# Welcome to the VAP Pro Bono Collaborative ECHO CLE Session July 16, 2024

## Succession Planning

# Agenda

**Introductions** - Nedia Isabella (Bella) Zayani, Statewide Pro Bono Coordinator, New Mexico Legal Aid, Inc.

**Announcements for Session:** Marissa Gonzalez, VAP Paralegal, New Mexico Legal Aid, Inc.

**Topic Presentation:** *Succession Planning*

**Topic Presenter:** Judge Cristy J. Carbon-Gaul, The Law Office of Cristy J. Carbon-Gaul

**Case Analysis and Q&A:** Judge Cristy J. Carbon-Gaul, The Law Office of Cristy J. Carbon-Gaul

**Overview & Closing Remarks:** Volunteer Attorney Program of New Mexico Legal Aid

# IT IS NOT IF, IT IS WHEN- Succession Planning.

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# WHO NEEDS AN ESTATE PLAN?

EVERYONE!

# PURPOSE OF PLANNING

- Lifetime issues
- Family issues
- Wealth protection
- Tax avoidance
- Succession Planning

# WHAT DOES AN ESTATE PLAN INCLUDE?

- Will
- Statement of Disposition of Tangible Personal Property
- Revocable Trust
- Life Insurance/ Irrevocable Trust
- Durable General Power of Attorney
- Durable Health Care Power of Attorney
- Organ Donation / Cremation and Funeral Instructions
- Beneficiary Designations
- Re-titling of Assets

# WHERE THERE IS NO WILL

- No named beneficiaries
- No named guardian
- No named personal representative
- No testamentary trust

# THE WILL

- The will is the instrument that directs how your assets are to be distributed after your death.
  - Personal representatives
  - Testamentary Trust
    - Minor children
    - Blended families

# REVOCABLE OR "LIVING TRUST"

- Trust Agreement
- Pour-Over Will
- Restatements
- Funding Trust (checking accounts)
- Incapacity

# WILL VS. REVOCABLE TRUST

- Tax planning
- Organize now or later
- Administration

# Estate Taxes

1. Current Estate Tax $13.610
2. Capital Gain
3. Income Taxes - IRA

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# Portability Election for Estate Tax

- In 2010, the portability election became available for married couples when both spouses are U.S. Citizens
- You have five years to make the election

# Gifting

- Unified Credit Gifts
- Annual Exclusion $18,000
- Restrictions on Gifts- maybe Irrevocable Trust
- Stock Restriction Agreement/Operating Agreement
- Use of LLC (discussed further below)

# Changes to Estate Tax Law

- Sunset provision kicks-in on December 31, 2025
- You need to start analyzing your estate tax issues now

# Need for POAs

1. Effective Date of POA
2. Need for Successor
3. Not Redacting the Statutory Powers
4. Use for Gifting
5. Freshness Date

# Does Your Agent Match your Succession Plan?

# Putting Children on Accounts and Deeds

- For the business account
- Deeds- capital gain issue
- Administrative Ease
- Liability Issues

# When Death Certificates are Slow

- Access to Liquidity
- Prepayment for Burial/Cremation

# Beneficiary Designations

1. Coordinate with Estate Plan/ making educated decisions
2. Naming Minors

## Understanding your Financial Situation when Spouse/Partner dies

- PENSIONS-ARE THEY TWO LIFE ANNUITIES?
- Social Security

# Understanding Ramifications of Remarriage

- Pensions
- Social Security
- Pre-Nuptial Agreements

# Confirming Titling of Real Property and Beneficiary Designations

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# TITLING OF ASSETS

- TENANTS IN COMMON
- JOINT TENANTS
- Inherited Property- check titles, i.e Mora County

# Use of LLCs for Real Property

1. Making Sure You Are Treating Them as a Separate Entity
2. Operating Agreement
3. Banking
4. Separate Insurance

# How Many LLCs Do You Need?

- Operations separate from land
- Separate ranches, non-contiguous property
- LLCs for difference beneficiaries

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# LLC Operating Agreements

- Owners Establishing Salaries
- Dealing with Grazing Fees
- Homes on the Property
- Appraisals- establishing who is used
- Right to Sell Underlying Assets
- Transferring Tangible Personal Property to the LLC
- Establishing buy-out terms
- Establish who can be a member

# DO NOT USE A CORPORATION TO OWN LAND

# ROFR- Right of First Refusal

- Allow siblings to buy each other out
- Set the valuation of the property
- Establish a discount and other terms that allow the continuation of the family legacy

# LIFE INSURANCE

- Liquidity – taxes, succession planning
- Creating estates
- Replace income
- A lot of insurance
- Not enough insurance
- Obsolete policies

# ILIT- Irrevocable Life Insurance Trust

- Have not been used in the last decade or so due to the increase in the Unified Credit
- May be time to reconsider life insurance in estate tax planning
- Need to consider life insurance in a buy-out plan- who is the owner of the insurance policy

# Liability Insurance

- Check your coverage
- Is it the tied to the entity
- Umbrella policy

# Funding and Restatements for Trusts

# Updating In General

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# Making Sure Your Estate Plan Covers Everyone You Care for Financially or Otherwise

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**JUDICIAL DISTRICT: District Court**

**LEGAL ISSUE: Blended family with Medicaid needs**

# Factual Summary

- Spouse One and Spouse Two have been married for thirty years. They are both in their late 60s and Spouse Two has been diagnosed with Parkinson's.
- Spouse One has three adult children from a previous relationship. Spouse One has one child who has special needs and is on the DD Waiver.
- Spouse Two has one child from a previous relationship.
- Spouse One and Spouse Two have one adult child together.

# Question of Practice

- Without a will, who are Spouse One's heirs?
- Who are Spouse Two's heirs?
- Are stepchildren included in the definition of children?
- What do you do it the step-parent wants the stepchild included?
- What issue does a developmentally disabled child/adult raise?

**JUDICIAL DISTRICT: District Court**

**LEGAL ISSUE: Property**

# Factual Summary

- Carmen Garcia is a widow. She has five children. She owns a number of real properties that she rents.
- **Property One:** Owned By Carmen and her deceased husband, Manuel, as community property.
- **Property Two:** Owned by Carmen and Manuel as join tenants.
- **Property Three:** Owned by Carmen, Manuel and Jorge, their oldest son, as joint tenants.
- **Property Four:** Owned by Carmen and her brother, Pepe Aragon as tenants in common.
- **Property Five:** Owned by Jose and Maria Aragon, Carmen's parents. Carmen has been renting this home out for decades, paying the taxes and insurance.

- Carmen wants all of the properties to be split evenly between her children, with the hope that they continue to rent the properties for continued income to her children.

# Question of Practice

- How does **Property Two** pass?
  - Owned by Carmen and Manuel as joint tenants
- How does **Property Three** pass?
  - Owned by Carmen, Manuel and Jorge, their oldest son, as joint tenants.
- How does **Property Four** pass?
  - Owned by Carmen and her brother, Pepe Aragon as tenants in common.
- How does **Property Five** pass?
  - Owned by Jose and Maris Aragon, Carmen's parents. Carmen has been renting this home out for decades, paying the taxes and insurance.

- How does this property pass?
  - Carmen wants all of the properties to be split evenly between her children, with the hope that they continue to rent the properties for continued income to her children.
- What options exist to set up a plan where the children can continue to own the properties together?

# Upcoming Pro Bono Opportunities

## July Legal Fairs:

- **Taos Legal Fair**:  July 19, 2024 from 9:00 a.m. to 4:00 p.m.
- **Dona Ana Village Legal Fair:** July 20, 2024 from 10:00 a.m. to 5:00 p.m.
- **Lawyers in the Library Legal Fair:** July 26, 2024 from 9:00 a.m. to 3:00 p.m.

## August Legal Fairs:

- **Socorro Legal Fair:** August 2, 2024 from 10:00 a.m. to 2:00 p.m.
- **Lovington Legal Fair:** August 23, 2024 from 2:00 p.m. to 4:30 p.m.

For more information regarding volunteering for upcoming legal fairs, please email Bella Zayani at bellaz@nmlegalaid.org.

# Thank you for joining Today's VAP Pro Bono Collaborative ECHO CLE Session!

July 16, 2024

Topic and Case Presenter:

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