PLANNING FOR CHANGE
ESTATE PLANNING & NEW TAX LAWS

Senior Living Foundation
of the American Foreign Service
September 27, 2018
Tools in Estate Planning

- Powers of Attorney
- Living Will/Advance Medical Directive
- Titling of Property
- Wills
- Trusts
- Gifting
- Life Insurance
General Durable Power of Attorney

- Power to undertake any action relating to your assets that you could do personally
- Effective immediately or effective in the event of disability ("Springing")
- Avoids guardianship proceedings
- Null/void upon death
Advanced Health Care Directive or “Living Will”

• Establishes individual preferences
  ♦ Use of Oxygen
  ♦ Nutrition/Hydration
  ♦ Pain Management
  ♦ Organ Donation: driver’s license is best

• Identifies individuals to make health care decisions for you if you are unable to do so.

• Null/void upon death
Titling of Property

- Overrides the will
- Examples:
  - Joint ownership (with survivorship)
  - Transfer on death and pay on death accounts
  - Revocable or irrevocable trust
  - Insurance
  - Retirement accounts
  - VA and DC permit Transfer on Death Deeds (not yet permitted in MD—Bills proposed/Bills defeated).
Wills

- Effective at death
- Funeral and other arrangements
- Specific bequests
- Appoints an Executor and outlines Executor’s duties
- May appoint Guardian for minor children
- May establish trusts
- Without a Will - state law applies as to distribution of assets and care of children
Main Types of Trusts

• Testamentary
  ♦ Established by your Will
  ♦ Assets do not avoid probate
  ♦ Accounting requirement
Main Types of Trusts

• Inter Vivos
  ♦ Established during your lifetime
  ♦ Assets in trust avoid probate
  ♦ Revocable vs. Irrevocable trusts
  ♦ Comes in many forms
Estate Taxes after the Tax Cuts and Jobs Act

- Transfer between spouses who are U.S. citizens are tax-free
- Qualified Domestic Trust must be established for non-U.S. citizen spouse
- Current Federal Estate Tax “Exemption” amount:
  - Approximately $11.2M/individual
  - Approximately $22.4M/married couple with election of portability
  - Current tax rate – 40%
  - Sunsets in 2026 – reverts to $5.6M/person and $11.2M/married couple-adjusted for inflation annually
Portability

- January 2013, Congress passed American Tax Relief Act of 2012 ("ATRA") – made Portability “permanent”
- A surviving spouse can use deceased spouses (unused) exemption for his/her gift or estate tax purposes
- Must file a tax return upon death of first spouse to reserve right to “elect” portability
Review Existing Trusts After Tax Act of 2018

- Review Family Trusts funded by formula
- Federal Exemption amount jumped significantly - could impact prior planning efforts/expectations
- Many trusts are worded to fund family trust with full amount of exclusion (very different result with $11.2M exclusion vs. $3.5M for example)
Several states and the District of Columbia have their own state estate tax

- Virginia – no estate tax
- Maryland - $4M in 2018; $5M in 2019 – adopting portability in 2019
- District of Columbia – As of 9/5/2018, $11.2M reduced to $5.6M (retroactive to 1/1/2018) – no portability in DC
Inheritance Taxes

• Approximately 6 states have their own inheritance tax which is normally paid by the recipient
• Virginia – no inheritance tax
• Maryland – 10% - payable by collateral (non-lineal) heirs
• D.C.– no inheritance tax
Federal Gift Taxes

• Lifetime exemption of $11.2M (tied to overall “exemption”).
• Annual gift exemption of $15K per individual ($30K if spouse joins in gift)
• Unlimited number of gifts to different individuals
• Annual transfers to a non-U.S. citizen spouse are tax-free up to $152,000 in 2018 (adjusts annually)
Spousal Rights for Foreign Service Spouses

- **Foreign Service Benefit Default Rules**: Unless otherwise provided by court order or spousal agreement, a Former Spouse (“FS”) of a FSPS or former FSPS is entitled to both pension and survivor benefits, unless waived, if the following conditions are met:

  1) the FS divorced participant after February 15, 1981;
  2) Before commencement of payments of any benefits, the FS did not remarry before age 55; and
  3) FS was married to FSPS or former FSPS for at least 10 yrs., and during at least 5 of such years, the participant was a member of the Foreign Service.
Spousal Rights Generally

- **Spousal Elective Share for Decedent dying on or after 12/1/2017:**
  - Cannot disinherit a spouse without their consent in Virginia
  - Surviving spouse may make a claim against estate regardless of whether any provision for the spouse is made in a decedent’s will or if the decedent dies intestate (without a will);
  - Six months to file from date of probating will or qualification of an administrator
  - Moves from “support” based theory to an “economic partnership” theory.
    - Old Model: looked only at Deceased spouses assets
    - New Model: looks at both spouses assets
- Takes into account length of marriage – 15 year “earn in” period
- Maximum elective share is 50% of all marital assets (sliding scale based on length of marriage).
- No longer matters if children or no children are living.
  - Can waived by writing
  - Statutory rights are barred by desertion or abandonment

- **Virginia’s Omitted Spouse Statute**
Gifting Strategies

- Cash, appreciating/appreciated property
- Uniform Gifts to Minors Act/Uniform Transfers to Minors Act
- Medical expenses/tuition
  - Unlimited yearly if gifted directly to educational or health care institution
- Installment sales or loans
- Charitable giving
Estate Planning in a Low Interest World

• Low interest rates favor certain strategies
  ♦ Grantor Retained Annuity Trust (GRAT)
  ♦ Charitable Lead Annuity Trust (CLAT)
  ♦ Installment sale
  ♦ Low-interest family loan
Intra-Family Loans

♦ Historically Low (but rising) Applicable Federal Rate, published monthly by the IRS
♦ Short-term Rate: loans with terms < 3 years;
♦ Mid-term Rate: loans with terms >3 years, but <9 years;
♦ Long-term Rate: loans with terms >9 years

Annual AFRs for October 2018

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Upcoming Changes in Estate Planning

• Inherited IRA – proposed changes in distribution requirements
• New IRS regulations – elimination/reduction of discounts for interfamily transfer of business interests
When to Review an Estate Plan

- Major life events
  - Inheritances
  - Career changes
  - Move out of state
  - Birth of a child
  - Marriage, Divorce, Death
- Tax law changes
- Significant changes in values of assets
- Every 5 years
Questions?

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