ESTATE PLANNING−−AN INTRODUCTION

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By definition, estate planning is a process designed to help you manage and preserve your assets while you are alive, and to conserve and control their distribution after your death according to your goals and objectives. But what estate planning means to you specifically depends on who you are. Your age, health, wealth, lifestyle, life stage, goals, and many other factors determine your particular estate planning needs. For example, you may have a small estate and may be concerned only that certain people receive particular things. A simple will is probably all you'll need. Or, you may have a large estate, and minimizing any potential estate tax impact is your foremost goal. Here, you'll need to use more sophisticated techniques in your estate plan, such as a trust.

To help you understand what estate planning means to you, the following sections address some estate planning needs that are common among some very broad groups of individuals. Think of these suggestions as simply a point in the right direction, and then seek professional advice to implement the right plan for you.

Over 18

Since incapacity can strike anyone at anytime, all adults over 18 should consider having:

- A durable power of attorney: This document lets you name someone to manage your property for you in case you become incapacitated and cannot do so.
- An advanced medical directive: The three main types of advanced medical directives are (1) a living will, (2) a durable power of attorney for health care (also known as a health−care proxy), and (3) a Do Not Resuscitate order. Be aware that not all states allow each kind of medical directive, so make sure you execute one that will be effective for you.

Young and single

If you're young and single, you may not need much estate planning. But if you have some material possessions, you should at least write a will. If you don't, the wealth you leave behind if you die will likely go to your parents, and that might not be what you would want. A will lets you leave your possessions to anyone you choose (e.g., your significant other, siblings, other relatives, or favorite charity).

Unmarried couples

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You've committed to a life partner but aren't legally married. For you, a will is essential if you want your property to pass to your partner at your death. Without a will, state law directs that only your closest relatives will inherit your property, and your partner may get nothing. If you share certain property, such as a house or car, you should consider owning the property as joint tenants with rights of survivorship. That way, when one of you dies, the jointly held property will pass to the surviving partner automatically.

Married couples

Married couples are effectively treated as one economic unit for federal gift tax and federal estate tax purposes, as long as each spouse is a U.S. citizen. This is accomplished using the unlimited marital deduction−−a powerful estate planning tool, because you can conceivably give or leave your entire estate to your spouse tax free. The deduction not only allows spouses to shift wealth between each other without incurring gift tax or estate taxes, but also allows spouses to maximize the benefits that result (e.g., equalizing your estates to take full advantage of the applicable exclusion amount). This is especially important since the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (the 2001 Tax Act) signed by President Bush on June 7, 2001, which has increased the exclusion amount (as described in a following section). Married couples should also consider creating a bypass or credit shelter trust.

Married with children

If you're married and have children, you and your spouse should each have your own will. For you, wills are vital because they can name a guardian for your minor children in case both of you die simultaneously. If you fail to name a guardian in your will, a court may appoint someone you might not have chosen. Furthermore, without a will, some states dictate that at your death some of your property goes to your children and not to your spouse. If minor children inherit directly, the surviving parent will need court permission to manage the money for them.

You may also want to consult an attorney about establishing a trust to manage your children's assets in the event that both you and your spouse die at the same time.

Certainly, you will also need life insurance. Your surviving spouse may not be able to support the family on his or her own and may need to replace your earnings to maintain the family.

Comfortable and looking forward to retirement

If you're in your 30s, you're probably feeling comfortable. You've accumulated some wealth and you're thinking about retirement. Here's where estate planning overlaps with retirement planning. It's just as important to plan to care for yourself during your retirement as it is to plan to provide for your beneficiaries after your death. You should keep in mind that even though Social Security may be around when you retire, those benefits alone may not provide enough income for your retirement years. Consider saving some of your accumulated wealth using other retirement and deferred vehicles, such as an individual retirement account (IRA).

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Wealthy and worried

Depending on the size of your estate when you die, you may need to be more concerned than ever about federal estate taxes, regardless of the gradual elimination of these taxes under the 2001 Tax Act. Here is a brief explanation about how your estate planning may be affected by this law and why it is important that you re−evaluate your current plan soon.

The 2001 Tax Act gradually eliminates estate taxes by increasing the amount that is exempt from these taxes over several years (from $1 million in 2002 and 2003 to $3.5 million in 2009); reducing the top estate tax rate over several years (from 50 percent in 2002 to 45 percent in 2007 through 2009); and finally repealing estate taxes for persons dying after 2009. However, under a provision in the law, pre−2001 Tax Act rules will return after 2010.

Federal gift tax remains. The applicable exclusion amount is $1 million in 2002 and beyond. The gift tax rates follow the estate tax rates, except that the top gift tax rate in 2010 (when there will be no estate taxes) will be 35 percent (the top marginal income tax rate in 2010 under the 2001 Tax Act).

The law contains several other changes, some of which are retroactive. These changes are complicated, and the uncertainty that exists makes planning difficult. You should contact your estate planning attorney to re−examine your plan.

Elderly or ill

If you're elderly or ill, you'll want to write a will or update your existing one, consider a revocable living trust, and make sure you have a durable power of attorney and a health−care directive. Talk with your family about your wishes, and make sure they have copies of your important papers or know where to locate them.

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