

Why Estate Planning is Still Important

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With the federal gift and estate tax exemption currently at \$5.25 million per person (\$10.5 million for married couples), some with “smaller” estates may wonder if they need to do *any* estate planning. But there are many reasons to do estate planning other than to avoid estate taxes. In fact, for most Americans, the recent tax legislation has brought incredible freedom: instead of jumping through hoops to avoid estate taxes, we can now concentrate solely on the real reasons we need to do estate planning: to take care of ourselves and our families the way we want.

In this issue of *The Wealth Advisor*, we will examine why proper estate planning is still important, regardless of the size of your estate. We will also address issues to consider if you have already done your estate planning.

Avoid State Inheritance/Death Taxes

It is true that, with the larger federal estate tax exemption in place, most families will not have to pay federal estate tax. But many states have their own inheritance/death tax. And while the states’ tax rates are generally lower than the federal tax rate of 40%, they typically apply at a much lower threshold. This means your estate could be exempt from federal tax, but have to pay a state tax. Proper estate planning can reduce or even eliminate state inheritance/death taxes.

Ensure Your Assets Are Distributed the Way You Want

Everyone has an estate plan. It is either the one you have created or the default plan of the state in which you live. In our experience, it is very unlikely that your state’s default plan is what you would have wanted. State laws vary, but generally they have your assets go outright to your closest family members (who your state considers to be “closest” often is complicated in non-nuclear families. Non-family members, like an unmarried partner, will not receive any of your assets.

Avoid Probate

If you don’t have a plan, your assets will probably have to go through a court

process called intestate (“no will”) probate. If you have a will, the assets it controls will have to go through probate before they can be fully distributed to your heirs. Probate proceedings vary from state to state, but many view the time, cost, and loss of privacy and control that come with probate as unnecessary evils that should be avoided. That is why living trusts are becoming ever more popular.

Even with a will, it is probable that not all of your assets will go through probate. Assets with a valid beneficiary designation pass outside probate to whoever you have named as beneficiary(ies) and property owned jointly with right of survivorship will automatically transfer to the survivor. But if your beneficiary or joint owner is a minor or is incapacitated when you die, the court will get involved to protect their interests. If your beneficiary or joint owner has died before or simultaneously with you or the designation/title is otherwise invalid, those assets will have to go through probate and will be distributed according to your will or, if you don’t have one, the default state law.

Many older people add an adult child to the title of their assets (especially their home) as joint owner, often to avoid probate. But this can create all kinds of problems:

- * When you add a joint owner, you lose control:
- * Your jointly-owned assets are exposed to your joint owner’s possible misuse of them;
- * You could lose part of these assets to your joint owner’s creditors;
- * The assets could become part of a joint owner’s divorce proceedings.
- * There could be gift and/or income tax issues.
- * It’s easy to add a joint owner, but taking someone’s name off the title can be difficult. If they do not agree, you could end up in court.
- * If you have more than one child but only name one to be joint owner with you, fluctuating values and sibling discord could cause your children to receive unbalanced/unintended inheritances.
- * Joint ownership does not provide any asset protection to your joint owner after you die.

Provide Responsibly for Minor Children or Grandchildren

If any of your heirs are minors and you have not made an estate plan, a court will

control the minors' inheritances until they reach legal age (usually 18), at which point the heir will receive, in cash, whatever is left to spend as they see fit. For most eighteen year olds, that is a recipe for disaster!

In most states, a parent may nominate a guardian for minor children in a will or by a separate document. If both parents die before a child reaches legal age, the court will have to decide whether to accept the nomination or appoint someone to raise that child. If the last parent to die has made no nomination, the court will act without knowing whom the parent would have chosen.

On the other hand, establishing a trust for your children's or grandchildren's inheritance lets *you* (not some court) keep control of the inheritance, decide when each child or grandchild will receive it, determine what controls will be put in place to protect the beneficiaries' inheritance from themselves and others, and select someone you know and trust to manage it.

Protect Inheritances from Creditors and Predators

Gifted or inherited assets are protected from the courts and the beneficiary's creditors, divorce proceedings and irresponsible spending *only* if they are held in a trust with proper safeguards built into it. In a trust, you can instruct your trustee to make distributions as needed to trust beneficiaries, which can include your spouse, children and grandchildren.

Provide for a Second Spouse *and* Your Children

Planning in second or subsequent marriage is often different from planning in a first marriage. There may be *his* children, *her* children and sometimes *their* children. Each spouse probably brought assets into the marriage, and each may want those assets to go to their own children after they die. At the same time, each spouse probably would want to make sure their surviving spouse will have enough to live on.

Naming a spouse who is not the parent of all of your children as a joint owner or beneficiary of life insurance or retirement accounts can be a problem because that means your spouse will have control of the proceeds if you die first. Promises may be made now to include your children that are not your spouse's children, but that

may not work out if you are the “glue” holding your children and their stepparent together.

Provide for a Loved One with Special Needs

You may have a spouse, child, sibling, parent or other loved one who is physically, mentally or developmentally disabled—from birth, illness, injury or even substance abuse—who may be entitled to government benefits now or in the future. Most of these benefits are available only to those with very minimal assets and income. A non-structured inheritance often disqualifies a disabled person from receiving government benefits that are needed for their care.

Plan for Disability

If you can't conduct business due to mental or physical incapacity (dementia, stroke, heart attack, etc.), having a will won't help. This is because a will can only deal with what happens after you die. If there is a problem with your power of attorney, you don't have one, or someone (like a bank) that has your assets will not accept it, a probate court will have to appoint a guardian to manage those assets for you. Then a court, not your family, will control how your assets are used to care for you. That will continue until you die or recover. The guardianship process is public and can be expensive, embarrassing, time consuming and difficult to end. It does not replace probate at death, so your family could have to go through the probate court twice.

Health care documents are critical. You need to give someone the power to make health care decisions for you if you are unable to make them for yourself. A living will can speak for you if you are unable and tell your doctors whether you want to be kept alive in a vegetative state or allowed to die. Federal and state laws control to whom your doctors can disclose your medical situation in the absence of your written direction, so you need to give those directions while you are able.

Finally, the exorbitant costs of long-term care, most of which are not covered by health insurance or Medicare, can wipe out a lifetime of savings. Consider long-term care insurance to protect your assets.

Protect Your Business and Other Assets

Those in high-litigation-risk fields like construction, medicine, law and real estate must be concerned about protecting their assets from lawsuits. All business owners need to plan for what will happen to their business when they can no longer manage it due to incapacity, retirement or death.

Make Meaningful Charitable Gifts

If you want some or all of your assets to go to a favorite charitable, religious or educational organization, you must include this in your estate planning. Without a valid will or trust, your assets will be distributed by state law—and no charity will be among your beneficiaries.

Pass Down Your Values to Future Generations

For many people, passing along their accumulated intellectual, spiritual, and human wealth to the next generation is just as important as passing along their accumulated financial wealth and business. Most people take the time to pass along their values and human wealth. Many fail to pass along their financial wealth and plan for their businesses. Don't be part of the more than 90% of family businesses that fail to survive to the third generation. Take the time to plan how you leave assets to your family, and that will let them know how much you care about them. It is another way to convey your values.

If you have young children, you can select someone who shares your views to manage their inheritance, and you can provide a letter of instruction to your chosen guardian with your views on the care of your children. Grandparents can provide for private or religious education. Even end-of-life and funeral/burial instructions can be personal and convey your values. We can help you with other ways to pass on your accumulated intellectual, spiritual, and human wealth, too. Final gifts to your church or synagogue, university, hospital or other favorite cause will let your family know that giving is important to you.

Conclusion

There are even more reasons than these to do estate planning, even when avoiding estate and inheritance taxes is not a concern. And with the federal exemption so high, most of us are free to plan our estates the way we want without having to jump through hoops to avoid federal estate taxes.

If you have already completed your estate planning, this is an excellent time to review your plan and make sure it is what you really want, especially in light of the changes in the income tax law that went into effect on January 1. Now that we have “permanent” estate and gift tax laws, you and your estate planning professionals have more certainty under which to plan than you have had in the past 12 years. If your estate is larger, be sure to take advantage of the high exemptions and techniques that are currently available. With the President looking to close more loopholes, many longstanding techniques may not be available much longer.

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