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**THE DOCUMENTS AND GOALS OF ESTATE PLANNING**

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**To:** Mr. and Mrs. Prospective Client  
**From:** Robert L. Freed  
**Date:** February 9, 2006  
**Re:** Estate Planning Process  
**File #:** C:\Documents and Settings\robert\My Documents\FS002052.WPD

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We believe the estate planning process should achieve the following goals:

1. First and foremost, your estate planning documents must reflect your personal objectives (all assets to my spouse, care for minor children, provision for parents, *etc.*). Most estate planning will involve the creation of some or all of the following:
  - a. *Will.* A will is a document that only becomes effective at your death. This document will dispose of your property, often to a trust that you will set up now; and it will name your executor (the person who will care for and distribute your assets) and guardian(s) who will care for your minor children.
  - b. *Trust(s).* A trust usually becomes funded at your death, but may be funded beforehand to accomplish various estate, gift, and income tax savings. The trust document names a succession of trustees (the persons or entities who will care for the assets and distribute the assets to your beneficiaries during the pendency of the trust).
  - c. *General Durable Power of Attorney.* A general durable power of attorney grants another person the power to deal with your assets. This is a very potent document and will be invaluable if you become disabled. Some clients ask us to hold the power of attorney under a letter agreement which instructs us to deliver the power to the agent after we have received instructions from the client to do so, or only after the client's physician advises us that the client is incapable of taking care of his or her affairs.
  - d. *Advance Medical Directive.* An advance medical directive grants another person the power to make medical decisions on your behalf in the event you are unable to do so yourself. This document describes your intentions and provides in part:
    - i. "If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of

medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain;" and,

- ii. "I grant to my agent [to be named] full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision about providing, withholding, or withdrawing medical treatment. The phrase "incapable of making an informed decision" means unable to understand the nature, extent, and probable consequences of a proposed medical decision, or unable to make a rational evaluation of the risks and benefits of a proposed medical decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way. My agent's authority is effective as long as I am incapable of making an informed decision."

2. It is our goal to assist you in transferring your assets while incurring the minimum transfer costs, including probate costs, estate, gift, and generation-skipping taxes. In this regard, we may discuss the following topics with you:

- a. Utilizing the ability of each of you to pass the maximum amount estate tax free to your descendants by creating a Family Trust. The first of you to die may establish a Family Trust which:
  - i. The surviving spouse may:
    - (1) be for the primary benefit of the surviving spouse during his or her life;
    - (2) be the *sole* trustee of this Family Trust;
    - (3) receive all of the income from the Family Trust;
    - (4) have the right to invade the principal for his or her benefit, and the benefit of your descendants, limited only by standards of health, maintenance, support, and education; and,
    - (5) be given the right to redirect the assets in the Family Trust to children and other descendants.
  - ii. Will save estate taxes.
  - iii. Will cause all estate taxes to be payable only *at the death of the survivor* of the two of you. Accordingly, most of our planning will be geared toward reducing the estate taxes and other transfer costs at the death of the survivor of the two of you.

- b. Transferring life insurance policies to or purchasing new life insurance policies in irrevocable life insurance trusts. By having an irrevocable trust own the life insurance, the policy proceeds will be removed from your estate and thus, substantial estate tax savings may be generated. Please note that if the insurance insures one spouse's life, the other spouse may have the same powers over the trust as outlined with respect to the Family Trust, above.
  - c. In larger estates, the most significant problem is future appreciation. This growth and the resulting estate taxes may be reduced and even eliminated by adopting a cogent and comprehensive gift giving campaign. In such situations, in order to reduce or eliminate the estate tax:
    - i. We may suggest that you: make gifts to donees of your choice of \$12,000 per year per donee; pay college tuition for grandchildren directly to the educational institutions; pay certain medical expenses for your children and grandchildren; and make gifts to charitable institutions if you are so inclined. In larger estates, we may even suggest that you make larger gifts, possibly incurring a Federal gift tax.
    - ii. We may suggest gifts to college savings plans.
    - iii. We may also discuss other techniques, such as grantor retained annuity trusts, qualified personal residence trusts, formation of limited liability companies to own some of your property, the recapitalization of business interests followed by gifts of *non-voting* equities, the formation of charitable remainder trusts for gifts of highly appreciated assets, and the sales of appreciated property to your children.
    - iv. In very large estates, we may suggest the creation of *generation skipping trusts* for your children. These trusts provide for each of your children during their lives, and each of your children may be the trustee of his or her trust. Upon your child's death, any assets left in the trust would pass free of estate taxes to his or her children or grandchildren. Please note that if you are married, these trusts would *not* become effective until the death of the survivor of the two of you.
3. Living Trusts. I am sure that you have either read or heard about living trusts. These are trusts that you create and which you reserve the right to revoke at any time. Much has been written about the advantages and disadvantages of living trusts. Essentially, these trusts do not provide any income, gift, estate or generation skipping tax savings. They are usually touted as a means of avoiding probate, with

a savings in the "horrific" costs associated with probating an estate. On balance, we have found that in Virginia the present value of the cost of setting up, *properly* funding, and administering a living trust very often exceeds the present value of the costs of probate. Of course, under certain circumstances, a living trust may be warranted. For example, if: you own assets in other states, especially New York or Florida, where extracting those assets at your death is expensive or burdensome; you anticipate that some of your heirs may cause problems with the passage of your assets at your death; for valid reasons, you wish anonymity at your death with respect to your assets which are placed in the trust; or, you wish to provide for the management of your assets because of your age or because you travel frequently. You should note, however, that in many instances, the power of attorney which we will draft for you will be more than ample to care for your assets without the costs and efforts associated with the living trust. If you think you have need for a living trust, please feel free to discuss this technique in our meeting.