The Wealth Advisor

Estate Planning - A Process, Not an Event

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You have signed all of your estate planning documents and, if your plan includes trusts, completed their funding. You sit back, relax, and enjoy the peace of mind that comes with completing that task. But don't bask in that feeling for too long—estate planning is an ongoing process, not a one-time event.

In this edition of *The Wealth Advisor*, we will explain why your estate plan will need to evolve to keep pace with your life, family, and finances as they change, events that should prompt you to consider making changes, and planning opportunities that can arise along the way.

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My practice is exclusively devoted to estate planning, trust and probate law, in which I am certified as a specialist by the State Bar of California, Board of Legal Specialization. This newsletter highlights legal issues which could affect you personally and financially.

Why Your Estate Plan Will Need to Evolve

Your estate plan is designed in light of what is known at the time; a snapshot, if you will, of you, your family, your financial situation and the tax laws as they existed and were anticipated to change in the future at the time it was prepared. All of those things do change during your lifetime, and often in ways that were not anticipated. When the unanticipated happens, your estate plan will need to change, to adjust.

It is unreasonable to expect that a basic will-based plan created when you were a newlywed living in an apartment would still be all you need when you have children, a home, and a business. Life's curve balls - such as a divorce, a loved one who has special needs, or changes in the tax laws can also make plan adjustments advisable.

Events that Trigger Changes to Your Estate Plan

Maintaining an estate plan has been compared to maintaining an automobile. Both need periodic attention if you expect them to perform the way you want when you need them. While a car will have *time and mileage* checkpoints for servicing, your estate plan will have *event* checkpoints and should be checked periodically, too.

Generally, any significant change in your personal, family, financial or health situation, or a change in the tax laws should prompt an estate plan review. The following list can be used as a guide, but is by no means all-inclusive:

Personal and family changes:
* You marry, separate or divorce;
* Your or your spouse's health declines;
* Your spouse dies;
* Birth or adoption of a child;
* Marriage or divorce of a beneficiary;
* Family member develops special needs or requires extra care;
* Minor becomes an adult;
* Beneficiary's attitude toward you changes;
* Beneficiary develops a substance abuse problem;
* Beneficiary displays poor financial management skills;
* Parent's or other beneficiary's health declines;
* Family member dies.

Family finances changes:
* Value of your assets changes significantly;
* You anticipate a sale or transfer of a family business;
* You buy real estate in your own or another state;
* Value of a family member's assets changes dramatically;
* Beneficiary gets into financial difficulties;
* Parent or other relative becomes financially dependent upon you.

Other Changes:
* Federal or state tax laws change;
* You move to a different state;
* Successor trustee, guardian or administrator moves, becomes ill, or changes their mind about serving;
* You change your mind about who you want to be your trustee, guardian or administrator.

Changes Your Estate Plan Might Need
These will vary according to the circumstances in which you find yourself at the time. As before, the following can be used as a guide to stir your thoughts, but it is by no means a complete list:
* When you begin to have a family, you will need to name a guardian and inheritance manager for your minor children and plan for their future. (Otherwise, the court could name who will raise them if you can't, and it will pay out each child's inheritance at age 18.)
* You may want to add or drop a beneficiary.
* Beneficiary designations, especially for IRAs and other tax-deferred plans, may need to be updated. (As your tax-deferred plan grows, consider a "stand-alone retirement trust" to

ensure maximum tax-deferred growth for these assets.)
* You and other family members may want to set up a special trust to provide for a family member (child, parent, irresponsible adult) without jeopardizing their eligibility for valuable government benefits.
* You may want to change a trustee, successor trustee, guardian or executor, or replace one who is no longer able or willing to serve.
* Once you own your own home or have other significant assets, you may want to change from a will-based plan to a living trust-based plan.
* As your wealth increases, you may want to establish a gifting program so you can see the results of your gifts while you are living.
* With more assets to pass on, you may want to change the way your beneficiaries will inherit from you. In fact, you may decide to keep their inheritances in a trust to protect the assets from creditors, predators (including ex-spouses), irresponsible spending and future estate taxes.
* With more disposable income and accumulated wealth, you may want to increase the amount of your life insurance to hedge against estate taxes, create a dynasty trust for future generations or to fund a private foundation.
* You may want your estate planning to help you pass on your values (religion, education, hard work, etc.) in addition to your financial assets.
* Your health care documents may need to be updated. (You may want to change who will make decisions if you are unable to make them; also, some states require the documents be replaced periodically.)
* With more accumulated wealth, you may want to add a charitable beneficiary, such as your church or synagogue, hospital, university, or other favorite cause.
* You may want to plan for a smooth transfer of a family business before your retirement, disability or death.

Tax Law Changes Can Affect Your Estate Plan

Proper estate planning should always consider estate and gift tax rules. In recent years, we have seen the federal estate, gift and generation skipping transfer (GST) tax exemption rise from a stable $1 million to a very temporary $5 million. As those changes took place, many states enacted their own estate or inheritance tax, in addition to the federal tax.

If your estate plan does not keep up with these and other changes in the tax laws, it may not work the way you intended when it was established. That could cause your estate to pay too much in taxes and leave less to your beneficiaries than you had planned or have your estate distributed in ways you did not anticipate.

Special Planning Opportunities During the Rest of 2012 Only

The final months of 2012 are a time of special opportunity. Until December 31, 2012, an individual can give up to $5.12 million ($10.24 million, if married) in lifetime gifts without paying gift taxes. For most Americans, that will allow them to transfer as much as they want to family members without having to worry about gift taxes. For those with larger estates, combining the $5 million gift and GST tax exemptions with discounting, installment sales, and other advanced planning techniques can allow the tax-free transfer of huge amounts of wealth.

However, unless the President, House of Representatives and Senate all agree otherwise, on January 1, 2013, the federal estate, gift, and GST tax exemptions will drop from $5.12 million to about $1.4 million and the tax rate on everything over $1.4 million will increase from a flat 35% to a sliding scale starting at 45% and topping out at 55%. At the same time, unless the President, House of Representatives and Senate all agree otherwise, income tax rates will also increase, the tax on long-term capital gains will increase from 15% to 20% and the favorable tax treatment of dividends will end.

Planning Tip: If you transfer assets to a family limited partnership or limited liability company, an outside buyer would pay substantially less than the underlying asset value for an interest that cannot be sold without the approval of the other owners. Discounting values through planning strategies like this can leverage the $5.12 million gift and GST tax exemption available this year only and further increase its exceptional value as a wealth transfer tool.

Planning Tip: A very large amount of life insurance can be purchased with $5.12 million or $10.24 million. Giving the money to a trust that buys the insurance can allow the insurance policy proceeds to pass to younger generations free of probate, income taxes and estate and GST taxes or be available to meet liquidity requirements at death.

What Can We Expect in 2013?
The simple answer is that nobody knows. The exemptions from estate, gift and GST taxes and tax rates are political issues. What will happen in 2013, therefore, will depend a lot on who controls the House, Senate and Presidency after the November elections. The old adage, “Make hay while the sun shines” was never more true. The farmer understands that today’s sunshine may be followed by a rainy tomorrow and thus the opportunity to “make hay” irretrievable lost. Trusting that the President, House of Representatives and Senate will all agree to continue today’s estate, gift and GST tax regime into 2013 and beyond is a very risky strategy, especially when compared with the certainty of today’s extremely favorable tax situation – and especially in light of continuing record federal deficits.

Planning Tip: The current administration has targeted for elimination long-used wealth transfer strategies like discounting (mentioned above) and even unlimited charitable deductions. Nobody yet knows what the tax laws will be in 2013. However, we do know what we have now…an exceptional planning opportunity that we may never see again.

When Should You Review Your Estate Plan
It’s a good idea to review your estate plan every year. To make that happen, set aside a specific time each year (such as a birthday, anniversary, family gathering) as your reminder to review it. Having a plan in place and then reviewing it regularly will maximize the probability that it will be current on that unknowable future date when it

really will need to be.

When you do your annual plan review, take time also to update and organize your financial records. That way, when the unexpected happens, your family members will not be doubly stressed by having to search for insurance policies, bank records, etc., like so many are forced to do, following a death or disability event. Instead, *your* family or trustee will have the comfort of knowing that you planned for this event when they find everything they need organized and in one place.

Planning Tip: Depending on your relationship with your beneficiaries, it can be a good idea to let them know the general provisions of your estate plan. You don't have to give them specific amounts of their inheritance or of your financial accounts. But it can be very helpful for them to understand what your plan contains and why you have planned it this way.

What if Your Estate Plan Needs Changes?
You need an estate planning lawyer's advice to make an estate plan and you need the same kind of lawyer's advice and assistance to change one. Trying to make a change yourself by writing on your original plan documents is a sure-fire recipe for disaster. Maybe your changes won't be valid. Maybe they will actually void your plan documents altogether. Maybe they will lead to confusion that will require a judge and jury to straighten out. Maybe the change will have tax consequences you didn't anticipate.

Your estate planning lawyer will be able to provide critical guidance you need to make the appropriate changes to your plan, thus giving you peace of mind that everything has been done correctly. And that will put you back where you were when we started this conversation: sitting back, relaxing and basking in that peace of mind that comes with knowing that you have just the planning you need…at least until the next change comes along.

Conclusion
Estate planning *is* an ongoing process. You wouldn't mark "Done for life" next to "Buy clothes" on your task list and you can't so mark "Plan estate." Your estate plan needs to be changed, adjusted and adapted as you move through the events of your life. Keeping your estate plan up to date will give both you and your family assurance that it will work the way you want whenever it is needed. And that is one of the most thoughtful and considerate things you can do for yourself and those you love.

Visit [EstatePlanning.com] for more information and for up-to-date news about estate planning and related topics.

TEST YOUR KNOWLEDGE

1. Most people only need to do their estate planning one time. T F

2. Every young family should start with an expensive, comprehensive estate plan that will carry them all the way to retirement and beyond. T F

3. A change in your personal, family, financial or health situation could result in the need to change your estate plan. T F

4. Proper estate planning should consider estate and gift tax rules. T F

5. Estate planning can help provide a smooth transfer of a family business. T F

6. Estate and gift tax laws are stable – they haven't changed in years. T F

7. There are exceptional estate planning opportunities in 2012 that may not last. T F

8. There's no need to review your estate plan more often than every 10 years or so. T F

9. If you want to change your estate plan, you can make the change yourself by just crossing out the old and writing in the new wording on the plan documents. T F

10. While you do not need to share specific financial information with your beneficiaries, it can be helpful to inform them of the general provisions of your estate plan and why you planned it the way you did. T F

Answers: 1, 2, 6, 8 and 9 are false. The rest are true.

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