

A Vital Dialogue – Estate Planning

Discussions with parents or other family members regarding estate planning can at times be difficult, emotional and stressful. This discomfort, however, cannot compare to the financial pain felt by family members whose parents die without having implemented estate planning strategies. Relying upon state governments to decide the management and distribution of our assets and property can be an unsettling experience. Probate costs and the time delays associated with municipal court systems may leave heirs financially unstable. Even those individuals with existing estate plans should review them to ensure they take into account recent tax law changes. We suggest that our clients initiate a family discussion of these topics, or update any plan that is already in place, sooner rather than later.

Broaching the Topic

Perhaps the most challenging task, especially with elderly parents or relatives, is initiating the discussion. Some may perceive it as the first step toward giving up control over their personal affairs. To assuage this concern, we may emphasize that estate planning is about providing the estate owner more control, not less. Legal documents such as wills and trusts are tools that allow us to control the management and distribution of our assets both during life and at death. There is perhaps no way to gain greater control over our assets than to implement time-proven, legal estate planning strategies such as personal trusts.

To ensure an effective discussion:

- Choose a comfortable setting, arrange a convenient time and location, and eliminate, or at least limit, distractions.
- Suggest a group discussion with siblings or other family members.
- Stress the importance of the topic and encourage an open and honest airing of issues and goals.
- Express concern for the elderly relatives' future well being and emphasize the need to implement an effective estate plan that will serve their needs and wishes.
- Use current books or articles on the topic to illustrate the benefits of having an estate plan and successful planning strategies. These may include articles on the consequences of not having a sufficient estate plan in place.
- If appropriate, schedule more than one meeting.

Current Transfer Tax

Federal law imposes gift and estate taxes on the transfer of property. The current law provides each individual with a single gift and estate tax exemption or credit that allows property up to a certain value to be transferred tax free. This year the exemption amount is \$2,000,000 for estate taxes which is inclusive of the \$1,000,000 exemption amount for gift taxes. The estate-tax exemption amount will increase to \$3,500,000 in 2009 while the gift tax exemption amount will remain at \$1,000,000. The rates of gift and estate taxes currently reach their highest levels at 45%. This top rate will remain effective through 2009, as Figure 1 shows. In 2010, estate taxes are scheduled to be repealed, while gift taxes will remain in effect with a \$1,000,000 exemption and a top-rate of 35%. However, unless Congress acts to extend the law, estate and gift tax exemptions and rates will subsequently revert back to the laws in existence in 2001 when these changes were first passed.

Individuals who die in 2008 with a net worth of more than \$2 million may be subject to federal estate taxes. These issues should be discussed - and understood - by all family members in order to devise an effective estate planning strategy.

Tools and Options

For a successful discussion of estate planning options, the family should understand the basic tools available.

These include:

- Will - This is a legally executed document that outlines and directs how and to whom a person wants his or her property distributed after death.
- Living Will - This advance directive gives instructions to doctors and hospitals regarding the nature and extent of care a person wants in the event of permanent incapacity.
- Durable Power of Attorney for Property - This designates someone to act on a person's behalf with respect to their financial affairs if he or she is physically or mentally incapacitated.
- Durable Power of Attorney for Health Care - This appoints a person to make health care decisions in the event that someone is too ill to make a decision.
- Living Trust - This is a legal arrangement that enables an individual to transfer money or other assets to a trustee, who holds legal title for the benefit of that individual and his or her beneficiaries.

Finally, parents and relatives may want to make available (perhaps to a trusted family member) the details and location of their financial accounts. These would include the location of bank, brokerage, and credit card accounts, as well as insurance policies (including health, life, annuity and long-term care). Also, it is important to know the location of tax returns, birth certificates and safe deposit boxes and keys. A name and phone list of key financial contacts such as financial advisors, lawyers, accountants and insurance agents should also be made available.

It is a delicate topic, but parents or other relatives may require guidance in coordinating an estate plan. Parents and relatives should consult their own tax advisor or estate planning legal advisor prior to implementing their estate plan to determine what is appropriate to their specific circumstances. Delaying these discussions can lead to significant family hardship and a loss of highly prized and hard-earned assets. But the strategies that follow a successful discussion can avoid this and provide peace of mind for family members.

For More Information

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