INSIGHT ON ESTATE PLANNING

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ESTATE PLANNING PITFALL
You're not making direct payments of tuition and medical expenses

YEAR END 2018

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Don’t be afraid of probate

Probate. The word itself is enough to strike fear into the hearts of elderly individuals and their loved ones. It conjures images of lengthy delays waiting for wealth to be transferred and bitter disputes among family members. Plus, probate is open to the public, so all your “dirty linen” may be aired. The reality is that probate doesn’t have to be so terrible, and often isn’t, but both property owners and their heirs should know what’s in store.

Probate process explained

For starters, be aware that probate is predicated on state law, so the exact process varies from state to state. This has led to numerous misconceptions about the length of probate. On average, the process takes no more than six to nine months, but it can run longer for complex situations in certain states. Also, some states exempt small estates or provide a simplified process for surviving spouses.

In basic terms, probate is the process of settling an estate and passing legal title of ownership of assets to heirs. If the deceased person has a valid will, probate begins when the executor named in the will presents the document in the county courthouse. If there is no will — the deceased has died “intestate” in legal parlance — the court will appoint someone to administer the estate. Thereafter, this person becomes the estate’s legal representative.

With that in mind, here’s how the process generally works, covering four basic steps.

First, a petition is filed with the probate court, providing notice to the beneficiaries of the deceased under the will. Typically, such notice is published in a local newspaper for the general public’s benefit. If someone wants to object to the petition, they can do so in court.

Second, the executor takes an inventory of the deceased’s property, including securities, real estate and business interests. In some states, an appraisal of value may be required. Then the executor must provide notice to all known creditors. Generally, a creditor must stake a claim within a limited period of time specified under state law.

Third, the executor determines which creditor claims are legitimate and then meets those obligations. He or she also pays any taxes and other debts that are owed by the estate. In some instances, state law may require the executor to sell assets to provide sufficient proceeds to settle the estate.

Fourth, ownership of assets is transferred to beneficiaries named in the will, following the waiting period allowed for creditors to file claims. If the deceased died intestate, state

law governs the disposition of those assets. However, before any transfers take place, the executor must petition the court to distribute the assets as provided by will or state intestacy law.

Frequently, the will provides for the creation of a testamentary trust to benefit heirs. For instance, a trust may be established to benefit minor children who aren't yet capable of managing funds. In this case, control over the trust assets is transferred to the named trustee. Finally, the petition should include an accounting of the inventory of assets, unless this is properly waived under state law.

Planning to avoid probate

Certain assets are automatically exempt from probate. (See "What assets skip probate?" at right.) But you also may be able to avoid the process with additional planning. The easiest way to do this is through the initial form of ownership or use of a living trust.

In basic terms, probate is the process of settling an estate and passing legal title of ownership of assets to heirs.

With joint ownership with rights of survivorship, you acquire the property with another party, such as your spouse. The property then automatically passes to the surviving joint tenant upon the death of the deceased joint tenant. This form of ownership typically is used when a married couple buys a home or other real estate. Similarly, with a tenancy by entirety, which is limited to married couples, the property goes to the surviving spouse without being probated.

What assets skip probate?

Your will controls the disposition of most assets you own, but not all assets have to go through probate. A few notable exceptions include funds in a qualified retirement plan, such as a 401(k) plan, or traditional and Roth IRAs. These pass to beneficiaries listed in the plan or IRA documents. Similarly, life insurance proceeds go to beneficiaries named in the proper forms (unless the estate is named). These designations supersede any provisions in a will.

Other property in a payable-on-death (POD) form — such as certain securities, bank accounts and U.S. Savings Bonds — automatically pass to beneficiaries without going through probate.

A revocable living trust is often used to avoid probate and protect privacy. The assets transferred to the trust, managed by the trustee, pass to the designated beneficiaries upon your death. Thus, you may coordinate your will with a living trust, providing a quick transfer of wealth for some assets. You can act as the trustee and retain control over these assets during your lifetime.

Achieving all estate planning goals

When it comes to probate planning, discuss your options with family members to develop the best approach for your personal situation. Also, bear in mind that avoiding probate should be only one goal of your estate plan. Your estate planning advisor can help you develop a strategy that minimizes probate while reducing taxes and achieving your other goals. •

Smart estate planning begins with protecting your assets

It's one thing to earn enough to live a comfortable lifestyle. It's yet another to develop a plan for protecting your assets so that there's more for your heirs after your death. If you've been fortunate enough to achieve the former, there are estate planning tips to help with the latter.

Asset protection may take many forms, ranging from the simple to the sophisticated, often involving a combination of several techniques. In any event, you should begin planning now instead of leaving matters to chance.

Back to the basics

Traditionally, asset protection strategies have focused on avoiding or minimizing federal estate tax liability. Although estate taxes remain a concern for some families, most should find sufficient tax shelter under current estate tax law. However, be aware that estate taxes may still apply at the state level.

For instance, the Tax Cuts and Jobs Act (TCJA) hikes the unified gift and estate tax exemption to $10 million (subject to inflation indexing) for transfers to nonspousal beneficiaries and for assets passing tax-free to a spouse under the unlimited marital deduction. The indexed exemption amount for 2018 is $11.18 million. Also, portability effectively allows couples to double this tax shelter to $22.36 million. Finally, you can still use the annual gift tax exclusion of $15,000 per recipient in 2018.

Thus, you can simply "gift" assets to your loved ones, realizing the estate tax benefits of the exemption and gift tax exclusion amounts. For some, asset protection is as easy as that — case closed. But this simplified approach requires you to give up control of those assets during your lifetime, which might not be desirable or feasible. As a result, more complex techniques may be preferred.

A matter of trusts

Frequently, trusts are featured in an asset protection plan. The traditional bypass trust (or A-B trust), which was created mainly to avoid federal estate tax, is still a viable option. Such trusts offer protection from creditors, while continuing to provide tax shelter.

A similar variation, often called a spendthrift trust, can be established for a beneficiary who isn't qualified to manage investments or might indulge in spending sprees. An independent trustee assumes the financial management responsibilities.

With a qualified terminable interest property (QTIP) trust, a grantor can provide an income stream for a surviving spouse while still determining the disposition of the trust assets when the spouse dies. This enables a surviving spouse to maintain a comparable lifestyle. A QTIP trust is often used by someone who has remarried and has children from a prior marriage. The children typically receive the assets when the trust terminates.

Another type of trust, the domestic asset protection trust (DAPT), has been growing in popularity. This is a "self-settled" trust, where the grantor personally benefits from the income. The main objectives are to provide protection from creditors and retain control over the

assets. Accordingly, DAPTs may be used when there's a divorce or spendthrift concerns.

Currently, 17 states have enacted legislation authorizing DAPTs. They are: Alaska, Delaware, Hawaii, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia and Wyoming.

Finally, offshore trusts can be used to protect assets. These trusts are created in countries that are "tax havens" or have strict privacy laws. Professional guidance for these complex arrangements is recommended.

Focus on business matters

Asset protection is also vital to business owners. Depending on your situation, you might form a company as a C corporation to protect your business assets or as an S corporation providing partnership-type taxation. There are additional factors at work, so choose the business form carefully.

Another possibility is a limited liability company (LLC). These essentially combine the tax benefits of S corporations with the creditor protection of C corporations. LLCs may also offer more flexibility in management of assets. Again, all factors should be considered before you switch to LLC status.

Choosing the right asset strategy

The good news is that there are a multitude of ways to protect your assets, thus allowing you to be able to pass more on to your heirs. The key is to be proactive, not reactive. Consult with your advisor to determine which strategies work best with your estate plan. •

Thinking long term

Don't overlook long-term care planning

According to the *2017 Genworth Cost of Care Survey*, the average annual cost of living in an assisted living facility is $45,000. The average annual cost of a private nursing home room is nearly $97,500.

If you or a loved one becomes ill and requires long-term care (LTC), the costs can quickly deplete your savings, thus derailing your estate plan. Insurance is a popular option to help cover LTC medical expenses.

Supplement to traditional health insurance

An LTC insurance policy supplements your traditional health insurance by covering services

that assist you or a loved one with one or more activities of daily living (ADLs). Generally, ADLs include eating, bathing, dressing, toileting, and transferring (in and out of bed, for example).

LTC coverage is relatively expensive, but it may be possible to reduce the cost by purchasing a tax-qualified policy. Generally, benefits paid in accordance with an LTC policy are tax-free. In addition, if a policy is tax-qualified, your premiums are deductible (as medical expenses) up to a specified limit.

To qualify, a policy must:

- Be guaranteed renewable and noncancelable regardless of health,
- Not delay coverage of pre-existing conditions more than six months,
- Not condition eligibility on prior hospitalization,
- Not exclude coverage based on a diagnosis of Alzheimer's disease, dementia, or similar conditions or illnesses, and
- Require a physician's certification that you're either unable to perform at least two of six ADLs or you have a severe cognitive impairment and that this condition has lasted or is expected to last at least 90 days.

It's important to weigh the pros and cons of tax-qualified policies. The primary advantage is the premium deduction. But keep in mind that medical expenses are deductible only if you itemize and only to the extent they exceed 10% of your adjusted gross income (AGI), so some people may not have enough medical expenses to benefit from this advantage. It's also important to weigh any potential tax benefits against the advantages of nonqualified policies, which may have less stringent eligibility requirements.

Asset-based policies

These so-called "hybrid" policies combine LTC benefits with whole life insurance or annuity benefits. They have several advantages over standalone LTC policies. For example, their health-based underwriting requirements typically are less stringent and their premiums are usually guaranteed — that is, they won't increase over time. Most important, LTC benefits, which are tax-free, are funded from the death benefit or annuity value. So, if you never need to use the LTC benefits, those amounts are preserved for your beneficiaries.

Bear in mind that the features, terms and conditions of these policies can vary dramatically, so it's important to shop around.

Employer-provided group LTC plans

Employer-provided group LTC insurance plans offer significant advantages over individual policies, including discounted premiums and "guaranteed issue" coverage, which covers eligible employees (and, in some cases, their spouse and dependents) regardless of their health status. Group plans aren't subject to nondiscrimination rules, so a business can offer employer-paid coverage to a select group of employees. Alternatively, a business might pay premiums for key executives and require other employees to pay their own premiums if they choose to participate.

Employer plans also offer tax advantages. Generally, C corporations that pay LTC premiums for employees can deduct the entire amount as a business expense, even if it exceeds the deduction limit for individuals. And premium payments are excluded from employees' wages for income and payroll tax purposes.

Refocus your estate plan on LTC planning

Too often, people planning their estates focus on tax and asset-protection issues and overlook long-term health care needs. But the high cost of LTC can quickly devour resources you need to maintain your lifestyle during retirement and provide for your children or other heirs. Contact your estate planning advisor to learn more about the benefits of LTC insurance. •

ESTATE PLANNING PITFALL

You're not making direct payments of tuition and medical expenses

Now that the unified gift and estate tax exemption has jumped to $11.18 million in 2018, you may no longer have to worry about gift and estate taxes. On top of that, you can still use the annual gift tax exclusion of $15,000 per recipient in 2018.

In other words, you can give each recipient gifts valued up to $15,000 a year, thereby reducing the size of your taxable estate. For example, if you have three children and seven grandchildren, you can give each one $15,000, for a total of $150,000. If your spouse joins in the gifts, the tax-free total is doubled to $300,000. And, if you continue this pattern for five years, you'll have reduced your taxable estate by $1.5 million gift tax free.

But there are no guarantees that estate tax laws won't be revised in the future or that your accumulated assets won't eventually exceed the available exemption. Investigate other tax-saving possibilities.

Notably, be aware of this unique tax break: If you pay medical expenses on behalf of someone directly to a health care provider, those payments are exempt from gift tax *above and beyond* any amount covered by the annual gift tax exclusion. The same is true for paying the tuition expenses of a student directly to the school. For example, if you give your granddaughter $15,000 in 2018 and then pay her $35,000 tuition bill at an elite private college, the entire $50,000 is sheltered from gift tax. But remember that the gift must be made *directly* to the educational institution (or health care provider). You can't use your granddaughter as a go-between.

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Weinstock Manion

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Comprehensive
Estate Planning Services

For over 55 years, the attorneys and staff of Weinstock Manion have focused on providing personalized, high-quality counsel to moderate to high net worth individuals, real estate investors, business owners, charitable organizations, beneficiaries and fiduciaries in the following practice areas:

- Estate Planning
- Wealth Transfer Planning
- Estate and Trust Administration
- Estate and Trust Litigation
- Business Succession Planning
- Charitable Planning and Family Foundations

Working with our client's other trusted advisors, our team of specialized attorneys and paralegals create and implement comprehensive, creative and practical estate plans with the goals of maximizing wealth transfer in accordance with our clients' wishes and reducing taxation.

Estate and trust administration can have significant financial consequences for both current and future beneficiaries. In an effort to minimize income and estate taxes, while maximizing estate and trust income for beneficiaries, our process involves an extensive amount of collaboration between our estate planning, taxation and transactional attorneys.

Weinstock Manion's litigators represent both fiduciaries and beneficiaries in estate and trust disputes. Our litigators are skilled at handling claims for breach of fiduciary duty, beneficiary disputes, disputes regarding the validity of wills and trusts, undue influence and all aspects of conservatorships and guardianships.

For many clients, ensuring the future of their family business through a well-structured succession plan is an essential component of their estate plan. Our team of transactional, tax and estate planning attorneys work with our clients' other trusted advisors to develop plans for retirement, management transition and liquidity events.

Supporting charitable causes is important to many of our clients. We help our clients support the causes they are passionate about in a tax-efficient manner through thoughtful charitable planning, including the creation of family foundations.

At Weinstock Manion, we understand that significant wealth can lead to complex personal and financial issues that may result in family conflict. Our goal is to help implement wealth transfer plans that minimize potential conflicts while promoting enduring legacies for generations to come.

We invite you to explore our team and services, and to contact us to learn more about how we may collaborate to preserve your legacy.

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