ESTATE PLANNING

How to Transfer Estate Property

by Al Lundstrom

Prior to the middle ages, people were not allowed to acquire property or own anything of value. As the feudal system died out, people began to demand ownership rights in what they had acquired during their lifetimes. They also demanded a way to leave these acquired assets to their heirs.

Eventually the English Parliament granted permission to pass property by will—but only if a person did so in a very formal document complying with a set of very technical rules. To this day, making a will and leaving property to heirs is merely a privilege granted by the government. This privilege can be exercised only if we strictly comply with the rules.

Although the will is not the only instrument in estate planning, it is often the most important. There are generally three different types of wills, and different states allow anywhere from one to all three. Consult your attorney to determine what type of wills are appropriate for you in your state.

Types of Wills

The three types of wills include an oral will, a hand-written will and formal witnessed will. The use of an oral will is very restricted. In many states, it can be used only by someone in the military who is dying from battle injuries. Other states restrict its effectiveness to personal property and then to an amount less than $1,000. Other states say that an oral will can be used only by someone during his last illness and within a certain number of days before death.

The personally hand-written will is allowed in approximately half of the states. It must contain the date and the signature of the person writing the will. The hand-written will has two very dangerous problems. One is to prove that the will in question is the *last* will written or that it is the *only* will that was written. Many times a person will leave more than one will containing different subject matter.

The second problem area is writing a will in such a way that the judges, lawyers and tax officials can interpret it properly and that the intentions of the deceased can be complied with under current laws.

Formal Witnessed Will

The third type of will is the formal witnessed will, which is generally drawn up by an attorney to comply with all state and federal laws. After the terms in the will have been clearly outlined and are to the satisfaction of the person requesting the will, it must be signed in the presence of a witness or witnesses, depending on the state. Some states require that witnesses also sign the document.

One of the big questions that comes to mind is what should go into the will and how should it be written?

A will generally contains and reflects your wishes for that which is yours. If you want certain assets or personal property to go to specific heirs, that can be accomplished. You can describe each piece of property in detail and to whom it should go.

You can suggest who will be the administrator. You can select the executor of the estate and guardian of any minor children. You can suggest which assets must be used to pay taxes or to satisfy debts. You can specify what heirs should not receive anything from your estate. You can determine what assets can be given to non-family members or institutions.

A will can be very broad and general or very detailed and specific depending on the goals to be accomplished. Understand that a will *can* help to minimize taxes through the division of your property and the gifts specified.

Trusts

A will also can create a trust. Such a trust is known as a testamentary trust because it is established in the owner's testament or will. In such a case, the trust does not come into existence until the property owner dies.

Trusts can be used in many different ways. Some of their specific uses are to reduce taxes, provide administration and management for property, and provide administrative talents for the interpretation of your instructions in a trust document. A trust is a legal document recognized by the courts to have specific administrative powers over property.

Generally, your trust, a legal document, is handled by a designated person or institution called a trustee who will manage or invest the properties placed into the trust for the benefit of the persons called beneficiaries. The beneficiaries are those you have designated and who have a life interest or a remainder interest in the trust assets.

Misconceptions

Trusts are an essential part of estate planning; however, there are many misconceptions about trusts. One misconception is that you put property into trust so the beneficiary cannot use it or because you have little or no faith in the beneficiary's ability to manage the property. Trusts generally are created because of a concern for the welfare and security of the beneficiaries. In most cases, a trust provides flexibility where an outright gift would not. A trust is a legal entity such as a corporation or partnership and pays taxes.

There are two basic kinds of trust—a living trust and a testamentary trust. A living trust is sometimes referred to as an inter vivos trust (meaning during life). With the use of trusts in estate planning, you definitely need to seek council from your attorney.

Just to give you a better idea of the involvements of trusts, let me review some of

The fifth in a series of articles in ANGUS JOURNAL offering readers a systematic procedure they can use in designing their own estate plans.

the different kinds of trusts available for you to use: Revocable trusts, irrevocable trusts, pour over trusts, life insurance trusts, Clifford trusts, charitable trusts, support trusts, accumulation trusts, sprinkling trusts and spendthrift trusts. You could conclude from this list of trusts that it may be too complicated to use trusts in your estate planning. They do have a proper place in the transfer of assets to your heirs; they can be used in such a way as to preserve your ideas and goals and, in many cases, to minimize taxes.

Gifts

As we continue to think about distributing assets, gifts can be given during life on a non-tax basis. There is a $3,000 annual exclusion from gift taxes. You may give $3,000 to as many people as you wish in a given year without paying any tax on that gift. A married couple, therefore, could give $6,000 to each person or persons. A married couple with three children could give each child $6,000 a year or a gift reducing their assets by $18,000.

Another consideration is the gift tax deduction for gifts between spouses, more generally known as the marital deduction gift. This means that one's spouse may give the other $100,000, a 1-time tax-free gift.

Beginning in 1980, you can give an additional $175,000 without penalties. This is known as your lifetime exemption. Note carefully that because the lifetime exemption has been raised substantially since 1976, these gifts are reportable and have to be recorded so you do not exceed the maximum amount allowed by law. Prior to 1976, the lifetime exemption was $30,000 per donor. In some cases, you should consider gifts that would exceed these exemptions during life rather than paying state inheritance tax on the property after death. The tax calculations should be made and consideration given to your total goal.

Other Gifts

Other gifts to consider are to charity. Gifts that qualify to charitable, religious and educational institutions are deductible without any dollar limit

For the farmer/rancher, gifts of land could create problems. To make a $3,000 gift each year would mean providing land descriptions and acreages, deeds and bills of sale for not more than $3,000 of value or tax would have to be paid on the balance. To give someone $3,000 worth of cattle could be considerably easier than $3,000 worth of land, and certainly to provide someone with $3,000 in cash or equivalent in corporate stock is the least complicated way to make such a gift.

Even though the idea of giving $3,000 is somewhat simple, the actuality of doing it can be very complex and cumbersome. Making gifts to minors could present a problem. There are laws referred to as the Gifts to Minors Act or the Gifts of Security to Minors Act. In recent years, many states have adopted a uniform law setting up a simple trust-like device to be used in making gifts to minors. The property is held by a custodian who has the responsibility of handling the investments or managing the assets accordingly. The custodian may be an adult person or a bank.

Other Transfer Arrangements

Other transfers are made by operation of law. Many of you may have other transfer arrangements that you may or may not be aware of already in existence. As discussed in an earlier article, property in joint tenency passes to the survivors by law. With proper planning, this is an excellent way to transfer land to your heirs.

Written contracts can transfer assets such as in the sale of land using a land contract. Contracts between business partners are a legal form of transfer, i.e., a buy-sell agreement.

A will as an estate planning tool cannot be over emphasized, because it helps achieve many of the objectives at the very heart of the estate plan. The will can be used to determine who will share in the estate assets. It also allows you to make special provisions for those who normally would not be entitled to inherit assests (such as a daughter-in-law or son-in-law). Likewise, it can be used to disinherit those who otherwise would be entitled to a share of the estate. A will can be a means of saving some expensive probate costs and to appoint an executor to nominate a guardian for minor children.

Fear of Wills

For some reason, people fear making a will. Some of this fear is concerned with thinking about death. Other people who have never had any dealings with attornies are skeptical of talking to them. The use of an attorney who has professional training and understands the language is a necessity in order to comply with all the state and federal laws.

The cost of a will, in many cases, can be negotiated. Most attornies will draft a will at some lower rate than for other services. They do it as a means of establishing a new client-attorney relationship. The complexities of a will definitely determine the fees charged.

As your future ideas and financial situation change, your will also can be changed. Do not feel that when you draw up your first will, it is your last will. As your life changes, so should your will to reflect those changes. You are never too young or too poor to have a will, especially if you have minor children.

Let me encourage you to visit with the attorney of your choice. Such a visit is important to you and your family.

Next month's article will review the ideas of the first five articles and provide a few examples to work with and show how liquidity plays an important part in your over-all estate plan.

We appreciate your comments and questions on our previous articles. Continue to feel free to write or call Lundstrom & Associates, P.O. Box 1077, 101 East Milwaukee St., Suite 501, Janesville, Wis. 53545, or the ANGUS JOURNAL.