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ESTATE TAXES NO LONGER POSE A THREAT – SO WHY DO YOU STILL NEED AN ESTATE PLAN?

Recent changes in both federal and Maryland State law have significantly reduced the threat of so-called “death taxes.” The federal estate tax only kicks in on estates over \$5.4 million, and a married couple can combine both their exemptions and protect almost \$11 million from any federal estate tax. The Maryland estate tax threshold is \$2 million this year and will increase by \$1 million each of the next two years and then be fixed at the federal amount. Consequently, tax avoidance is much less a motivating factor for people to do estate planning. But does that mean that you don’t need to do any estate planning? Not at all.

The primary objectives of estate planning are (1) making sure someone you trust will be able to manage and control your assets for the benefit of you and your family in the event that you become incapacitated; and (2) making sure that if you die, your property will pass to those you want to get it, in a way that will best benefit them. These are goals that everyone has, regardless of the tax consequences.

Here are the documents that are important to every estate plan, and the consequences of not having them in place if needed:

Durable Power of Attorney: A power of attorney can designate and appoint someone you trust to act as your agent and manage your assets – bank accounts, investments, real estate, etc... - in the event that you are incapacitated. Without such a document (or, alternatively, a Revocable Living Trust, which is even better) your loved ones will be forced to institute guardianship proceedings – essentially a lawsuit in the Circuit Court, which will require two attorneys (one that they will have to hire and one the Court will appoint to represent you and make an independent investigation). This will take considerable time and involve considerable expense and aggravation.

Last Will and Testament: If you die without a valid will, your estate will pass under the state laws of intestacy – the laws on the books that says who gets your property if you die without a will. The chances are very good that these laws do not correspond to your own wishes. Thus, your property may very well pass to unintended beneficiaries. The probate process will also be made more cumbersome in the absence of a will, and may result in increased costs, such as bond premiums and attorney’s fees.

Trusts: Perhaps the primary task of an estate planning attorney is to design and establish the blueprints for proper trusts that will accomplish your goals. By failing to plan, you are missing the opportunity to fulfill your objectives in protecting your loved ones. Some examples of trusts that may be suitable for a given client are as follows:

Revocable Living Trusts. Many of our clients like the benefits that can be achieved by using a Revocable Living Trust as the centerpiece of their estate plan. The biggest benefits of a Living Trust are (1) the ability to provide management of your property in the event of incapacity and (2) the avoidance of probate when you die.

Trusts for minor children. These trusts form a set of instructions to a trusted person (the Trustee) to manage an inheritance that will pass to a minor child, so that the estate will be used to ensure the health, education, maintenance and support of the child until he or she completes college or reaches sufficient maturity.

Trusts for “spendthrift” children. Just because children may have reached the age of majority doesn’t mean that they are responsible enough to own and control an inheritance. A properly structured trust can protect such a beneficiary from himself and make sure that the resources are properly applied for his benefit.

Trusts to protect beneficiaries from failed marriages, lawsuits, creditors and bankruptcy. A big advantage to being pro-active in establishing an estate plan is the tremendous value that can be added to an inheritance by establishing a trust that forms a protective “wrapper” around the inheritance. Simply put, “money in a trust is more valuable than money in your pocket.”

Marital Trusts, especially useful in “blended families” or second marriages, that ensure that, if one spouse dies, the surviving spouse will not disinherit the deceased spouse’s children. A properly structured trust can make sure that a spouse gets the support that he or she needs during their lifetime, yet ensures that what is left goes to intended beneficiaries and not to strangers.

Special Needs Trusts. For clients who have children with disabilities, the difference between planning and failing to plan can be devastating. Without a proper Special Needs Trust in place for such a beneficiary, the entire inheritance of such a child could be exhausted in paying medical and support costs. With a proper trust in place, the inheritance can be used to supplement, not supplant, the public benefits that could cover those costs, and provide a much more enhanced standard of living for the beneficiary.

So don’t make the mistake of thinking that estate planning is only about tax planning. Remember, estate planning is all about doing what you can in order to make sure your loved ones will be protected in the event of your disability or death. There are a lot of things other than taxes to worry about.



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