the Court.

Revocable Trust.

As indicated above, assets may be transferred to your revocable Trust either during lifetime or at death. Also, your Trust may receive assets as the beneficiary of an IRA, a retirement plan, or a life insurance policy. During your lifetime, you can amend or revoke the Trust at any time as long as you are competent to do so. At the time of your death, the Trust generally becomes irrevocable and can no longer be amended or revoked.

In addition to providing for the administration of assets in the event of your incapacity, as well as avoiding probate for assets transferred into trust during your lifetime, another

important purpose of the Trust can be to reduce or avoid estate taxes. For married individuals with potentially taxable estates, at the time of the first spouse's death the trust assets will be divided by formula into two shares, commonly referred to as the "family share" and the "marital share." The objective of the family share is to provide benefits to your surviving spouse while at the same time keeping those assets out of his or her estate for estate tax purposes. For this reason, the family share assets are held in a separate trust sometimes referred to as a "shelter trust." Some of the family share benefits that you might provide to your spouse include (1) distribution of all trust income at least annually; (2) distributions of trust principal in the discretion of the Trustee for health, maintenance, and support (your spouse may be the Trustee); (3) an annual power to withdraw the greater of \$5,000 or 5% of the trust principal (although this power causes limited inclusion of assets in the survivor's estate); (4) the power to make gifts to children; and (5) a special power of appointment to change the ultimate distribution to children and other descendants.

In many estate plans, assets equal to the estate tax exemption at the time of death will be held in trust as the family share, while the remaining assets constitute the marital share and are either distributed to the spouse or held in trust for his or her benefit. Because the family share is covered by the decedent's available estate tax exemption, and the marital share qualifies for an unlimited marital deduction, even in large estates there is often no estate tax owing until the death of the surviving spouse.

Unless new legislation is passed, the estate tax exemption available at death will be determined in accordance with the following schedule:

2002-2003:	\$1,000,000
2004-2005:	\$1,500,000
2006-2008:	\$2,000,000
2009:	\$3,500,000
2010:	No estate tax
2011 (and after):	\$1,000,000

The potential benefit of the estate planning strategy described above is seen in the following two examples:

Example 1: Husband and Wife have a combined estate of \$2,000,000, including life insurance benefits to be paid at death. Pursuant to the beneficiary designations in place, all insurance proceeds will be payable to the surviving spouse. All other assets are held in joint tenancy and therefore will also pass to the surviving spouse. Husband dies in 2003 with an estate tax exemption of \$1,000,000. Because of the unlimited marital deduction, all of Husband's assets pass to Wife without the imposition of an estate tax, but Husband's exemption is wasted. Wife also dies in 2003 owning the entire estate of \$2,000,000, but with an estate tax exemption of only \$1,000,000. As a result, an estate tax of approximately \$435,000 is imposed on Wife's estate.

Example 2: Husband and Wife have a combined estate of \$2,000,000, including life insurance benefits to be paid at death. On the advice of their estate planning attorney, they establish Wills and Trusts and allocate their assets equally between them. Husband dies in 2003 with an estate tax exemption of \$1,000,000 and all of his assets pass to his Trust. No estate tax is imposed because of Husband's \$1,000,000 exemption. Wife also dies in 2003 with the other \$1,000,000 of assets. No estate tax is imposed on Wife's estate because of her estate tax exemption of \$1,000,000 and because the assets in Husband's Trust are not included in Wife's estate. The assets in Husband's Trust would not be included in Wife's estate even if they had doubled in value at the time of Wife's death. Thus, the benefit of having appropriate estate planning in place in this Example is an estate tax savings of approximately \$435,000.

Taking advantage of this type of estate planning requires a two-step process. First, the appropriate estate planning documents should be put in place. Second, after the documents are in place, assets should be allocated between husband and wife (which may require the re-titling of property) and appropriate beneficiary designations should be made for insurance policies and retirement benefits (retirement benefits may complicate this planning and require special attention, especially if you want your beneficiaries to have the ability to maximize income tax deferral). Your estate planning attorney can provide you with assistance in accomplishing both of these steps.

At the death of the surviving spouse, the survivor's assets (including assets received from the first spouse to die, but not including assets still sheltered in the family trust) may be subject to estate tax, depending upon the current value of the survivor's estate and the available estate tax exemption amount at the time of the survivor's death. After the payment of estate taxes, if any, and other debts and expenses, the remaining assets will be held in trust or distributed as provided in the trust document. Often, assets are distributed immediately to mature beneficiaries, and are held in trust for the benefit of younger beneficiaries, with distributions to be made at specified times or ages.

General Durable Power of Attorney.

With this document, you give a trusted individual or individuals the power to make business and financial decisions for you, effective either immediately or upon your incapacity. If you become incapacitated, a durable power of attorney may avoid the need for a court-appointed guardian or conservator.

Living Will and Special Medical Power of Attorney.

A Living Will is a medical directive authorized under Utah law by which you give specific directions to your physicians and other providers of medical services. In a Living Will, you typically state your desire that your life not be artificially prolonged by life-sustaining procedures except to the extent you provide otherwise. In contrast, a Special Medical Power of Attorney is a document by which you authorize a trusted individual or individuals to make

a broad range of medical decisions for you by executing a medical directive on your behalf in the event you are unable to act for yourself. Utah law provides a statutory form for both a Living Will and a Special Medical Power of Attorney. Because these issues involve matters of life and death, it is important that you carefully consider the directions that you give in your Living Will and the identity of the agent you designate under your Special Medical Power of Attorney.

In general, a Living Will only causes life-sustaining procedures to be withheld if all of the following occur: (1) you have an injury, disease, or illness which is certified in writing by two physicians who have personally examined you to be a terminal condition or a persistent vegetative state; (2) those physicians determine that the procedures would serve only to unnaturally prolong the time of death; (3) you do not give current directions to the contrary; and (4) there is not a conflicting directive executed by the agent appointed under your Special Medical Power of Attorney. Obviously, in considering the effect of these provisions, definitions become extremely important. Utah's statutory form of a Living Will provides that the term "life-sustaining procedure" includes artificial nutrition and hydration and any other procedures that you specify to be considered life-sustaining, but does not include the administration of medication or the performance of any medical procedure which is intended to provide comfort care or to alleviate pain. As defined in the statute, the term "life-sustaining procedure" also means any medical procedure or intervention which would in the judgment of the attending

physician serve only to prolong the dying process. This gives fairly broad discretion to the attending physician unless the declarant chooses to limit that discretion by excluding specific procedures or interventions from the definition of life-sustaining procedure. The term “persistent vegetative state” means a state of severe mental impairment, in which only involuntary bodily functions are present and the person totally lacks higher cortical and cognitive function but maintains vegetative brain stem processes for which there exists no reasonable expectation of regaining significant cognitive function. The term “terminal condition” means a condition caused by injury, disease, or illness, which regardless of the application of life-sustaining procedures, would within reasonable medical judgment produce death, and where the application of life-sustaining procedures would serve only to postpone the moment of death of the person. For purposes of identifying a terminal condition, the statute does not identify the amount of time expected to pass before death would occur.

Staying Current

All of the documents discussed above are critical components of a well-planned estate. Because both your circumstances and the law may change over time, you should have your estate plan reviewed periodically, and should consult with your estate planning attorney before taking actions or making decisions that could have a material effect on that plan.

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VanCott

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