WHAT TO DO NOW:
ESTATE PLANNING AFTER THE LOSS OF A SPOUSE

Deepankar Mukerji
445 Hamilton Avenue, Suite 1102
White Plains, NY 10601
914-220-8275
dmukerjilaw@gmail.com

CHECKLIST

- Funeral Home
- Social Security
- Bank accounts
- Pensions
- Retirement accounts
- Life Insurance
- Will and Probate
- Trusts
- Estate planning

FUNERAL HOME

- They will handle Death Certificates.
- They will notify Social Security.
- Look for original Cemetery Deed if available.

TAKE TIME TO GRIEVE

- After the funeral, there is nothing that needs doing right away.
- Relax and remember to look after yourself and to spend time with loved ones.

SOCIAL SECURITY

- For surviving spouses and minor and disabled children, the death benefit is $255.
- If Decedent was still working and had dependent children, they may receive ongoing payments.
- Surviving spouse will receive higher benefit of the two.
  - Planning tip: Waiting to collect Social Security until age 70 for the higher income spouse could result in a higher benefit for both.

ASSETS NOT CONTROLLED BY WILL

- Joint ownership assets (e.g. joint bank a/c; real estate owned as joint tenants)
  - NOTE: Convenience accounts now exist in which joint account can be set up without survivorship feature.
  - Totten Trust bank account – "in trust for"
  - TOD, POD

- IRA – Spouse is entitled to "rollover" and can take the account over his or her lifetime; otherwise, it must be taken over 10 years, unless beneficiary is an "Eligible Designated Beneficiary" under the Secure Act.

- Retirement Plans – 401(k), 403(b), and 457 plans have similar rules under the Secure Act.

ASSETS NOT CONTROLLED BY WILL

- Life insurance – if there are designated beneficiaries, the policy is directly payable to them. This is also true of policies in Life Insurance trusts (ILITs).
- Pension – There may or may not be a death benefit, depending on the type of plan and which option was selected by the retiree.
- These assets are not part of **probate estate** but are still part of **taxable estate.**

WILLS - PROBATE

- If there is a Will, it must be submitted to the Court for Probate.

- Executors and administrators cannot act until appointed by the Court.

- Spouses have right of election and must receive greater of 1/3 of estate or $50,000, regardless of the Will.

- The original Will must be submitted to the Probate Court along with a petition and any necessary supporting affidavits.

- Wills should <u>not</u> be kept in safe deposit boxes.

WILLS - ADMINISTRATION

If No Will is Prepared and No Trust Funded - What Happens?

The assets pass as controlled by N.Y. law as follows:

- If survived only by spouse (no children) - everything to spouse;
- If survived by spouse and parent or parents (no children or grandchildren, great grandchildren, etc.) entire estate to spouse
- If survived by spouse and any children (or grandchildren of deceased children) - $50,000. plus 1/2 of estate to spouse, 1/2 of estate to children or grandchildren;
- If no spouse, children or parents, then to grandchildren and further descendants, if any; and if no descendants, then to brothers or sisters or their issue.
- **NOTE:** Adopted children and illegitimate children of decedent have same rights as biological and legitimate children (except illegitimate children only have inheritance rights from deceased father if they prove paternity).

TRUSTS

- A transfer of assets to a trustee or trustees to manage the assets on behalf of the beneficiaries you designate. The person establishing the trust is generally called a grantor.
- The grantor can designate him or her self as a beneficiary of income or principal. Similar to a will, the trust also details how the trust's assets are to be distributed after the death of the grantor.
- Most common is a **Revocable Trust**, which can be revoked by the Grantor at any time. Avoids Probate, but not Estate Tax.

IRREVOCABLE TRUSTS

- If the trust is **Irrevocable**, it will avoid Probate, and possible Estate Tax.

- Additional benefits of Irrevocable Trusts:

    - **Capital Gains Tax Savings** – Beneficiaries inherit date of death basis, and can avoid paying tax on appreciated property (Grantor Trust).

    - **Estate Tax Savings** - For a non-Grantor trust, e.g., life insurance trust in which life insurance policy is owned by Trust and therefore not part of decedent's taxable estate;

    - **Income Tax Savings** - e.g., 2503(c) Minors trust in which parents place money in trust for children, which money (up to certain limits) may be taxed at child's lower income tax bracket; and

    - **Preservation of Assets** - to remove from use by creditors (if transferred far in advance) or to qualify for coverage by Medicaid.

TESTAMENTARY TRUSTS

- *A* Trust can also be created by Will, and allow for assets to be held by the Trustees on behalf of another.
- In some cases, it may be a trust to hold assets for a group or an individuals, e.g., a trust for minor grandchildren, with payouts at particular ages.
- Also, there are marital and Credit Shelter Trusts created by Will, in which assets are left to a surviving spouse in a way which takes advantage of the marital and QTIP deductions to minimize Estate Tax liability

ESTATE TAXES

- Effective January 1, 2025, the federal estate tax, gift tax, and generation skipping transfer tax are unified so that the 2025 exemption for all three is **$13.99 million** for individuals and **$27.98 million** for married couples.
- The exemption is indexed for inflation.
- The exemption for married couples is portable, meaning that if one spouse dies without using the full exemption, the remaining amount can be added to the surviving spouse's exemption amount.

NEW YORK STATE ESTATE TAX

In New York, the Estate Tax exclusion for 2025 is 7.16 million.

However, for amounts over the exemption, the tax quickly adds up, since at amounts over five per cent over the limit, the entire estate is taxable.

The exemption is also not portable, meaning that the exemption must be claimed upon the death of the first spouse through a credit shelter or QTIP trust.

Gift Tax

Reportable Gifts within the past three years may be added back into the estate.

ESTATE PLANNING FOR A SURVIVING SPOUSE

- **New Will, POA, Health Care Proxy may be needed.**
- **Change/Update beneficiary designations in Life Insurance, IRAs, Retirement plans, and Pensions**
- **Gifts** made during lifetime.
  - Every individual may each year give unlimited separate gifts of $19,000 (which amount is being indexed for inflation) to as many family members or friends as they desire tax free.
- **Consider whether to create a trust, or amend existing trusts.**