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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

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 have unique estate planning challenges and opportunities. On the one hand, you can transfer your entire estate to your spouse gift and estate tax free under the unlimited marital deduction. This will postpone taxation until the death of the surviving spouse. While this may be a good outcome for couples with smaller estates, couples with combined assets in excess of the estate tax exemption amount (\$3.5 million per person in 2009) may wind up paying more in estate taxes than is necessary because they've wasted the exemption of the first spouse to die. Couples in this situation need to plan in advance to avoid this result (perhaps by using a "credit shelter" or "bypass" trust, or some combination of marital trusts, often referred as an "A/B or A/B/C trust arrangement").

Note: Funding a bypass trust with funds from a retirement plan could have adverse income tax consequences.

Note: In the states that have "decoupled" their death tax systems from the federal system, using a formula provision to fund a bypass trust may increase the chance of having to pay state death taxes.

Married couples where one spouse is not a U.S. citizen have special planning concerns. The marital deduction is not allowed if the recipient spouse is a non-citizen spouse (although a \$133,000 annual exclusion, for 2009, is allowed). If certain requirements are met, however, a transfer to a qualified domestic trust (QDOT) will qualify for the marital deduction.

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).

Wealthy and worried

Depending on the size of your estate when you die, you may need to be concerned about estate taxes.

Current federal estate tax law (1) increases the estate tax exemption from \$2 million in 2008 to \$3.5 million in 2009, (2) imposes a top estate tax rate of 45 percent, (3) repeals the estate tax for 2010 only, and (4) reinstates the estate tax in 2011, with an exemption amount of \$1 million and a top tax rate of 55 percent.

There is uncertainty about the exact form the federal estate tax system will take in future years. However, it appears that individuals with estates valued at under \$1 million need not worry too much about federal estate taxes, those with estates between \$1 million and \$3.5 million should have some flexibility built into their plans, and those with over \$3.5 million need to implement plans now to avoid having to pay federal estate tax.

Whether your estate will be subject to state death taxes depends on the size of your estate and the tax laws in effect in the state in which you are domiciled.

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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