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ESTATE PLANNING FUNDAMENTAL FOR SENIORS

tax planning. Without such directives in place, a person's estate will pass pursuant to the provisions of the California Probate Code, which may not yield the intended result, and may be subject to otherwise avoidable costs and taxation.

ML: What are the main components of an estate plan?

JS: The typical estate plan for a California resident consists of (1) a revocable living trust, (2) a "pour-over" will, (3) a financial power of attorney and (4) a health care power of attorney. The most important of these is the revocable living trust, which allows one's appointed successor trustee, who is a typically a trusted family member, friend, or professional, to manage one's estate during any periods of incapacity. At death, the living trust allows assets to pass to one's intended beneficiaries without the need for a court-supervised probate, and, along with other estate planning tools can allow for tax planning so that the estate is not subject to otherwise avoidable tax liability. The "pour-over" will is mostly a supportive document and allows assets that weren't transferred into the trust during one's life, to be "poured over" into the trust after death. The powers of attorney appoint trusted individuals to make health care and financial decisions for a person should the need for that arise.

ML: In what ways are seniors, in particular, putting their assets and health at risk by not having these plans in place?

JS: Without an estate plan in place, a probate court proceedings will likely be required for the distribution of assets to one's heirs, the potential for tax planning is limited and there will be no legally binding expression directing the management and distribution of one's assets. This leaves the estate vulnerable to otherwise avoidable administrative costs and tax liability and can leave the door open for financial abuse. If there is no plan in place, navigating the issues that arise following a death can be particularly stressful and confusing for seniors who have just lost a spouse and are grieving.

With respect to health, a health care power of attorney is essential to allow the agent of your choice to quickly make decisions for you should the need arise, and to provide direction as to the type and level of care you wish to receive, if you are not able to effectively communicate that yourself. Without an estate plan, there will be no support system in place should capacity issues arise and health care decisions may take place that are not consistent with one's wishes.

ML: In working with clients on the real estate planning side, we have learned that there are a number of common pitfalls and mistakes people make when it comes to their estate plans. Can you highlight some of these?

JS: One of the major mistakes we see is when people forget to properly fund their revocable living trusts. For the trust to be effective, all assets held in the estate, including real estate holdings, should be transferred into the name of the trust. With respect to real property, most estate planners will prepare the deeds required to transfer any real property into the trust as

part of the creation of the estate plan. However, when property is acquired after the estate plan has already been drafted, it is common for people to forget to take title in the name of their trust. Also, during a refinance, mortgage companies will often require the property to be temporarily taken out of the trust and put back into the borrower's name for the purpose of the loan. Too often, people forget to put the property back into the name of the trust after the refinance transaction is complete.

ML: How often should people review and update their estate plans? Why is this important to do?

JS: We typically advise clients to review their estate plan annually to ensure that it is still consistent with their desires as to the disposition of their estate. Certainly, if there has been major life change, such as a divorce, death, sale of a business, receipt of inheritance, etc., the estate plan should be revisited. Also, if there have been significant changes in tax law, the estate plan should be reviewed. This is important because an estate plan created years ago may no longer express one's current intentions and may not be appropriate in light of changes in law.

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An Interview between Monica Lenches, Seniors Real Estate Specialist, and Jeff Soderborg, Estate Planning attorney with Barnes & Barnes.

ML: According to the National Association of Estate Planners & Councils, more than 120 million Americans do not have updated estate plans or any long-term financial plans. Holly and I have found this to also be true amongst homeowners in Hope Ranch and Montecito. Why is having an estate plan so important?

JS: An estate plan serves two primary goals - (1) to provide incapacity planning and (2) to help ensure that a person's assets pass to his or her intended beneficiaries with the least amount of administrative cost and taxation as possible. As to the former, estate planning documents appoint trusted individuals who can act on behalf of a person should that person lose mental capacity. Without such documents in place, a court-supervised conservatorship may be required, which is both costly and invasive to one's privacy. As to the latter, an estate plan directs distribution to one's intended beneficiaries, avoids the necessity of a court-supervised probate to distribute assets and allows for

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