

PUBLICATION

Estate Planning Considerations: Documentation and Peace of Mind

February 8, 2013

With the introduction of the American Taxpayer Relief Act of 2012 (Act), the world of estate planning has been injected with a dose of certainty after more than 10 years of uncertainty as to federal estate, gift and generation-skipping transfer tax rules. As discussed in our January 8, 2013 Alert, "[The American Taxpayer Relief Act of 2012 Offers Some Certainty in an Uncertain World](#)," the Act makes permanent the \$5 million unified exemption - "permanent" simply meaning that the exemption can only be changed by subsequent legislation.

With a \$5 million unified exemption indexed for inflation, many may be questioning the need for estate planning now. In fact, there are many reasons, both tax and non-tax, that you should take steps sooner rather than later to be sure your estate plan is in order. This Alert -- which is the first in a series we will issue in 2013 addressing why estate planning remains a time-sensitive endeavor -- will deal principally with the documents every person should have and steps every person should take to make sure their affairs are in order, regardless of whether your estate is likely to be taxable.

Documents Everyone Should Have

Even if your estate is likely to be less than the \$5 million unified exemption amount, every person should have the following "bare minimum" estate planning documents:

- **Will** -- A Will that is valid under state law and reflects your current wishes and family structure. Keep the original Will in a fireproof safe or safety deposit box and make sure your loved ones know the location of the original, as a court will accept only the original Will for probate (with possible exceptions in very unusual circumstances).
- **Power of Attorney for Health Care** -- Sometimes called an Advance Directive for Health Care, this document appoints a loved one to make health care decisions in the event of incapacity. This document can also be drafted to include the so-called "Living Will" language that reflects your wishes regarding life support and anatomical gifts.
- **General Durable Power of Attorney** -- This document appoints an attorney-in-fact (most often a close relative or trusted advisor) to do essentially anything you can do in regard to your property and finances and can be drafted to be effective either immediately or upon incapacity.

The Value of a Revocable Trust

Journalist Ambrose Bierce once wrote, "Death is not the end. There remains the litigation over the estate." The probate process is both time-consuming and expensive. That is why, in addition to the "bare minimum" documents listed above, in some jurisdictions a Revocable Trust may be recommended. Such a trust, if suitable for you and your circumstances, has the potential to save your beneficiaries thousands of dollars and a lot of headaches.

In some jurisdictions, the benefits of a Revocable Trust include the reduction or avoidance of probate, the flexibility to control how beneficiaries receive assets, added privacy, and the ability to provide a mechanism for

planning for your own incapacity. However, in some jurisdictions Revocable Trusts may not be regularly used or recommended. Contact your attorney to find out whether a Revocable Trust is right for you.

Other Key Steps to Organizing Your Affairs

In addition to the "bare minimum" estate planning documents discussed above and other instruments (such as a Revocable Trust) your attorney may draft for you, be aware that your estate plan also includes documents your attorney did not necessarily draft, such as the beneficiary designations on life insurance policies and retirement accounts. Also be mindful as to the way in which your property is titled. For example, if you co-own a piece of real property with another person, such as a spouse or a child, it makes a difference to your estate whether that property is owned jointly with a right of survivorship, or as tenants-in-common. When you discuss your estate plan with your attorney, be sure to also ask their advice on whether these other ownership interests are in keeping with your overall estate plan.

Here are some additional steps you can take to get organized and make life simpler for your loved ones if something should happen to you:

- **Document What You Own** -- Keep in a safe place proof of ownership information such as deeds to real property, cemetery plots, stock certificates, insurance policies, retirement benefits, ownership interests in businesses and lists of brokerage and bank accounts.
- **Keep Your Loved Ones Informed** -- The importance of keeping your loved ones informed cannot be overstated. You should not only be sure to have the ownership information listed above on hand, but also make sure your loved ones either have copies of that information or know where they can find it. Undeniably, it is difficult to have conversations about your wishes and your assets with the people you love, but doing so now helps prepare those you care about to handle your affairs.
- **Update Your Estate Plan Regularly** -- Life is busy and full, and when you completed that life insurance or retirement account beneficiary form you might have been in a hurry. But take the time to periodically review the beneficiary designations on those policies and accounts as well as to review your estate plan with your attorney so that you can be sure that they reflect your current wishes. For additional guidance on reviewing your estate plans, see our October 31, 2012 Alert "[Non-Tax Reasons for your Well-Tailored Estate Plan.](#)"

Conclusion

Do not put off contacting an attorney because doing so forces you to think of a time when you will be unable to voice your wishes yourself. If you never memorialize what those wishes are, they can never be carried out. Although thinking about these matters now can be difficult, spending a few hours with an attorney who can help you put your wishes in writing will likely give you a sense of relief and enable you to live your life with a renewed peace of mind.

If you need advice or assistance with your estate plan, please do not hesitate to contact any of the attorneys in the Firm's Tax Department.