John Doe

Estate Planning Documents

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Tab #1



Introduction and

Estate Plan Summary



The Introduction touches on a few explanations as well as a few items that merit special attention. Basic information relating to the maintenance and possession of your estate plan is included.

Something to consider when reading an estate plan is the audience for whom it was drafted. Our drafting style is first to ensure the integrity of the plan before any readability concerns are addressed. For example, we take very few liberties in ease of readability when drafting provisions relating to taxes—we are writing specifically to address the issues that could theoretically be brought up with the IRS. As so, we have also included this cover letter and “Summary of Estate Planning Provisions” which explains the essence of each document, with more detail given to the Living Trust.

Should you have any additional questions or would like a further explanation of any document, please feel free to contact us.

Tab #2

 

Revocable Living Trust and

Declaration of Trust



The Revocable Living Trust is the core document of your estate plan; every other document in your plan relates to it, works together with it, supports it, or protects it. Note that the Revocable Living Trust is a “pass-through” and “see-through” entity, which means that although it is a separate entity for ownership purposes, you do not need to file a separate tax return, and any assets owned by the Trust are not exempt from creditors. Note that the “EIN” of the Trust will be your Social Security Number.

Behind the Trust document is the Declaration of Trust. This could be considered a corollary document, but case law has frowned upon this document not being attached to the Trust or not in close proximity to the Trust. The purpose of this document is to support the Trust in the fact that you intend all of your property to be owned by the Trust.

Last, is the Personal Property Distribution form, which allows you to specify to whom you want certain items of your personal property distributed. You can update and amend this on your own. Note that these distributions should not be inconsistent with anything explicitly stated otherwise in the Trust.

Tab #3

 

Pourover Will(s)



Although a Will and a Trust appear to be redundant in one’s estate plan, they are mutually exclusive in a few respects. A Pourover Will is simply a standard Will with a special role when included in an estate plan with a Trust, with the term, “Pourover” indicative of this role. First, if an item of property or any asset is not properly “funded” (See the information behind Tab #7, “Trust Funding Instructions / Information”) into the Trust, then such assets would likely be subject to the Probate process. Although Probate is the very last resort for such an item of property, a Pourover Will acts as a back-up to the Trust to take the asset through Probate if needed, and to eventually “deposit” it into the Trust and allow it to be distributed pursuant to the terms of the Trust.

The other primary role of a Pourover Will is to name guardians for any minor children. In California, a Will is the document in which this determination is made. And although the Will acts as a back-up to the Trust in some respects, it is a primary document when naming guardians.

Tab #4

 

Power(s) of Attorney

 

The Power of Attorney for Financial and Personal Affairs works independent of your Trust, but complimentary to it. The “successor trustee” appointed in your Trust document has the authority to manage the affairs of your Trust assets, whereas your agent(s) designated in your Power of Attorney handle affairs relating to non-Trust assets and other personal affairs.

Although the successor trustee will be the one managing much of your property should you become incapacitated, there are certain items of property that only an agent designated by a Power of Attorney can manage. For example, certain federal laws prohibit trustee management of 401(k)s and other tax-favored retirement plans and only allow an appointed agent.

Also, there are certain affairs not related to property that an agent will be able to take care of such as managing cell phone contacts, property leases, and the signing of tax returns and corresponding with government and private agencies and organizations on your behalf.

Tab #5

 

Advance Health Care

Directive(s)



The Advance Health Care Directive is essentially a Power of Attorney, but for health care and end-of-life decisions only. You are able to make certain decisions and elections which are reflected in the actual document, but your agent will be able to make all other decisions as they relate to your medical affairs and health.

The primary issue is the end-of-life decision, which is a decision that you made during the preparation of the document. If your choice is not to prolong life, note that there will be very little, if any, judgment your agents will need to exercise. The Advance Health Care Directive is very descriptive in the conditions that need to be present in the order for this to even be an issue. The final decision, whether made by the attending physician or an agent, is usually just a formality. In the past, there was a separate document referred to as a “Living Will,” which is now commonly eliminated as a separate document and such provisions included with the Advance Health Care Directive.

The enclosed HIPAA Authorization allows access to your medical records by your agents, which, under federal law, is not otherwise allowed.

Tab #6

 

Certification of Trust



The Certification of Trust (sometimes referred to as the “Certificate of Trust”) is a summary of the Living Trust, but is also a legally effective document. Occasionally, when doing business in the name of the Trust (opening a bank account in the name of the Trust, re-financing your house in the name of the Trust, etc.), you may be requested to furnish a copy of the Trust or information about the Trust. The Certification of Trust acts as a legal executive summary of the Trust, and most of the time satisfies this request. Feel free to furnish a copy of the Certification of Trust if requested without fear of the private provisions related to the distribution of your assets being known.

More and more common is the practice of banks and other financial institutions to balk at accepting a Certification of Trust (although doing so is prohibited by law). In place of willingly accepting this document, you might be asked to fill out a form asking for certain information about the Trust. When a bank or financial institution does this, they are effectively having you create another Certification of Trust, but on their standardized form. Although you are not required to do this, it is almost always more convenient than pushing your own Certification of Trust. Note that you can use your own Certification of Trust to fill out any such form from the bank or financial institution.

Tab #7

 

Instructions on Transferring

Your Assets to Your Trust



A Living Trust can hardly act in the manner intended unless the creator’s assets are subject to the Trust’s authority. The appropriate term for transferring one’s assets to the control and authority of the Trust is “funding” the Trust.

A good rule of thumb is that all assets that have your name on them need to instead, have the name of the Trust on them, if possible. If not possible, the asset or account likely has some sort of designation ability to name a beneficiary, which should be the Trust itself. There are a few nuances and things to consider, and the following document provides instruction on how to fund various assets into the Trust. There is nothing to sign behind this tab as it is solely a reference document.

Tab #8

 

Marital Property /

Joint Ownership Agreement(s)



The Marital Property Agreement essentially clarifies that all property of either spouse, regardless of who more commonly consumed or managed the asset, is to be treated as one whole for purposes of distribution; but only after taking into consideration Pre-Nuptial Agreements and separate property rights. Note that a Marital Property Agreement as included in one’s estate plan cannot, and should not be relied on to alter a Pre-Nuptial Agreement or change the character of property to, and from separate property or community property. For most plans, this is not too much of a concern, but those families with separate property or Pre-Nuptial Agreements, a well-drafted Marital Property Agreement is essential.

Similar to the need for a Marital Property Agreement, some situations where property is jointly owned by parties to the Trust, or a party to the Trust, and a third party, clarification is needed to define the ultimate disposition of such property. These documents are rarely needed, but critical when relevant.

Tab #9

 

Assignment of

Personal Property



Trustees have authority to manage all property that is owned by the Trust. Should any property fall outside ownership of the Living Trust, the trustee cannot manage or distribute that particular asset. Instruction is provided elsewhere within these documents on how to properly transfer assets so that they are owned by the Trust.

Nevertheless, personal property (furniture, jewelry, art, clothing, etc.) does not have papers or records of ownership, but rather the common law principle that mere rightful possession denotes ownership. As so, an Assignment of Personal Property is needed to legally transfer ownership of your personal property so that it may be properly managed and distributed by your successor trustees.

Tab #10

 

Final Disposition

Instructions



Although not integral to an estate plan, instructions for your next of kin in relation to memorial services or internment is a right afforded to an individual under certain provisions of the Probate Code.

Please make notes on this document as you wish. If you have other forms or records outlining your wishes or pre-need arrangements, feel free to include them in here as well.