



Estate Plan Strategies and Legal Toolbox for Long Term Care



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Presented by:

Jon S. Schroeder

Attorney at Law
PO Box 4
Curtis, NE 69025
(308)367-4141
schroeder@curtis-ne.com



Experience

- 34 years – Attorney
- Filed over 500 Estates
- Filed over 60 Federal Estate Tax Returns
- Drawn over 3,500 Wills
- Created and Administered over 400 Trusts



Experience Continued

- 28 years – County Attorney
- President of the County Attorney's Association
- 4th Generation Attorney
- 5th Generation – Daughter Whitney S. Lindstedt
- Offices in Curtis and Eustis



Family Background

- Wife is a clinical psychologist
- We have 4 children
- We have 2 granddaughters and hoping for more
- Honored to present today!
- Please ask questions!



Why You Need an Estate Plan

- Pass your property as you choose
- Reduce death taxes
- Reduce expenses
- Protect assets
- Protect beneficiaries
- Avoiding a mess



What your Will can do

- Give your property
 - All to spouse
 - Equally to children
 - Specific bequests
 - Credit Shelter Trust



HERMAN



7-13

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“Therefore, I leave my entire fortune
to my trusted lawyer.”



- Name Personal Representative
- Handle Expenses
- Predecease Language
- On the farm heir
 - Option to buy
 - Reduced price



“... and to my faithful valet, Sidney, whom I promised to remember in my will — ‘Hi there, Sidney’ —!”



Two Death Taxes

- Federal Estate Tax
 - Pay within 9 months
- 40% on amounts greater than
 - 2017 Exclusion-\$5,490,000
 - 2018 Exclusion -\$5,600,000



Example

	\$7,000,000	Gross Estate
-	<u>\$ 5,600,000</u>	Exclusion
	\$1,400,000	
x	<u> .40%</u>	
	\$ 560,000	Tax Owed

- Planning is needed

Portability Election

- Consider if over \$1,000,000 net worth
- Example

	\$7,000,000	
<u>\$3,500,000 Husband</u>		<u>\$3,500,000 Wife</u>
\$5,600,000 (Exclusion)		\$5,600,000
- <u>\$3,500,000</u>		+ <u>\$2,100,000(Excess)</u>
\$2,100,000 (Excess)	→	\$7,700,000 (Survivor's Exclusion)

Nebraska Inheritance Tax

- Paid to County of residence or County where real estate is located
- Spouse – tax free
- Child – 1% over \$40,000
- Niece and Nephew – 13% over \$15,000
- Nonrelative – 18% over \$10,000
- 1 Year to pay


Like a Child N.R.S. §77-2004-For more than 10 years

- Examples

\$1,000,000	\$1,000,000	\$1,000,000
x <u>18%</u>	x <u>13%</u>	x <u>1%</u>
\$ 180,000	\$ 130,000	\$ 10,000
\$170,000 savings	\$120,000 savings	

Factors

- In re Estate of Rollo E. Ackerman, 550 N.W. 2d 678
- In determining if the requisite acknowledged parental relationship exists for the purposes of N.R.S. §77-2004, the following factors should guide the trial court:
 1. Reception of the child into the home and treatment of the child as a member of the family.
 2. Assumption of the responsibility for support beyond occasional gifts and financial aid.
 3. Exercise of parental authority and discipline.
 4. Relationship by blood or marriage.
 5. Advice and guidance to the child.
 6. Sharing of time and affection.
 7. Existence of written documentation evincing the decedent's intent to act as a parent.




Personal Representative

- Important to name
- Multiple Personal Representatives
- Who to choose
- Good judgment and fair
- Can change as circumstances change




Bond-Protects Beneficiaries

- The Will waives requirement of a bond
- Saves money and hassle of applying for bond
- Waste if Personal Representative is honest



Laundry List

- Tangible personal property to named persons
- Rings, family heirlooms, etc.
- Signed and Dated



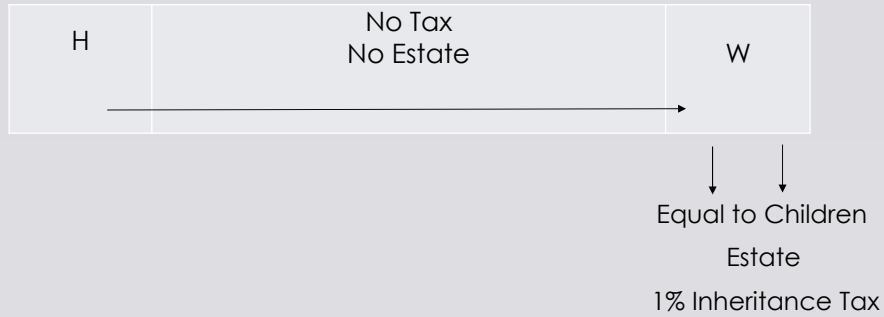
Simple Wills

- Net worth less than \$1,000,000
- Joint ownership of all assets
- No estate on first death
- No death tax
- No Notice in newspaper
- Cost \$100.00

Simple Will Illustration

1st Death

2nd Death



Minor Trust

- To protect inheritance of young beneficiaries
- Name trustees – handle the money
- Name custodians of children – very important
- Age for distribution – recommend 25

Reason To Make An Estate Plan #49

Your son, Frankie


- Still living at home at age 35
- Comes home at 4 a.m. and sleeps 'til noon
- Pays no rent, has his mother launder his clothes, and heartily participates in all family meals
- Works part time at the local video games store
- Begins every sentence with the word "Dude"



Are you sure you want to leave everything to him... No strings attached?


Adult Trust-Protect Adult Beneficiaries

- Name Trustee to invest and distribute money
- Age for distribution of principal
- If beneficiary dies before end of term, provide to whom principal descends
- Spend thrift provision



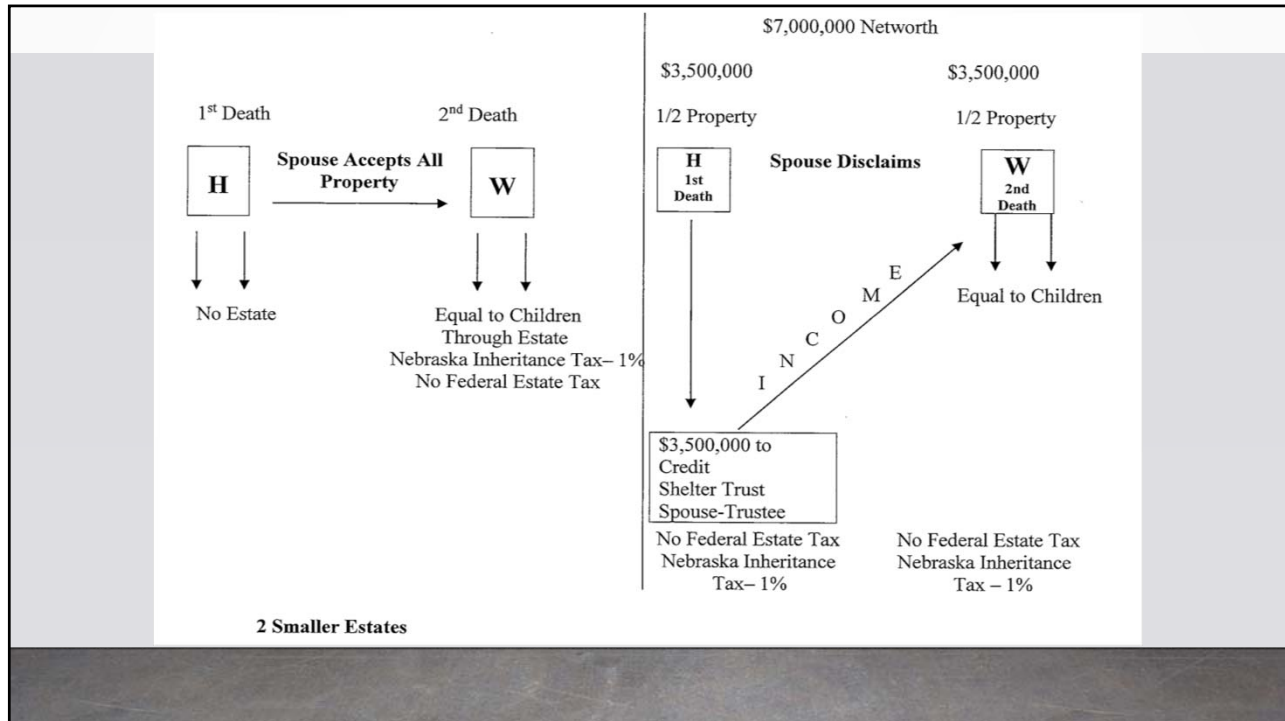
Discretionary Trust

- For those disabled and receiving governmental benefits
 - Prevents disqualification of benefits



Disclaimer Wills

- Net worth greater than \$1,000,000
- 2 smaller estates rather than 1 large estate
- Process
 - Talk about goals
 - Draw documents
 - Check title to assets and re-title
 - 2 to 3 conferences



- //////
- 2 Smaller Estates
 - On 2nd Death – Trust is terminated and distributed to beneficiaries
 - Survivor's Estate – distributed to beneficiaries



Estate Process

- Open Estate
- Notify Creditors
- Prepare Inventory
- Determination of Death Taxes
- File Income Tax Returns
- Distribute Property
- Close Estate

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- Time to administer estate
 - 3-5 Months
 - Meet every 2 weeks – telephone
 - Prepare an Inventory
 - Cash
 - Real estate

Ownership Must Fit Plan

- Types of ownership
 - Individual
 - Joint
 - Tenants in Common
- Non probate assets
 - Pay on death beneficiaries
 - IRAs
 - Joint tenancy
 - **Still subject to death tax**

Use of Entities in Estate Plans

- Limited Liability Company
- Advantages
 1. Limit Personal Liability
 2. Pass Through Taxation
 3. Better Deductions
 4. Gifting Vehicle
 - gift \$14,000 per year
 - double with spouses
 - plus grandchildren

Advantages Continued

5. Providing succession of management and control
6. Buy/Sell Provisions
7. Guardianship Substitute
8. Discount of value in estate:
 - Lack of marketability, transferability and lack of control

Example Gift of \$1,000,000

Year	Child 1	Child 2	Child 3	Child 4	Total Gifts
1	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$56,000
2	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$112,000
3	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$168,000
4	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$224,000
5	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$280,000
6	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$336,000
7	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$392,000
8	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$448,000
9	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$504,000
10	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$560,000
11	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$616,000
12	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$672,000
13	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$728,000
14	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$784,000
15	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$840,000
16	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$896,000
17	\$14,000.00	\$14,000.00	\$14,000.00	\$14,000.00	\$952,000
18	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$1,000,000



- Disadvantages of LLC
 - File tax return
 - File biennial report
 - Loss of Homestead Exemption
 - No 1031 Exchange
- S Corp has similar advantages and disadvantages



Formation of LLC

- Check availability of name with Secretary of State
- File Certificate of Organization with Secretary of State
- Obtain Federal ID Number
- Sign Operating Agreement
 - Buy/Sell important
 - Internal management



- Banking Resolution
- Corporate Book
- Ledger/Certificates
- Seal



General Partnerships


- Advantages
 - Simplicity and flexibility
 - No filing of forms with Secretary of State
 - Pass through tax treatment
 - Less expensive to form
- Disadvantages
 - No liability protection
 - Personal liability
 - Debts
 - Liabilities of partners

Revocable Living Trust

- Trust Steps
 - Set up Agreement
 - Fund Trust
 - Convey **all** assets to Trust
 - Assets still subject to death taxes
 - Still need Pour Over Wills
 - Trust failure




*We just created a living trust and I have no idea
what to feed it.*



Advantages

- Provide for and protect beneficiaries
 - Individuals who lack management skills
 - Persons susceptible to influence
- Retain flexibility
- Easy to revoke or amend
- Avoid probate
 - Probate = property passing through the Will



Disadvantages

- Loss of control over trust assets
- Trust must be funded
- Probate required for assets not transferred to trust
- Trust may be costly to create and maintain
- Beneficiaries have right to demand accounting
- Trust termination expenses



- More difficult to understand
- No additional death tax savings
- Trustee owes fiduciary duties to trust beneficiaries
- Probate may be more efficient and economical



Nursing Home Planning

- Home Care
- Independent living
- Assisted living - \$3,000.00 a month
- Full scale nursing home - \$8,000.00 a month
 - $\$8,000.00 \times 12 \text{ mo.} = \$96,000.00 \text{ a year}$



Solutions for Nursing Home

1. Die at home

- 40% of individuals who reach age 65 will enter a nursing home during their lifetimes
- 892 days (2.44 years) is the average length of stay for current nursing-home residents
- 65% of people who enter a nursing home die within one year of admission
- \$20 is the average hourly rate for a licensed, non-Medicare certified home health aide

2. Long Term Care Insurance

- Apply for insurance
- Pass physical
- Age to buy: 55+
- Hybrid policy
 - Long Term Care
 - Death benefit
- Price a policy

3. If No Long Term Care Insurance – It is a matter of cash flow

- Cash flow – \$8,000 (monthly)
 - Social Security – \$1,500
 - Farm rent – \$3,000
 - Interest income – \$1,000
 - Retirement income – \$2,000
 - \$7,500
- Need \$500 principal

4. Gifts to protect property

- Lifetime gifts up to \$5,600,000 without Gift Tax
- \$14,000 annual exclusion
 - Over \$14,000 requires filing of Gift Tax Return
- 5 year look back period on gifts
- No trusts and no reservation of life estate
 - LB 268 (2017)
- Capital gains
 - Outright gift - carryover tax basis
 - Run through estate- stepped up basis

Example- No Capital Gains

\$10,000 -	Purchase Price -Tax Basis
<u>\$10,000</u> -	Sale Price
\$ 0 -	Capital Gains

Example- Capital Gains

\$ 10,000 - Purchase Price –Tax Basis
\$100,000 - Sale Price
 \$ 90,000 - Gain
22% - Capital Gains Rate
 (Federal 15%, State 7%)
 \$ 19,800 - Capital Gains

Example- Estate

- Die owning property
 - \$100,000 - Stepped Up Tax Basis through Inventory
 - \$100,000 - Sale Price
 - \$ 0 - Capital Gains
- Cost 1% inheritance tax

Example- Life Time Gift

- Sale of gifted property
- | | | |
|------------------|---|----------------------|
| \$ 10,000 | - | Carry Over Tax Basis |
| <u>\$100,000</u> | - | Sale Price |
| \$ 90,000 | - | Gain |
| <u>22%</u> | - | Capital Gain Rate |
| \$ 19,800 | - | Capital Gains |

Example- Life Time Gift with Life Estate Reservation


- | | | |
|------------------|---|------------------|
| \$100,000 | - | Stepped Up Basis |
| <u>\$100,000</u> | - | Sale Price |
| \$ 0 | - | Capital Gains |

- If a life estate is reserved, beneficiaries must pay inheritance tax (1% over \$40,000 per child), however, they will receive a stepped up tax basis to fair market value as of date of death



Power of Attorney

- Very important
 - Avoids Guardianship/Conservatorship
- Business Power of Attorney
 - Name representatives (Same as Personal Representatives)
 - Use to pay bills
 - Power to sell real estate
 - Power to gift
 - Multiple other powers to care for principal



Healthcare Power of Attorney


- Important for healthcare
- Allows attorney in fact to make healthcare decisions when you cannot
- Avoids Guardianship
- Nursing Home requires
- May include living will instructions



"My grandkids came to visit. They talked mostly about world politics. Kept asking me how I felt about the youth in Asia."


Living Will

- If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Right of the Terminally Ill Act, to withhold or withdraw life sustaining treatment that is not necessary for my comfort or to alleviate pain.
- Many different varieties
- Share with doctors and hospitals



Life Insurance

- Useful for debt and minor children
- Use to equalize between children
- Generally not subject to death taxes
- Not income to beneficiaries
- Federal Estate Tax – included in Estate if decedent had incidences of ownership
- Use cross ownership to avoid
- Inheritance Tax – included only if payable to estate



Burial Plan

- Prepaid
- Planner



Family Agreements

- Settle Disputes
- Fix inequities
- All beneficiaries must agree
- Court approval required



Jon S. Schroeder
PO Box 4
Curtis, NE 69025
P: (308)367-4141
F: (308)367-4141
schroeder@curtis-ne.com