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Real Estate and Estate Planning 101

by

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Wills

If you do not have a will when you pass away, any assets held in your name alone will be distributed in accordance with the Maine laws of intestacy. This may or may not reflect your wishes regarding the disposition of your estate. There are many benefits to drafting a will, including:

- Directing the distribution of assets that you hold in your name alone, and ensuring that assets are titled correctly so that they are not distributed contrary to the terms of your will
- Nominating a guardian and/or conservator for a disabled or minor child
- Nominating a personal representative in the will who will be responsible for administering your estate

Trusts

Depending on the value of your estate, a well-drafted trust can, for example, reduce or even eliminate your potential estate tax liability. It is important to have a trust that is tailored to your particular needs and reflects your wishes for the disposition of your estate assets. Examples of common types of trusts are as follows:

- *Tax-Planning Trusts*: These trusts are effective tax-savings devices for a married couple with a combined estate of more than the federal and/or state applicable exclusion amount. It ensures that both spouses use their full exemption while also allowing the surviving spouse access to the estate
- *Minor's Trusts*: These trusts can be used to hold assets for a child who has not yet reached the age of maturity. The provisions governing these trusts, such as the age upon which the trust terminates, are flexible and can be tailored to the needs of the individual beneficiary
- *Irrevocable Life Insurance Trusts (ILITs)*: ILITs can own life insurance and, if structured correctly, the proceeds from the life insurance will be excludable from your taxable estate after your death and will not be subject to state or federal estate taxes. It provides an opportunity to set aside a pool of money that would be available to pay expenses and support your family
- *Supplemental Needs Trusts (SNTs)*: SNTs are a way to set aside a pool of money for a disabled individual and permit the individual to remain eligible for means-tested public benefits programs. SNTs can be used to pay for those items and services that are not covered by public benefits, thereby enhancing his or her quality of life. There are two types of SNTs: a first-party SNT, in which the disabled individual contributes his or her own assets to the trust, and a third-party SNT, in which a third party contributes assets to a SNT for the benefit of a disabled individual

Powers Of Attorney

A financial power of attorney allows you to name an agent who has the legal authority to manage your finances and assets in the event that you are unable to do so. An advanced health care directive (medical power of attorney) allows you to name an agent who will be

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responsible for making health care decisions and making sure that your wishes are carried out regarding a variety of life decisions, such as artificial nutrition and hydration, funeral arrangements and life support.

Residential Real Estate Acquisitions

A real estate attorney can play a valuable role representing a buyer in a residential real estate acquisition by reviewing documents and providing assistance and guidance on the following topics:

- Negotiating the purchase and sale agreement
- Ensuring the issuance of proper coverage by the title insurance company
- Completing due diligence for condominium purchases
- Drafting and amending leases for multi-tenant buildings
- Addressing easement, access and survey issues along with general zoning compliance
- Reviewing closing documents and settlement statement figures

Office Lease Negotiations

A business opening an office or relocating to a new space will typically enter into a commercial lease agreement with a landlord. A commercial lease can and should be negotiated on behalf of a tenant. Certain reasonable changes can be incorporated into the lease to:

- Protect the tenant against inadvertent default
- Ensure the landlord is held accountable for any failure to comply with its maintenance obligations and other responsibilities under the lease
- Provide the tenant with specific and designated rights for access, parking, signage and use of any and all common areas within the landlord's building

Financing Commercial Real Estate Acquisitions

If the purchase of a commercial building is financed by a local bank, the loan documents are typically negotiable. As in the case of a commercial lease, these loan documents can be modified to protect the borrower against inadvertent default by ensuring that proper notice and cure period provisions are included. For commercial loans, a lender will typically require the borrower to form a limited liability company or corporation prior to the closing, and the individual owner or owners of this entity will need to personally guaranty the obligations and performance of the borrower entity. In addition, the lender will usually request that the borrower's attorney prepare corporate authority documents for the borrower entity, and draft a legal opinion confirming the entity's existence and authority to proceed with the financing and acquisition of the real estate.

Corporate Entity Formation and Liability Protection

A limited liability company is the most typical corporate entity formed and used by individuals when purchasing real estate. However, before deciding whether to form a limited liability company, corporation, trust or other entity, it is recommended that these options be discussed with an accountant or other trusted financial advisor. In most cases, when

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purchasing investment real estate, it is suggested that the property be purchased in the name of the applicable corporate entity in order to ensure maximum liability protection, and when acquiring multiple properties, it is recommended that each property be purchased in the name of a separate corporate entity.

For more information please contact trusts and estates attorney Lauren Epstein at lepstein@bernsteinshur.com or 207-228-7157, or real estate attorney Hawley Strait at hstrait@bernsteinshur.com or 207-228-7118.