

INMACS

ASSURANCE | TAX | ADVISORY

ESTATE PLANNING

A Guide to Understanding Estate Planning

CA Vinod Jain
Chairman, INMACS
+91 98110 40004
vinodjain@inmacs.com

ESTATE PLANNING

- Introduction
- Estate Planning Question
- Estate Planning Goals

ESTATE PLANNING – INTRODUCTION

- What is an ESTATE
- ESTATE PLANNING is
 - The Management
 - Disposition
 - ❑ Of Assets and Resources
 - ❑ When you are deceased
 - Is it minimizing income taxes
 - No, it is much more
 - Accomplishing your goals if imposed during your life and beyond.

ESTATE PLANNING QUESTION

- How do we determine what our goals are?
- How do I begin the Estate Planning Process?
- Who can help me develop my Estate plan?

ESTATE PLANNING INTRODUCTION

Process of Estate Planning

Identify your own
specific goals



Advisor



Best strategy to
achieve goals

People and their goals are different.

Circumstances are different.

Strategies and Process needs careful crafting.

ESTATE PLANNING GOALS

- Estate Planning opportunities.
- What is in your heart
 - not really what you have made notes of.

ESTATE PLANNING GOALS

Goal 1: Plan for loved ones

- To Provide for family
- What is important for them.
- How to act on behalf of disabled or deceased family members.
- Estate plan is a document to express your hope, dreams and aspirations.
- In a realistic practical manner.

ESTATE PLANNING GOALS (CONTD)

Goal 2: Plan to Pass on your legacy

- values and beliefs
- history
- tradition and culture

A personal family history for children and grand children is certainly a meaningful Estate plan.

Goal 3: Plan to avoid Probate and intestacy.

Goal 4: Plan to minimize taxes.

Goal 5: Plan for disability.

WILL

What Is A Will

- A last Will and Testament is a Legal document
- Designed to tell the Probate court what to do with your assets at your death
- Comply with Law

Example: In Writing

: Whether To Register

: How To Execute

CAN A WILL ADDRESS ALL THE ISSUES AND VARIOUS KINDS OF PROPERTY RIGHTS

- Freehold – Leasehold
- Joint Ownership
- Either or Survivor
- Tenancy
- License/Rights
- Partnerships
- Goodwill
- IPR
- And so on....

OPEN QUESTIONS

- If I have a will does there need to be a probate?
- Is it wise to pick up a standard format for drafting a will?
- Do I need to list every personal possession, property, or assets I own
 - And how to dispose/deal on my death?
- Can I revise/amend a will or I need to rewrite again
- How to take care of successor in interest dying before the Executor?

Will

OPEN QUESTIONS

- How I can ensure that my will is not challenged after my demise
 - Does a “No contest clause” help or there is a better strategy?
- What happens
 - If my family can't find my will when I die?
- What happens if I die without a will?
 - Interstate succession
- Can I manage that a probate is not needed?
 - To save my successor from all expenses, harassment and delays.

PROBATE

➤ Living Probate

➤ Death Probate

- Living Probate or Guardianship

- Incapacitated

- Can no longer make financial or health care decisions

- Court need to appoint in the absence of a clear document/plan

- Disability plan option

- A living revocable trust

- Health care power of Attorney

- Living Will.

DEATH PROBATE

- A legal proceedings to verify and administer a decedent's will
 - Process of transfer of title
 - Making sure all taxes are paid
 - Creditors are satisfied
- The distribution/transfer of assets will be done:
 - As per will if there is a reliable legal will document can be evidenced
 - OR
 - As per interstate succession as per law, say Hindu Succession Act 1956,...

DEATH PROBATE ISSUES

- Delay
- Cost
- Publicity
- Control/contest
- Multiple probate in case assets are in different jurisdiction.

WHAT ARE PROBATE ALTERNATIVES?

- Giving away assets
- Using Joint and contractual form of property ownership
- Nominations for financial assets
- Using a revocable living trust

AVOID PROBATE

GIVING AWAY ASSETS – Art. 1

- Loose control
- Property may not be used as you wish.
- Whether you will be taken care?
- Children's creditors and other claimant (including their spouse)
- What happen if child predecease you?
- Claim by Son In Law or Daughter In Law on your transferred Property
 - If there is a divorce or marital issues

AVOID PROBATE (CONTD)

Ownership forms to avoid probate – Alt. 2

- Property need to be used to take care of you and your family- is the objective.
- **OPTION-: Joint ownership with right of survivorship (WROS)**
 - **EQUAL SHARE.**
 - **Undivided interest.**
 - **Most commonly used by married couples.**
 - Need consent to sell or create charge.**
 - on death of one spouse the property vest with survivor.**

AVOID PROBATE (CONTD)

❑ On your death you can not control how the property will be used
special issues-

- Divorce
- Remarriage

❑ Avoid Probate Conditions:

- Joint ownership with children or others will have more complications
 - similar to giving away of assets.

AVOID PROBATE (CONTD)

Alt. 3 :Nomination

- Possible for LIC Proceeds, FD, MF, shares and securities and other similar assets.
- You can not give instructions to nominee as to how to use proceeds.
- Nomination is subject to your will and intestate succession rules.
- Amending Nomination for each property is a onerous task in case of need.

Avoid Probate conditions:

Alt. 4: LIVING TRUST

- Legal title of property held by the trustee.
- Beneficial enjoyment or use by
Beneficiary or
Beneficiaries as may be specified .
- A trust created during life time of the owner(settlor).

AVOID PROBATE (CONTD)

- Can contain detailed instructions on usage of property and how to use benefits.
- Living trust could be
 - Revocable
 - Irrevocable.

LIVING TRUST STAGES

1. When the Trust maker (Settlor) is alive and well
2. When the Trust maker is disabled and
3. When Trust maker dies

STAGE 1. No change in the way you operate usual tax. Usual control on assets Trustee bound by your instructions.

LIVING TRUST STAGES

- **STAGE 2**: When you are unwell/disabled or not able to take Economic or Medical decisions.
- Trustee are legally bound to follow trust instructions of protection.

LIVING TRUST STAGES

STAGE 3 : ON DEATH

- Trustee to transfer assets to Heirs as per trust instructions or
- Trustee may continue to be trustee for your second layer of beneficiary, say your Wife or Children.
- Trustee can be changed by Settler or Beneficiaries – as defined.

LIVING TRUST QUESTIONS

- Can a living trust avoid a probate on my death?
- Can I transfer all my assets to a living trust? OR can I be selective
- What are the benefits of a living trust?
 - Avoid probate
 - Plan for disability
 - Control property during life
 - Control property at death
 - Safety from creditors

ESTATE PLANNED PROCESS

- Accurate picture of your Estate
- What is your current Estate Plan
 - Will
 - Trust
 - No plan(Interstate)
- How are assets titled
- Likely growth of assets
- Do not forget your liabilities, charges, encumbrances, capital commitment, interest and repayment obligations.

ESTATE PLANNING ACTION STEPS

- Locate existing Estate Planning documents
- Inventory of Assets
- Inventory of Liabilities
- Estimate value of Each Component
- Nature of ownership title of each asset
 - Freehold
 - Leasehold
 - Sole/Joint ownership
 - Either or Survivor
 - Community property

ACTION STEPS

- Consider your values and experiences
- How to do you wish to preserve your values
 - Pass them on to future generations
- Planning goals -Broad outline
- Prioritise goals to the extent feasible
- Initial list of goods rewrite in more specific terms

QUESTION YOURSELF

- Estate plan document
 - Whether clearly understood
- Assets will pass
 - To whom you want
 - The way you want
 - When you want
- Does the existing Plan address
 - Your goals
 - Personal, family and financial position/situation
- Need help
- Estate planning professional is your answer

THANK YOU

INMACS

ASSURANCE | TAX | ADVISORY

CA Vinod Jain
Chairman, INMACS
+91 98110 40004
vinodjain@inmacs.com

