ESTATE PLANNING TO PROTECT ASSETS FROM TAXES AND CREDITORS

Last Will and Testament:
- Can contain testamentary trust to manage assets for minor children, beneficiaries that cannot manage assets, or beneficiaries that are being pursued by creditors.
- Works well with estates consisting of qualified assets such as IRAs, 401(k)s, qualified retirement plans, annuities, and life insurance (death benefits).

Revocable Trust Agreement:
- Can provide the same type of management and protection as testamentary trust.
- Works well with estates consisting of non-qualified assets as well as qualified assets. Non-qualified assets would include small business interests, investment real property, bank accounts.
- Disadvantage of Revocable Trust Agreement is that your creditors have to be paid at death from trust assets.
- Alternative to Revocable Trust Agreement where debts are significant - Last Will and Testament with testamentary trust and use of beneficiary provisions where appropriate on all accounts.

Durable Power of Attorney:
- Can provide for management of your financial matters and health concerns during illness or incapacity.
- Protects you from guardianship attorney costs and court reporting of your financial situation and health care.

Living Will Declaration:
- Control over life support decisions and avoidance of potential legal battle (i.e., Terry Schiavo case).

Key Changes in Estate Taxes:
- Estate Exemption increased to $5,340,000 per person.
- Portability Election to allow surviving spouse to utilize deceased spouse unused estate exemption by timely filing an estate tax return and electing portability.

  Pitfall: Not timely filing an estate tax return where one is not required by law (i.e., net estate under $5,340,000).

Impact of Key Changes in Estate Taxes:
- Many trusts created to avoid estate taxes prior to 2013 are no longer needed to avoid estate tax with the increased exemption $5,340,000.
- Failure to amend such trusts will result in needless accountings and responsibilities for surviving spouse.

Things to remember:

- Florida has some very generous exemptions from creditors.
- Statutory Exemptions: Annuities, Cash Value of Life Insurance, IRAs, 401(k)s, qualified retirement plans.
- Constitutional Exemption: Homestead Real Property ½ acre within the municipality, 160 acres outside municipality.
- Tenancy by Entirety: Property acquired by husband and wife (not subject to creditor of either spouse).
- Single member LLC are no longer protected from creditors (must have multi-member LLC).
- Transfers intended to defraud creditors can be set aside, except for transfers into Constitutional Real Property Homestead (Note bankruptcy exception).
- IRS does not recognize Florida exemptions or Tenancy by Entirety.
- Florida does not have an Asset Protection Trust Statute (where grantor is protected from his creditors).
- Although other states have such a statute, it may be pierced in bankruptcy if created within 10 years of filing.
- Off-shore trusts offer greatest protection since some foreign jurisdictions do not recognize U.S. court judgments and require re-litigation in foreign jurisdiction.

Miscellaneous:

- Avoid placing children on accounts or property to avoid probate because your accounts or property will be subject to your children's creditors.
- Do not give away appreciated property to avoid probate because property inherited receives a step-up in tax basis to fair market value to avoid capital gains on sale (property gifted does not receive step-up in tax basis and capital gains will have to be paid).

Thank you for your time and attention.

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