WHY YOU NEED TO CONSIDER ESTATE PLANNING

IF YOU DO NOT PLAN FOR YOUR ESTATE

1. When you die, the estate must go through the probate court

   Problems with probate

   a) **Cost**- 6% of gross estate is national average
      lawyers charge hourly fees
      court costs are expensive
      costs must be paid before anyone else
      need accountant to file final income tax returns

   b) **Takes too long**
      IL- minimum of 6 months to close estate
      averages over one and a half years to close estate
      concern: beneficiaries not paid till estate closed
      concern: all creditors of estate paid prior to its closing

   c) **Public record**
      anyone can see what you died owing and owning
      swindlers can pray on unsuspecting spouses who inherited lots of money and don't know what to do with it

   d) **Loss of control**
      no longer have control over your property and who is to receive it
      Court is now in control

2. Can not reduce federal estate taxes
3. Can not protect yourself in case of future disability
4. Can not keep creditors from attaching your assets
5. Can not decide how your property to be divided- state law to decide
6. Can not decide who will care for your minor children
7. Can not decide who will handle your financial affairs at your death

HOW ESTATE PLANNING CHANGES BY USING A WILL

Advantages over no planning:

1. Can decide who will care for your minor children
2. Can decide who is to receive your property
3. Can decide who will handle your financial affairs at your death

Disadvantages that remain:

1. Still need to go to probate
2. Can not reduce federal estate taxes
3. Can not protect assets from creditors
4. Can not stop Court from taking control of assets if you become incapacitated
5. Allows you to dispose only of assets you own solely, not those in joint ownership

WHAT A REVOCABLE LIVING TRUST ADDS TO ESTATE PLANNING

Advantages over no planning and having just a will

1. Avoids time delay of probate
   Beneficiaries receive their money a lot sooner
2. Avoids cost of probate
   No attorneys fees or court costs
   Everything is transferred to new owner automatically
3. Only way to avoid out of state probate if you own real estate in another state
4. Protects your assets in the event you become incapacitated/ disabled
   Allows successor trustee to manage assets
   More preferred and accepted by banks than powers of attorney
5. Maximum privacy
6. Minimizes emotional stress on your family
7. Can reduce or eliminate estate taxes (if used with certain trusts)
8. Allows trust to keep beneficiaries assets under control until no longer minors
9. Easier to make fair distributions to minors
10. Prevents court interference when minors inherit property
11. Can protect dependents with special needs
12. Prevents unintentional disinheriting
13. More difficult to contest than a will
14. Provides effective pre-nuptual protection
15. Inexpensive to set up and maintain
16. Can be changed or cancelled at any time
17. You keep maximum control during your life, if you want

Common misconceptions as to the disadvantages of living trusts

1. Costs more to set up than a will generally
   Practice of preventative law pays off in the end
   Difference is minimal, considering the cost it is saving
2. Have to pay management fees to Trustee
   Not during your life, you are trustee
   If Corporate trustee is used- experience in investing outweighs the value of the fee
3. If you hear Probate is not expensive- someone is lying to you.
   Ask for proof.
4. You lose Court's supervision
   Not needed
   Successor Trustee has to wind up estate, but does not need Court approval
   May still need to hire attorneys, accountants, etc., but much lower cost and paperwork
5. Still may go through Probate
   If you properly fund your trust with all your assets, it **will not go through probate**.
6. Difficulty to change titles and beneficiary designations
   You can do most of it yourself, if you spend the time
   You can hire an attorney to do it now for a lower price than you will pay later
   Titles and designations must be changed at some point (now or later)

DISADVANTAGES TO OWNING EVERYTHING JOINTLY WITH SPOUSE

1. Surviving spouse has to remove other's name from everything when they should be grieving
2. Surviving spouse owns solo- now will be part of her estate
3. Each joint owner considered 100% owner of property
   Assets exposed to co-tenants debts and obligation
   Could wind up losing property to other owner's debts
4. Co-owner could sell without your knowledge or approval
5. If co-tenant with minor, need guardian appointed by court to sell/refinance, etc.
6. If co-owner becomes incapacitated- need court approval for everything
7. Can not take advantage of tax planning from federal estate tax
8. **No disability protection**
9. Can't sell, transfer stock, bonds, etc. without other owner's signature
10. Can't withdraw money from life insurance policy without other owner's signature
11. Can't sell house without other owner's signature
12. Can unintentionally disinherit family members
13. **Does not avoid probate- just postpones it**
14. Difficult to get joint tenant's name off the title

WHAT AN IRREVOCABLE LIFE INSURANCE TRUST ADDS TO YOUR ESTATE PLAN

Life insurance provides for:

1. Liquidity upon death- can pay short term expenses
2. Prevents sale of assets
3. Can fund specific gifts

Without planning, life insurance will be considered an asset of your estate

This will constitute the bulk of your estate

This will normally create a major estate tax problem

Can use life insurance trust to remove from your estate upon death

Leave all income to spouse for life and then remainder goes to your children as beneficiaries, tax free

Can also leave money to spouse for support

Trust owns the life insurance for you

Drawbacks-

1. If transfer existing policy to trust- must live for 3 years or policy reverts back to your estate
   But if trust buys new policy- no reversion
2. Trust is irrevocable- meaning you can not change or cancel it during your life
3. Transferring premiums may cause gift taxes if not properly planned
   But, the cost spent during life to set up and maintain trust is far outweighed by the savings this trust offers as an estate tax reduction technique.

The legal fees to set up a proper estate plan, including a joint revocable living trust, an irrevocable life insurance trust, a pour-over will, a heath care power of attorney, a living will, and a power of attorney for property will cost less, on the average, than the legal fees just to probate an estate with no planning. That does not take into account the additional probate costs, executor fees, and federal estate taxes. Proper estate planning is the best way to protect the ones you love.