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# Estate Planning Essentials

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# Disclaimer

- David Sowerbutts and Jeremy Wechsler are licensed attorneys in the following jurisdictions only: Commonwealth of Pennsylvania, and State of New Jersey;
- This presentation is for educational purposes only and the ideas presented are conceptual in nature;
- Each client has individual circumstances and concerns, which requires individualized legal advice; and
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# Estate Planning Essentials



1. The Basics
2. Estate Planning Update
3. Procrastinating? Overthinking? Find a Balance!
4. Probate: Introduction, Facts, and Myths
5. Elder Law/Medicaid Review
6. Tax 101 & Gifting
7. Wrap Up/Conclusion

# The Basics

- **Essential Documents:**
  - Last Will & Testament
  - Health Care Directive & Living Will
  - Durable Financial/General Power of Attorney
- **A Trust may be appropriate for certain clients:**
  - A qualified attorney can determine what planning is necessary
- **Beneficiary Designations:**
  - A beneficiary designation is a legal contract that permits you to specify who inherits an account upon your death. Also referred to as “Payable on Death” (POD), and “Transfer on Death” (TOD)
  - These contracts supersede your Last Will & Testament and estate plan, so they are of equal importance to executing a will

# The Latest On Estate Planning

- **Federal Estate Tax Exemption:** It is very high right now, but scheduled to 'sunset' at the end of 2025 to a \$5 Million exemption (adjusted for inflation, so approx. \$7M)
  - What if congress changes the law to lower even further, or add in new provisions?
- **SECURE Act:** No more lifetime stretch for most beneficiaries. What are the alternatives?
- **Are 'Entitlements' (Social Security, Medicare, Medicaid) sustainable?** Particularly in regards to Medicaid for elders, will there be increased eligibility requirements in the future?
- **529/FAFSA Changes:** School year 2024-25 financial aid changes, makes 529 giving from grandparents more advantageous

# Overthinking? Procrastinating? Find a Balance!

- **Overthinking:**

- Using a Trust when it's not necessary
- Avoiding probate if not necessary
- Complicating real estate issues

- **Procrastinating:**

- Waiting until you're sick/incapacitated to start planning
- Not considering elder law planning in advance
- Don't want to offend family, so no planning done
- Having a 30 year old will and no other plan (such as a power of attorney)
- Not thinking strategically about gifting/tax planning

## Probate Facts



- Probate in Pennsylvania and New Jersey is ***'simplified'***
- If you are basing your understanding of probate on a national publication or internet source, you may come away thinking you need to avoid it at all costs
- Probate is simply the legal process of administering an estate
- **Avoid Probate When:** There is property in multiple states, major creditors/debts (not including mortgage), known conflicts in the family, or very complex affairs/high net worth estate
- **Probate Avoidance Does Not Fix Everything:** Still have PA Inheritance Tax; Trusts still are subject to creditor claims; A beneficiary can challenge/contest a trust

# Probate Myths

- **If I use a trust, there will be no taxes**
- **If I avoid probate, my heirs will get my assets immediately**
- **Regardless of jurisdiction, probate is a burdensome process that must be avoided at all costs**
- **If my estate goes through probate, 20% will go towards attorneys fees/Executor compensation**
- **I should gift/transfer my assets now (especially real estate and stocks) so that it saves on taxes and probate**



## Keeping Probate/Estate Admin Simple

- **Have an updated and professional will**
- **Keep a current list of assets, important contacts, etc. alongside your will**
  - *Asset Map: type of account, how it is owned (joint/separate) and beneficiary designations if any*
- **Keep your documents/paperwork organized**
- **Put yourself in your executor's shoes: will your executor have everything he/she needs without hiring a private investigator?**

## Medicaid & Elder Law Planning



- Medicaid (in PA, called Medical Assistance) is the program that will pay for nursing home care (and sometimes home-based nursing services)
  - Strict financial eligibility
  - Strict medical eligibility
- Currently, Medicaid has a 5-year look back for gifts/transfers
- There are strategies that can allow for spend-down even if under 5 years time; must talk to an attorney asap
- Advanced Strategies: Long-Term Care Insurance, Continuing Care Retirement Communities, Trust Planning and/or Gifting
- **Aging in place becoming more common, but not always possible. Whether any of us need a nursing home is T.B.D.**

# Estate & Tax Reference Guide

- **Federal:**

- **Lifetime Estate Tax/Gift Tax Exemption (2024):** \$13.61 Million per person
  - After 2025: \$5 Million per person, adjusted for inflation
- **Annual Gift Exemption Amount (2024):** \$18,000 per person
- **Trust Retained Income Taxation:** After \$14,451, rate is 37%
- **Capital Gain Tax Rate (2024):** 15% to 20%, possibly as high as 23.8%
  - Currently, unlimited “step up in basis” for assets passed upon death

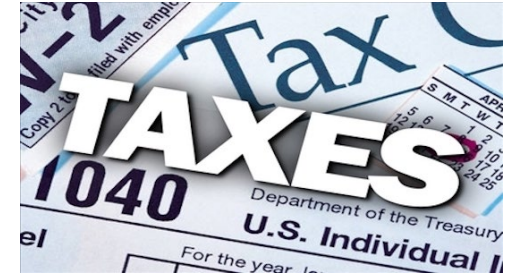
- **Pennsylvania:**

- **No Gift Tax**
- **Inheritance Tax:** On all transfers except life insurance and certain agricultural assets
  - 0% spouse; 4.5% children, grandchildren; 12% siblings; 15% all others

# Quick Tax Talk

- **Federal Estate Tax:** You may be unaffected now, but what about later? And what about other taxes?
- **Other 'Estate Taxes':** PA Inheritance Tax, Income tax, and Capital gains taxes are still present
- **Tax Advantaged Assets:** Life insurance, Roth IRA's, 529 plans
- **Tax Strategies:** Depends on your net worth, type of asset(s), and goals

# Gifts



- **Annual Exemption (2024):** \$18,000 per person
- **Lifetime Exemption:** (Anything above \$18k starts to count) - \$13.6M, tied in with estate tax exemption
- **CAUTION:** Yes, gifting exemptions are generous. But if you're gifting highly appreciated assets to save on inheritance taxes, you will end up costing your heirs more in capital gains taxes
- **CAUTION:** Medicaid does not recognize these gifting exemptions. Gifts over \$500 are penalized (5 year look back)
- **Strategic Gifting:** Consider 529's, gifting to life insurance policy, using GRATs/SLATS for higher net worth portfolios, and more

# Wrap Up & Conclusion

- Have you updated **BENEFICIARY DESIGNATIONS** on accounts? These supersede wills.
- Do you have a recent **POWER OF ATTORNEY** document in case of incapacity?
- If you have a beneficiary with special needs who may receive public benefits, have you created a special needs trust/provisions for a **SEVERELY DISABLED BENEFICIARY?**
- Have you **UPDATED YOUR PLAN** when changes occur in family, circumstances, assets place of living, etc.?
- Have you considered **ELDER PLANNING** (financial planning/asset protection, living arrangements, having a 'trusted network')?

# Contact Us

- Please make an appointment at your convenience
- Dave or Jeremy can be reached at 215-736-2521
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