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Attorneys at Law

Estate Planning

Planning for Today and Tomorrow

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Introduction

We created this brochure to give our estate planning clients an overview of the estate planning process, and the services that our firm provides.

We work closely with our clients in developing plans that meet their current and future objectives. Often this is a team approach that involves our clients and their accountants, financial planners, insurance agents, trust officers and other advisers. Careful planning can make sure that your wishes are carried out, minimize the potential for family conflict, and reduce estate administration expenses and taxes.

What you should expect from us

Before our initial estate planning conference we will send you a confidential questionnaire that asks you to provide us with important information concerning your family, finances and property, and your dispositive plans, including any special needs that members of your family might have. This will be a good opportunity for you to consider whom you want to name as executor of your estate, and as guardian for any minor children that you

might have. While we recognize that you may not be able to provide all of this information before our conference, to the extent that you are able to do so, our conference will be much more productive. We find that this questionnaire encourages our clients to consider these important matters before we meet, and results in less legal time, which thereby reduces the cost of their estate plans. Our estate planning questionnaire may also be downloaded from our firm's website, which may be found at www.southernvermontattorneys.com.

After our initial conference we will usually send you draft estate planning documents, as well as a letter that summarizes the scope of our representation and an estimate of the fee for our estate planning services, which we will discuss with you. Any questions or changes can often be discussed in a subsequent telephone conference. At our signing conference we will review your estate planning documents, and attend their signing before witnesses and a Notary Public. After your estate planning documents are signed, we will send you a letter confirming where you plan to keep these important documents, and when we should review your estate plan once again.

Frequently asked questions

1. *What happens to my estate if I should die without a will?*

As surprising as this may seem, most of those who die in our country each year do so without a will. If you fail to plan your estate by dying without a will, your estate will pass under your state's laws of intestacy to your closest living relatives. Some mistakenly believe that if you die without a will, your estate will pass to the state in which you reside.

Property that is distributable to minor children requires cumbersome guardianship proceedings until they attain the age of majority, which is 18 in Vermont and New Hampshire. If you die without a will and leave minor children, the probate court will appoint a guardian for them. When you make a will, you may name a guardian for your children and an executor to settle your estate. In the absence of a will, state statutes give various relatives priority to administer your estate, who may not be the individuals whom you would have chosen. These inflexible statutory provisions are unlikely to reflect your wishes.

2. *Does my will distribute all of my assets?*

No. Property owned jointly with right of survivorship, which is "transferrable

or payable upon death,'' which is held in trust, and which passes by beneficiary designation, such as retirement accounts and life insurance policies, does not usually pass under the terms of your will through probate. With the tremendous increase in the value of retirement accounts, more and more property is passing outside of probate proceedings. Therefore, it is essential that you review the form of ownership of your assets and their beneficiary designations. This is often overlooked following a marriage or a divorce, or simply with the passage of time. We will review your beneficiary designations and how you own your property to be sure that they are consistent with your wishes, and minimize and defer taxes to the extent possible.

3. *If I own everything jointly, why do I need a will?*

Joint ownership of assets makes good sense for many couples with relatively modest assets who have been married for a considerable period of time, when they are both the parents of all of their children. When couples own their property jointly they nevertheless should have wills to address the possibility of simultaneous death, to dispose of their property upon the death of the second spouse, and to appoint executors and guardians for minor children. It is impossible to know whether a joint tenant will die before you, and there is the remote possibility that you could both die in a common disaster. Furthermore, upon the death of the first spouse, the surviving spouse may lack the capacity to sign a will and other estate planning documents.

Placing property in joint ownership with a child exposes that property to potential claims of their creditors and spouses. If you want a certain bank account, for example, to pass to a child upon your death, it would be better to have that account registered such that it is "pay on death" or "transfer on death" to that child.

When property is placed in joint ownership or titled "pay on death" for your convenience to guard against incapacity or avoid probate, questions may arise as to whether or not you wanted that property to pass to the surviving joint tenant or designated individual, or under the terms of your will, thereby creating confusion and the possibility of conflict and litigation among your children. Because that property will not be a part of your probate estate, it will not bear a share of your estate's expenses and debts, which could also create conflict. We usually suggest that our clients provide for incapacity through durable powers of attorney, and, when appropriate, a trust.

4. Do I need a lawyer to prepare a will?

The proliferation of legal forms and software causes many to consider drafting their own wills and other estate planning documents. Probate courts strive to give effect to the intent of those who make wills, and in many cases these self-made wills are valid and are allowed by those courts. The law contains specific requirements for the execution of wills, which not all legal forms and software address properly. Self-made wills can be a source of litigation that is far more expensive and divisive then having a qualified lawyer prepare those documents. Furthermore, an attorney's in-depth questioning process and analysis of each matter is usually as important as the drafting of estate planning documents. We can help you create and implement an estate plan to achieve your unique objectives.

5. Why is my will so long?

While a will could conceivably be as short as one page, such an abbreviated document may not accomplish your objectives, and lead to unnecessary delay and expense. The wills we draft address a wide range of legal and factual situations that may arise. We will strive to make sure that you understand the provisions of your will and other estate planning documents before you sign those documents.

6. Where should I keep my will?

It is important to keep your will in a safe place where it can be readily located by your executor when it is needed. Although safe deposit boxes and home safes are common repositories, there can be delays involved with opening them after your death. In Vermont, probate courts retain wills for a nominal charge. Because your will is a private document during your lifetime, probate courts will release them only to you or your court-appointed guardian.

7. What is a trust, and should I have one?

A trust is an arrangement wherein property is given to a trustee to manage for the benefit of one or more beneficiaries. The person that establishes a trust is often the initial trustee, and there are provisions in the trust agreement for the appointment of one or more successor trustees. In most cases the beneficiary of a trust receives the income from the trust for life, or until he or she reaches a certain age or ages, at which point the trust property is distributed outright to other individuals or charities. Trusts created under the

terms of wills are known as testamentary trusts, and those created during the maker's life are known as revocable living or “inter-vivos” trusts.

Trusts are versatile and effective estate planning tools. For example, revocable trusts may (1) delay distribution to children until they have attained an age or ages when they are able to handle substantial sums; (2) encourage or discourage certain behaviors; (3) preserve assets for children with special needs so as not to disqualify them from any public benefits for which they might otherwise be eligible; (4) benefit a surviving spouse while retaining property for children from a prior marriage; (5) hold real estate that is located in another state in order to avoid probate administration in more than one state; (6) facilitate the professional management of assets by a corporate trustee during lifetime; (7) minimize or eliminate estate taxes for couples with substantial assets, and (8) avoid probate. Trusts can effectively double the amount that a couple can leave without incurring estate taxes. Much like jointly held property or accounts or securities that are payable or transferrable on death, property held in trust during lifetime does not pass through probate.

When people die, various personal, financial and legal matters need to be addressed, whether through a will or trust agreement, or those people die intestate. The fact that property held in trust during lifetime does not pass through probate is often emphasized in seminars and in the media. While there are a number of states where probate is to be avoided, in Vermont and New Hampshire probate courts do a good job of looking out for the interests of heirs, devisees and legatees, and making sure that expenses are kept within reason. Probate courts are an informal, economical forum within which to resolve disputes. Although a revocable trust can be extremely beneficial in certain situations, their benefits are sometimes overstated. All of our clients’ situations and their resulting estate planning documents are unique.

8. What is a durable power of attorney?

A durable power of attorney is a written agreement in which you appoint some other person to perform specific acts for you. Most of our clients have appointed agents to make a broad range of financial decisions for them if they become unable to make those decisions themselves. In light of the broad authority and discretion that a durable power of attorney typically confers, and the lack of judicial oversight, it is important to designate someone in whom you have complete confidence to serve as your agent. Durable powers of attorney can prevent protracted and expensive guardianship proceedings. It is important to note the authority granted under a durable power of attorney ceases when the person that signed that power of attorney dies.

9. What is an advance directive?

An advance directive is a document whereby you appoint an agent or agents to make health care decisions for you if you become unable to make those decisions for yourself. It is essentially a power of attorney to appoint your agent to make your health care decisions, and a living will which states your wishes, including those related to terminal care. While it is important to have an advance directive, it is equally important to discuss your wishes concerning terminal care with your family, physician and spiritual advisor.

10. What is long-term care planning, and will a nursing home or the government receive all of my assets?

Many people wrongly assume that either their health insurance policy or Medicare will pay for their care at home, in an assisted living facility, or in a nursing home. Medicare does not pay for extended long-term care. Medicaid pays in most instances for care only after your funds have been almost completely depleted. Longterm care insurance is appropriate for many individuals who want to leave their estates without having their assets diminished by their own health care costs. Careful planning may protect substantial assets to permit them to pass to your beneficiaries. Our firm can also assist in the application process for Medicaid benefits.

11. What is involved with estate administration?

Estate administration is a process that involves having a will allowed by the probate court or having an administrator appointed to settle an estate, filing an inventory of estate assets, paying debts and taxes, securing tax clearances from the state, accounting to the court, and distributing property to the beneficiaries under the will or the estate's heirs. Probate court employees are helpful, and attorneys are not required to settle some estates. When real estate is involved, executors will probably want an attorney to assist them with the administration of the estates for which they are responsible. In many cases the assistance of a qualified attorney can avoid the problems, delays and unexpected consequences that may arise during estate administration.

12. How will my estate be taxed?

Estate taxes are not a concern for most of our clients, given the extent of their assets. The amount that is exempt from federal estate taxes in 2015 is $5.43 million per person. Beneficiaries who receive assets from decedents receive a step-up in basis to the fair market value as of the date of death. A relatively new provision permits surviving spouses to apply the unused portion of a deceased spouse's $5.43 million estate tax exemption to increase the surviving spouse's exemption, provided that an estate tax return is filed upon the death of the first spouse. The federal gift tax annual exclusion rose to $14,000 in 2012. Vermont does not impose a tax on gifts.

In 2009 the Vermont Legislature imposed a Vermont estate tax upon estates larger than $2 million. Vermont thereby joined 16 other states, including every state in New England except for New Hampshire in decoupling from the federal estate tax. The Vermont estate tax exemption is now $2,750,000. Although it has yet to do so, the Vermont Legislature has stated its intention that it will raise this exemption to $3.5 million. New Hampshire is considering imposing a state estate tax.

13. How often should I review my estate plan?

We suggest that you contact us every five years to review your estate plan and update the information in our files, and more often if changes in the tax laws affect your plan. We also suggest you contact us when your wishes change, in the event of a major change in your financial situation or in your family or with your executor, and if there is a significant change in your health. Notice of a substantial inheritance may create opportunities for tax savings. It will be important for us to discuss this matter before you actually receive that inheritance. In addition, you should contact us to determine whether changes in tax laws should be reflected in your estate plan. Minor modifications to our clients' estate plans can often be accomplished by revisions to their estate planning documents. Normally any such modifications will involve relatively little legal work, and therefore the expense is usually quite modest. Because we are unable to advise our clients of future changes in the law that may affect them, it is important for our clients to meet with their tax advisors and us periodically to review their estate plans.

Who We Are

Joseph F. Cook and Jonathan D. Secrest concentrate their practices in estate planning and administration.

Joe graduated *cum laude* from Vermont Law School in 1997, where he was asked to serve on law review. Earlier in his career Joe was a Vice President and Trust Officer responsible for the regional trust office of a local bank, where he worked for 18 years. Joe's responsibilities included administering $115 million in investments for his clients through several hundred agency accounts, trusts, and estates, as well as the review of wills and trust agreements, the preparation of federal estate tax returns, and interaction with probate courts, attorneys, and other professionals.

Joe is the President of the Putney Bicycle Club, vice-chair of the Dummerston Selectboard and serves on a hearing panel for the Vermont Professional Responsibility Board. He testified before the Vermont House and Senate Judiciary committees, and was instrumental in Vermont's adoption of the Uniform Transfers to Minors Act. Joe has served on the Committee of Rules of Probate Procedure for Probate Court of the Vermont Supreme Court. Joe is the president of the Putney Bicycle Club, and chairs the Investment Committee of the Newfane Congregational Church. Joe is the former Chair of the Brattleboro Union High School Board, and a former President of the Green Mountain Club.

Jonathan graduated *magna cum laude* from Amherst College, and graduated from Northwestern University School of Law. Before moving to Vermont, he worked as an attorney in the federal government and in a prominent national law firm, and also served as a senior aide to a United States Senator. A founding member of the Vermont chapter of the National Academy of Elder Law Attorneys, Jonathan drafts wills and trusts, advises clients on tax matters and business succession issues, and counsels clients regarding asset preservation, special needs trusts, and Medicaid planning.

Jonathan has testified on legal matters before the legislature and argued before the Vermont Supreme Court. He is a member of the Brattleboro Memorial Hospital Clinical Ethics Committee, heads the hospital's Planned Giving Advisory Council, is active with the Sunrise Rotary Club, and will be serving as its President in 2014.

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