

ESTATE PLANNING FOR THE NON-US CITIZEN

Estate planning issues for non-citizens who reside in Ohio are the same as any U.S. citizen. There are three important topics:

- 1. Disability:** If you become disabled or become mentally incompetent, are documents in place, so someone else can make financial and health care decisions for you?
- 2. Death:** If you die or pass away, do you have a Will and Trust that will dispose of your assets and who will be appointed to take care of your minor children?
- 3. Estate Taxes:** How do the estate tax rules apply to my estate?

DISABILITY

There are three legal documents that address the issue of disability:

1. Durable Power of Attorney - Appoints someone to make legal and financial decisions for you if you become incapacitated. The person is called an Agent. Your agent has the power to pay your bills, sign your tax returns, and manage your investments. The agent will make sure your house, car, and insurance payments are kept up to date. The agent has the power to sell your house if the nursing home becomes permanent and funds are needed. A Power of Attorney is no longer valid once you die. At that point, the executor of your Will and the Trustee of your Trust assume control.

If you become incapacitated without a Power of Attorney, your family has to go to Probate Court and must file an application to have you declared incompetent. This procedure is a matter of public record, is time consuming, and expensive. Probate Court will then supervise the guardian and your affairs. Annual accounts need to be filed with the court.

2. Durable Power of Attorney for Health Care - Appoints someone, the Agent, to make medical decisions if you are unable to make them for yourself. This includes the right to hire and fire doctors, the right to give and receive medical information, the power to consent to or withdraw medical treatment, and the power to remove life support.

Without a Power of Attorney for Health Care you will be declared incompetent by the Probate Court and a guardian will be appointed to make these important medical decisions.

3. Living Will - It is your written declaration concerning life support. In a Living Will, you communicate to your doctors and family that you do not want to be maintained by artificial life

support. This document allows your health care agent to refuse treatment, remove life support, and to remove feeding tubes.

DEATH

1. Last Will and Testament

A Will is the traditional document that transfers assets upon one's death. The Will becomes effective at death. All assets controlled by a Will must go through the probate process. In a Will, you tell your Executor what should be done about the payment of debts, the distribution of personal property, the distribution of real estate, and the distribution of the remainder of your assets. The Will appoints an Executor who manages the process of administration and a Guardian for any minor children.

Additional questions that apply to non-citizens are:

Q. Should I have more than one Will?

A. You might likely need an Ohio Will to deal with your USA assets and real estate. A second Will may be needed to deal with real estate located in another county.

Q. Can my parent who lives in my home country serve as my Executor?

A. The local Probate Court may not appoint a family member who resides in a foreign country as your executor and, if it does, the added cost of administration and travel may not be cost efficient. Thus, you should name an institution or other local person to serve.

Q. Can I name a foreign guardian, such as a grandparent, to serve as the Guardian?

A. Only if the grandparent moves to Ohio to take care of the children will the court appoint them. If the children will return to the country of the guardian grandparent, it is necessary to execute a document acceptable to the foreign country to accomplish the appointment of a guardian.

2. Trust

Wills are commonly used to dispose of one's assets at death. However, assets controlled by a Will must go through the Probate Court process. The probate process takes more time and costs more money than an administration with a Trust that does not require the probate process. Therefore, Trusts are the more contemporary tool to plan one's estate.

Trusts have three distinct purposes. First, Trusts may be used to minimize or eliminate estate taxes. Second, Trusts are used to control the distribution of wealth to the intended beneficiary. This is important if the beneficiaries of the Trust are children under age 18. Lastly, Trusts are used to avoid Probate. Probate is a public matter and anyone can read your Will, see your

assets, and learn of your estate plan. Trusts are private documents not available to public review.

Estate Planning Trusts are generally revocable. Thus, you retain full control over the Trust while you are alive and competent.

ESTATE TAXES

1. OHIO ESTATE TAX

The State of Ohio will tax all of the assets you own at death except for real estate located in other states or countries. Thus, stocks, bonds, and bank accounts are taxable wherever they are located. If the foreign assets are also taxed in the foreign country, the foreign taxes can be credited against the Ohio estate tax.

2. FEDERAL ESTATE TAX

The federal rules are divided into two topics. The first is gifts made during life and the second is the tax associated with death.

a. Gift Taxes

Gifts to a non-US citizen spouse are limited to \$120,000 each year. The government does not want a citizen to give large sums of money to a non-citizen spouse and then have that non-citizen spouse move back to the home country. The government would lose the opportunity to tax the transfer of wealth. You may also give children and others \$12,000 per year without gift taxes. Amounts over these levels are subject to gift tax at a 45% rate.

b. Estate Taxes in Death

At your death, the U.S. Government taxes all of your assets in the United States and in all foreign countries. Under the current estate tax rules, there is no estate tax on an estate less than \$2,000,000. Thus, if your estate is less than this amount, federal estate taxes should not be a concern. This credit amount is set to increase to \$3,500,000 in 2009.

If your estate is larger than the credit amount, a Trust called a QDOT (Qualified Domestic Trust) can be used to shelter the amount over the credit amount. The amount over the credit is held in Trust for the benefit of the non-citizen spouse. However, there must be a U.S. Trustee or a bond must be posted by the Trustee. When the spouse dies or moves back to the home country, the U.S. Trustee has the responsibility to pay the appropriate estate tax from the Trust before turning the money over to the spouse.

CONCLUSION

It is very important to plan your estate. This is true whether you are a citizen or not. The fact that you are not a citizen does not shelter you from the Laws of Ohio and the Federal Government.

I am a member of ARAG Legal Plan which is one of your FLEX Benefits. It offers a credit against the cost of the estate plan, \$290 for single people and \$455 for a married couple. This completely covers the cost of the Wills, Power of Attorneys, and Living Wills. Trusts are extra. However, your ARAG benefit provides a 25% discount on the cost of the Trust.

I hope this helps you with your retirement planning, estate planning, tax planning, and financial planning journey. Let me know if I can be of assistance. I welcome the opportunity to be a part of your team.

John B. Cornetet