



## *miracle law*



### **Basic Objectives: Issues to Consider in Estate Planning**

- How do you want your assets distributed?
- The people who receive your assets are called beneficiaries. If any beneficiaries you have chosen to benefit do not survive you, who should receive those assets?
- Should distributions be made in equal shares?
- Do some of your beneficiaries have special needs?
- Do you want to give anyone special items such as family antiques and jewelry?
- Do you wish to include any charity or church?
- If you have children under eighteen years of age, you need to name a guardian to care for them and a conservator to manage their financial affairs. An alternate guardian and conservator should be named in case the first person named cannot serve for any reason.
- Should you have a durable power of attorney prepared? If you become incapable of handling your own affairs, you will need a person you trust (spouse, relative, trusted friend, etc.) to deal with your finances on your behalf (deposit checks, pay bills, etc.). A durable power of attorney accomplishes this and avoids the necessity of a court proceeding to appoint a conservator to act for you.
- Should you make a Living Will in which you direct the type of medical treatment you would like in the event you are in a permanent coma or terminally ill?

### ↗ Choosing your Trustee and Personal Representative ↗

Your estate will be administered by your Trustee and/or Personal Representative. The Trustee and Personal Representative's responsibilities include paying funeral bills, handling any claims against the estate; selling assets; temporarily investing money while the estate is being administered; preparing (as required) the Federal estate tax return, and a fiduciary income tax return; properly accounting for the assets and income received; and, after all responsibilities have been completed, distributing the remaining assets to the beneficiaries. The Trustee and Personal Representative must be available to handle the frequent problems that arise in the administration of your estate and should be capable of making sound decisions.

Any adult resident of the United States may act as Trustee and Personal Representative, but it is helpful to appoint someone who is capable of keeping accurate records and has a basic level of financial knowledge (e.g., knows what mutual funds and life insurance are). This is primarily a short-term job, but it varies widely depending on the estate. A typical first choice is your spouse. If you name an individual as your Trustee and Personal Representative, you should name an alternate in the event the person designated should die or be unable to assume the responsibility. You may also name a professional Trustee if your family dynamics are complicated. A lawyer, accountant, or bank which has a trust department may be a good choice.

## Tax Implications

➤ *When a person dies, his or her estate may be subject to estate taxes.*

### Federal Estate Tax:

The federal estate tax is assessed against assets owned in your own name, assets which you own in trust, life insurance proceeds and pension or retirement funds. Assets which you own jointly with others are also taxed if you supplied the money to make the purchase (or if it was received by gift or inheritance). In this case of joint property owned by a married couple, one-half the value of the joint property is included in the estate of the first spouse to die.

There will be no federal estate tax on estates under \$12,920,000 in 2023 (\$12,920,000 being the current "exemption"). In addition, there is an unlimited marital deduction for property passing to a spouse who is a U.S. citizen, and when certain guidelines are followed, a surviving spouse may utilize any of his or her spouse's unused exemption, which is the so-called "portability" provision in the law.

### Michigan Estate Tax:

Since October 1, 1993, Michigan has had an estate tax described as a "pick up" death tax. The tax is designed to be equal to the credit against state taxes allowed by the federal government as an offset against the federal estate tax liability. Unfortunately for Michigan (and most other states), this credit has been phased out. Michigan has never had a separate gift tax.

## MARRIED CLIENTS AND/OR THOSE WITH MINOR CHILDREN

*If you are married and/or have minor children, you should think about the following issues:*

### Common Accident:

The possibility of an accident in which you and your spouse die should be considered. State law provides that a person becomes an adult at age eighteen. This means that assets given to children are distributed to each child at age eighteen regardless of the amount or the needs of your other children. Rather than giving assets outright to a young child, it is frequently more prudent to delay distribution until the child is more mature. A trust can be set up for support and education which delays division and distribution to each child until all of them have completed their education or reached a certain age.

### Guardian and Conservator:

If your children are under eighteen years of age, you should appoint a Guardian and Conservator for them in the event both of you die. A Guardian exercises powers over the person and a Conservator exercises powers over the property of the person. You can name either an individual, married couple or bank as Conservator. You may also wish to name alternates. If you decide to set up a Trust for the benefit of your young children, this Trust can handle the assets. For example, you could name a relative or close friend as Guardian to take care of the children and leave the responsibilities of investment to a bank or another individual as Trustee.

### Trusts for Children or Grandchildren:

If you have minor children or grandchildren you intend to leave assets to, there are a few models for doing this. You could have a separate trust for each beneficiary or a common pot trust. You can specify essentially any rules you want about your beneficiaries' rights in his or her trust. It is typically common to provide that the trust funds are available for their health, education, maintenance, and support. When a beneficiary turns the age you specified, they can receive additional income or principal from their trust.