Estate Planning

Facts, Misconceptions, and Common Mistakes of Estate Planning

Estate planning can be precisely defined as a series of legal steps that involves permitting your beneficiaries to steer clear of probate and curtail the taxes incurred. It also requires you to write a living will in which you appoint trusted acquaintances who would acquire the power of attorney and executor status should you be debilitated or die.

Facts

1. **Estate Planning gives you control over your property/assets:**
    - **a.** It permits you to exercise direct control over how your property will be treated when you are incapacitated
    - **b.** It allows you to lay down terms and conditions regarding the distribution of your property.
    - **c.** It provides protection to your assets.
    - **d.** It permits very explicit instructions for how your assets should be treated in case you wish to avoid this asset division from happening.
2. **Estate Planning protects from taxes:**
    - **a.** The most important aspects of any estate plan are the procedures followed to evade too much of the estate's value being lost to taxes like the death tax, estate tax, etc. You can curtail the estate tax by naming the recipients of funds or property from your estate in your legal will. Also, indicate that a certain amount should be given as a gift. The lifetime tax-free gift threshold is of $1 million.
3. **Living wills grant power of attorney:**
    - **a.** Inclusion of a living will in the estate plan is also important. Your enduring power of attorney legally binding decision.
4. **Either you or your state decides your estate's fate:**
    - **a.** In case you die without writing a will, the explicit laws of your state will decide how your property will be divided following probate. In such a case, it is quite possible that your estate will be taxed the maximum probable amount. According to the law, in absence of a will, your spouse is entitled to receive one third of the value of the estate. The rest of the amount has to be distributed equally among children.

To conclude, Estate planning is the best method by which your assets can be protected from whims of government taxation and financially irresponsible relatives. It also safeguards your property by preventing the dissolution of your property by the normal laws of succession in the country.

Misconceptions

We've found that many people have many misconceptions about the best way to leave their hard-earned money to their families. Here are some of the common misunderstandings we have run across:

1. **Estate taxes won't affect me -- I don't have $625,000.**
    - a. When calculating the value of your estate, don't forget to include life insurance proceeds, retirement plans and IRAs.
2. **I own everything jointly with my spouse, so I don't need an estate plan.**
    - a. If your combined estate is more than $625,000, you will pay unnecessary estate taxes. By leaving everything to your spouse you are effectively passing up your unified deduction.
3. **A will is all I need.**

   a. A will can appoint a guardian for your minor children, and can determine who will receive your assets after your death. Without a trust it cannot determine when your children will inherit your estate. Generally speaking, your children would receive their entire inheritance upon their eighteenth birthday.

4. **It's no one's business who I leave money to.**
   a. Wills are public record. If you want privacy, avoid probate. Create a trust and title your assets to the trust.
5. **Life insurance is not subject to taxes.**
   a. Although it is true that life insurance proceeds are not subject to income tax, they are included in your estate, where taxes can run up to 55%. One specific type of trust, an Irrevocable Life Insurance Trust, can take ownership of the policy out of your name, and out of your taxable estate.
6. **My spouse will never remarry.**
   a. You should consider the "what if" questions. What if you leave everything to your spouse, what if he or she remarries, what if he or she dies, leaving everything to the new spouse? What do your children inherit?
7. **I don't need a corporate trustee.**
   a. A corporate trustee can administer all aspects of the trust -- accounting, legal and investment, in a professional, even-handed manner. Asking a family member to take sole responsibility for all of that assumes financial sophistication and a family that will never have any conflicts -- a rare combination. **I'm leaving money to charity in my will.**
8. **Having a trust avoids probate.**
   a. All assets that are titled in your name alone at the time of your death will go through probate. Title your assets in the name of the trust to avoid probate. For example, your checking, savings and brokerage accounts may be titled "John W. Smith Trust, John W. Smith Trustee".
   b. Did you know that you can leave money (or stock) to your favorite charity while you are alive and receive income from your donation? It can be done through a Charitable Remainder trust.
9. **I had a trust done ten years ago - it's still good.**
   a. Your trust can become outdated by changes to the tax law or by changes in your personal circumstances. Stock market gains over the last ten years may have increased the value of your estate to the point where more advanced estate tax planning is now in order.

Common Mistakes

1. **No Plan:**
   a. The first, and worst, mistake is to have no plan at all.
2. **Improper use of jointly held property:**
   a. Owning everything jointly makes the provisions of one's will ineffective. Property held jointly with the right of survivorship is left outright to the survivor. Frequently, an inequitable amount of property goes to a joint tenant because he or she receives the property directly, and the decedent's will divides the assets transferred by probate to the remaining heirs on a percentage basis, such as thirds. Since the will only covers probate property, an equalization of all of your assets need not be made.
3. **Improperly arranged life insurance**:
   a. If the primary beneficiary of your life insurance policy is deceased, and you never named a secondary beneficiary, your family can be in for big problems. If your children are minors, and you haven't designated a trust to hold the life insurance

proceeds until they reach a certain age, your insurance proceeds are subject to claims in the estate, and will pass through the estate.

4. **Lack of liquidity:**
    a. Not having enough ready cash available to cover death taxes and other final expense is a major concern for many people.
5. **Choosing the wrong executor:**
    a. Often, an executor hasn't the time to devote to the often long and drawn-out process of estate administration. Or, how do you know that your executor will be fair and knowledgeable, and not display a conflict of interest?
6. **Will errors**:
    a. Too many wills do not get updated. People tend to draft wills when they get married or divorced, or when they have their children. The will often remains neglected for years after that. An incorrect will can pass property to an incorrect heir.
7. **Leaving everything to your spouse**:
    a. There can be serious tax consequences if you pass all your property to your spouse, and then he or she passes it along to your children. Leaving everything to a spouse isn't always the best way to proceed.
8. **Improper disposition of assets:**
    a. This is when your assets get passed along to the wrong person. A 20-year-old, for instance might receive a larger amount of money than he or she is capable of handling. Inequitable distributions due to incorrect beneficiary designations is a major error.
9. **Failure to stabilize and maximize**:
    a. It's very important that you know, and record, the value of your business interest, and have an agreement in place that makes provisions for the business if you die. It's also important to make sure you've got primary and secondary beneficiary designations on all contracts—from pension plans to tax-deferred annuities. IRAs and other retirement vehicles often are a family's largest asset beside their home, yet they don't plan the accurate disposition to minimize death tax and income liabilities.
10. **Lack of adequate records:**
    a. Where are your assets located? Do you have an updated list of the names and numbers of your closest advisors? Thankfully if you completed weeks 1 & 2 you do! An executor also needs access to last year's tax returns, the locations of all your bank accounts, information about insurance policies, and so forth. Make sure you record all relevant information and have it in an accessible location. (Like your 52 Weeks Organizer ☺)
11. **Not having a master plan:**
    a. You can learn everything you can about estate planning, but if you don't have a well-thought-out master plan, you'll still be at square one. Be sure to take the time once a year to quantify in dollar terms your financial needs and objectives, and chart a plan for reaching your goal in the most efficient and effective way.

Having a clear and intelligent estate plan can help to put your mind at ease about the future, and assure that your heirs will get maximum benefits from what you leave behind. Estate planning is a useful tool, not something to be avoided or ignored.