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JIM: It's been a couple years since we did a program on basic estate planning, and I needed to find what I consider basic estate planning. Many people when they think of basic estate planning, they're thinking of just wills. Well, I believe basic estate planning should consist of not only wills, but powers of attorney for both financial and for health care, and then there are some other documents depending what state you live in that you might want to consider, and I'm also a pretty big fan of revocable living trusts. They're a great way for families to keep control. You don't have to be a multi-millionaire to be considering it. Maybe if you're young, starting out, you may not need a trust by I'm a big fan of them.

Today we have joining us Rob Melick who is an estate planning attorney. He has focused his practice on estate planning and Title 19 and those types of issues. I'm so glad to have him here today to discuss these issues. Welcome, Rob.

0:56

ROB: Thank you for having me, Jim.

0:57

JIM: Rob, let's start out with a lot of times when people talk about estate planning, they're always thinking about wills, but I always tell people what has to happen for a will to take effect, someone's got to guy, but there are some documents that are really critical during lifetime that most people overlook, so let's start out with the health care power of attorney. I know it started out way back when we had the Nancy Cruzan (SP?) and Karen Ann Quinlan (SP?) gals that had been in a coma basically brain dead, being kept alive on life support, and they came out with a living will, but I know we've progressed to the point where now we have durable powers of attorney for health care. Can you share with our audience a little bit about those and why they're important?

1:37

ROB: Absolutely. The health care power of attorney acts as a document that enables you to have someone speak for you when you can't speak for yourself. You had mentioned the issue of people in irreversible comas. Certainly they don't have a voice at that point in time to be able to make health care decisions on their own, so where the durable health care power of attorney comes into play is it allows a specifically designated agent, usually a loved one or some sort of other family member or very close friend, to be able to make health care decisions for you only in the event that you can't make those decisions by yourself.

2:04

JIM: I know a lot of people when they think about estate planning, they're not thinking about this and being necessary until their maybe in their 70s, 80s, or 90s, but I'll tell you what, all my kid when they turned 18 I had them sign these health care powers of attorney, and what prompted me to do that, I'm not smart enough to think of this stuff on my own, but we had a client who had a child that went away to college in Colorado and we're here in Wisconsin, and the son got in a serious car accident and he was with a friend, and the friend called the parents after the ambulance took him away and said, hey I thought you should know, we were in a car accident together, they took your son to the hospital, just want to let you know, and the mom said, what hospital did they take him to, and he's like, I don't know, and there's a long pause and the mother said, okay, fine, we'll figure it out. They called the two hospitals that were closest to the location of where the accident was, and the hospitals said, I'm sorry, we can't help you, that's private. She really persisted and the one gal that she persisted with said, look, I'm a mom too, I understand what you're going through, I could lose my job and I tell you this, please don't tell anybody I told you this, but I just want to let you know your son is here, he's stable, he's okay.

Imagine that you're a thousand miles away hearing that, what a relief that could be just to even know that, and I know we went through the same thing with my son. He had a serious head injury, he was in a coma and until we could produce the health care power of attorney, they weren't telling us a lot. They weren't asking us a lot of questions of what we thought because at that point we didn't have any say in the matter. We needed that health care power of attorney.

Let's talk about financial power of attorney, that's something that kind of goes along the same lines. Someone becomes incapacitated but this deals with financial issues. How important is that?

3:41

ROB: It's extremely important. The key thing here is we don't know when we're going to lose our capacity, it could happen at any age. It could happen due to something that's foreseen or something that's unforeseen, and what a financial power of attorney does, similar to a health care power of attorney but in a financial realm, it allows you to designate specific agents, again usually loved ones or close family friends, to be able to make financial decisions in the event that you cannot make those financial decisions on your own.

Now, one difference between a financial power of attorney and health care power of attorney is depending upon your circumstances, you can choose to have a financial power of attorney, an agent under a financial power of attorney be able to make those decisions immediately. There's a distinction there between an immediate durable financial power of attorney and a springing financial power of attorney.

4:20

JIM: And basically that springing means it springs into action when needed, otherwise it just kind of sits in the background, and I've got to share too, this is really important. Most people think, wow, that's probably never going to happen to me, but again I go back to my son's situation, we just wanted to get his phone and here he was in college and he was working as kind of a nanny type situation where he was working for a couple of college professors, and I think one of them was one of his professors, and basically he was taking the kids to their soccer practice, their swimming lessons, their golf lessons, all these different things, just running them around, and my son had this injury on July 4 so he wasn't working that day, but we knew he was going to be working the next couple of days. We did not have that contact information because he was living on his own. We thought we'd just go in the phone and we could figure out who the people were he was working for and at least give them a courtesy call, but we were powerless to even do that.

They confiscated everything and locked it up, and I know too from other client experiences as people get older, I know here in Wisconsin, this isn't the same thing in every state, but for example if a spouse goes to a nursing home and the other spouse is okay, there is a certain amount of assets that can be exempt or shifted to that spouse to help them out, but if all the assets are in, say for example a 401(k) or IRA and the spouse that needs the help, unless they have a power of attorney they might be powerless to shift even their basic exemptions to that spouse that's okay because it's an individual retirement account. I've talked to a lot of clients where husband and wife just kind of assume because they're the spouse they can step in, but you can't even get information about account balance. You're not even able to shift those sets to a safer place if need be if something were to happen unexpectedly. Talk about that a little bit.

6:01

ROB: You're absolutely correct, Jim, and one of the only ways really to get around that is to institute a guardianship proceeding. Basically what it is is if you do not have a power of attorney and you're in a situation where a spouse becomes incapacitated, you could petition a court to have a guardianship appointed and the spouse, capacitated spouse can serve as a guardian for an incapacitated spouse, similarly a child or other loved one could serve in that capacity ads well, but I can assure you having done a fair amount of guardianship proceedings in my time, not only is it expensive, it's very time consuming. You need court approval to be able to do it.

You need to have a medical professional determine that that person is truly incapacitated. Courts are very reluctant to determine that somebody is incapacitated without medical testimony indicating that that person is mentally incapacitated. Furthermore, the courts do appoint a guardian ad litem to the person who is being judged based upon their incapacity, so that attorney isn't working for free either, so the fees just keep adding up when all of these could be avoided by a properly drafted financial power of attorney.

6:55

JIM: I think it's just so critical, so whether you're young or old, rich or poor, just having the people that you care about and people that care about you being in this control position, because let's face it, the courts don't know who you are, your family dynamics and all that, they're just hearing some testimony and trying to make the best decision, and that best decision may not be best for you.

Hey, we're going to take a short break. When we come back we're going to talk about some of the estate planning documents that have to do with after we are gone, where we just finished up with documents that are important before you leave this earth, so please stay tuned.

[BREAK]

8:25

JIM: Welcome back as we continue to visit with estate planning attorney Rob Melic (SP?), and today we're talking about basic estate planning, and after you listen to this program we're packing a lot of information in just 15 or 20 minutes. It may have your head spinning, but I consider this basic. There are a lot of things we can do with advanced planning and we could spend hours on that, but this is something I believe every man, woman, and child in America should be looking at, and when I define child, obviously parents are in control until the child reaches 18, but I still consider them kids and have some growing up to do when they turn 18, and that's when these documents start to become real important.

We talked about the financial and health care power of attorney. Now let's move on for those states that are in community property states. I believe there are only nine of them. Here in Wisconsin a lot of people are confused because our legislature decided to be unique and named it a marital property agreement, but there are some significant tax benefits that can be had for people that live in those states, and they can confirm or clarify or make sure that they get those benefits just by confirming they want to participate in it. Talk about that a little bit.

9:30

ROB: Sure. Whenever we do an estate plan for a married couple, we always put into place a marital property agreement. Basically what a marital property agreement does is it allows you upon the death of one spouse to be able to transfer the assets to the other spouse. The IRS and the governmental regulations do allow that to be done on a tax free basis, that transfer to the surviving spouse. In addition to that, it can be a very powerful estate planning tool as well, because again depending upon the timing of the deaths of the spouses, again in the event of a non-simultaneous death, the spouse who's receiving the assets could very well be in a position where they may need Medicaid benefits themselves, but the marital property agreement allows for that transfer to occur.

10:06

JIM: That's something definitely each state is a little bit different, you want to check into it if you're one of the nine community property states. I know in Wisconsin we have some significant benefits here, but the biggest benefit for those living in community property states is that step up in basis, so for example if you have an asset that does not receive an automatic step-up like a primary residence every two years, there are some benefits there, but we're talking about you could have stocks, bonds, mutual funds, second properties, business assets, and what happens is when one spouse dies, typically if you're in joint with right of survivorship, only half of you died, only half a step-up, but with community property states what happens is when one spouse dies there's a full step-up, so that surviving spouse doesn't have to pay any capital gains if they were to sell it at the date of death fair market value, so it's really significant, especially in business situations.

We see circumstances where here we have a lot of farmers. They've got assets that have been depreciated, subject to a lot of capital gains, and a lot of times if the husband is the one that dies first and the wife is not the one who is going to keep the farm going, let's face it, a lot of farmers don't have a lot of retirement accounts here in this area, very low social security. Most of their retirement is that farm, and if all the sudden that surviving spouse, not only did they lose a social security check but now they've got all these capital gains to pay, it can really put them in a tough financial position.

Now, let's switch gears to the actual distribution of the estate. Now, a lot of times people think of wills and absolutely a will is a way to distribute assets. From the surveys I've seen, something like 78% of Americans don't even have something written down on a cocktail napkin, so a will would definitely be a good step. For myself personally, I have a trust. I believe trusts are the best ways to distribute assets. I think it puts the family in control, and the one thing is I think there's a big misconception by most people. They think you have to be a Vanderbilt or a Rockefeller or some affluent person in order to consider a trust, but take a little bit about a trust and how basic every day Americans, middle class Americans, how they could benefit from considering that.

12:10

ROB: Sure. Most states have a process, if you pass away with a will you have to go through a process known as probate. Probate is essentially a process whereby a court oversees and makes sure that the distribution in your will occurs. In most states where a living trust comes into play, a trust allows you to avoid that probate process. Now, when states have probate processes and people go through that probate process, a lot of times they hire an attorney to help them out with it. A lot of times there are deadlines in place, there are requirements that need to be satisfied by the court. You have to notify creditors, and you have to get family consent on a lot of issues. Creating a trust avoids all of that, and your point that one need not be exceedingly wealthy to benefit from a trust is absolutely true.

I know here in Wisconsin, for instance, if the estate is worth less than $50,000 that is really the only time in which a trust really isn't necessary because you're allowed to bypass the probate process. If your estate is worth more than $50,000, which is not a large sum of money when you consider home equity as part of that $50,000, if your estate is over $50,000 you can certainly benefit from a living trust. You're able to get all of your assets kind of in a row and save your family some time, and most importantly money, with respect to your last expenses.

13:17

JIM: Well, what I love about the trust is the privacy. I know with probate I went to court way back when, when I first found out about this. I couldn't believe that I could just walk in to the court and the register of deeds or the probate court area or whatever, and I went in there and I said, look, I'd like to look the some probate files, and they kind of looked at me funny, and whose do you want to look at? I said, I just want to browse through a bunch of them. Well, why do you want to do that? I said I want to see what's involved with it. They are public record, aren't they? She goes sure, so she takes me back and she says, please keep all the stuff together and leave it here on this table so we can make sure it's organized when we put them back. I mean, I couldn't believe it, so everything was there, account numbers, balances, all this information. We wonder why there is such a problem with identity theft or how thieves get the information, it's all public record.

I couldn't believe that, and the other thing I look at with the trusts, kids aren't growing up as quickly as they used to. Kids are 25, 30 years old, trying to find their first job yet, and they're not always financially in the best position, maturity-wise they're maybe not ready to make those decisions to handle even smaller sums of money, much less larger sums of money, and think about it, if you have a small estate, and let's say it's only $100,000 or $150,000, people sometimes lose track what their value of their estate is, but your life insurance that you might have a death benefit on, that's part of your estate, your retirement accounts, the clothes on your back, the jewelry that you wear, the house that you live in if you own the house if there's equity in the house. You start adding that up, it can get to be several hundreds of thousands of dollars, maybe even a million dollars or more without too much trouble, so I look at that and all the sudden you send to a young person, and let's say it's only $50,000 or $75,000, the stories are out there.

That money goes in a heartbeat, so one of the beauties of a trust is you can control the distribution. You can take that distribution over time, or if one of the kids is in financial trouble or half the marriages are turning upside down, you can protect the assets. Talk a little bit about how you can do that with a trust.

15:13

ROB: Absolutely. Basically what you do in a trust is you get to allocate who gets what, when. It's a very simple formula; who gets what, when, so again if you do have children, because a lot of times when people have children unfortunately we don't know when we're going to pass away. That's one of the great mysteries that's out there, and people unfortunately sometimes pass away sometimes with minor children, so it's not even a case necessarily where someone is over the age of 18 and isn't likely to spend the money in the most frugal way. Sometimes because they're minors they can't even legally inherit that money and spend that money, and so they turn the age of 18.

What a trust allows you to do is it allows you to place a person who is the trustee in control of how those funds get disbursed and when, and the beneficiaries have the ability to petition the trustees for more money for things that are important. If there are extreme medical expenses or someone loses a job or things like that, about you it remains the trustee's discretion. The trustee as the name implies is someone whom the grantors put significant amounts of trust and discretion in to be able to make sure that their money that they worked so hard for all their life goes in a way that is most likely in accordance with what their wishes would have been.

16:16

JIM: Now, I've got to tell you, the grantors, those are the people that create the trust, so if you create a trust and initially you're managing it for your own benefit because you serve all those positions, but when you pass away you've got someone who's going to step in for you that you've named as trustee, and you have contingent beneficiaries which a lot of times will be the kids or grandkids, but that trustee is really stepping in to your shoes. If right now let's said you had a grandchild or a child having drug and alcohol problems, you probably wouldn't give them $10,000 to have fun with. Well, why should that change just because you passed away, so having those controls in place, you're able to customize it for the beneficiaries. There's a lot of flexibility and things you can do.

Now, there are a lot of other supporting documents. One thing I would recommend that everybody who is listening to this do, if you haven't dusted off your existing documents in a couple years, it's not a bad idea to have these things reviewed, but God forbid you don't have anything in place right now. I implore every single one of you to make sure these things are in place, and if you have young ones at home that have had their 18th birthday, make sure you have the financial and health care power of attorney.

I had this discussion with a couple not so long ago, shortly after their son had graduated from high school. He was going on a Peace Corps mission or something like that in Africa, and I talked about this and they said he was leaving in 10 days, is it too late to do something. I said no, we need to get it done, so I arranged for an attorney to draft that stuff for them. We had it in place. He got sick when he was in Africa and if it weren't for that health care power of attorney, they wouldn't have been able to get him home, so these things, people like it lightly, it's not something that's discriminatory for young or old, everybody should be considering this, and what I suggest, your financial or insurance professional that's sending you this program, they could help work with the attorney to make sure that this process goes smoothly. They know a lot about your circumstance, they can help with changing beneficiaries. I work very closely with many different attorneys through the years. I've worked with Rob. It just works so much better when your team of professionals work together as a team than trying to do it separately, so I encourage everybody to get it done.

Thanks, Rob, this has been awesome.

18:18

ROB: Thanks for having me, Jim, I appreciate the opportunity.

18:20

JIM: Make sure you go talk to your attorney, talk to your financial or insurance professional, make sure you got these things in order.

Thanks for joining us this week, and tune in again next week as we explore another phase of the Real Wealth process, and remember, if anything you heard in today's show you'd like to get more information about, contact your Real Wealth advisor. Also if you feel that any of this information would be helpful to a friend or family member, just click the Forward to a Friend button.