Insight on estate planning

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Final considerations

Gain peace of mind with deathbed planning

Dealing with a terminal illness is physically and emotionally draining on a family. But if you face such a situation, it's also a time to reflect, giving you a chance to tie up loose ends, including finalizing your estate plan.

Myriad deathbed estate planning strategies are available, but, before you take action, update your estate plan and take an inventory of your assets.

Wills

A will is where you name the executor or personal representative of your estate. The executor is responsible for administering whatever functions are required — for example, paying your final debts.

If you have assets included in your estate, the executor facilitates the transfer of those assets under the will's terms. Thus, if you have a pour over will and assets that had not previously been transferred to your trust, the executor will be responsible to make the transfer. In addition, the executor is the estate's legal representative for the probate of the will.

Guardians for minor children

If you had minor children when you wrote your will, you likely designated a guardian for them. Is this the person you still want in this role?

Whatever you decide, make certain to name successor guardians. Thus, if the first person you name is unable to act — for any reason — you'll have a backup. Bear in mind that the terms "guardian" and "trustee" aren't synonymous. Indeed, it's probably best not to have the same person perform both roles.

Living trusts

If you have a living trust, determine whether it's up-to-date and properly funded — meaning that all assets have been titled in the name of your trust. This will allow you to maximize the effectiveness of your planning. A living trust allows your assets to pass free of the probate process, potentially saving significant administrative expense and keeping your business private.

You may be under the misconception that you don't need a living trust because your assets are held in joint tenancy with your spouse, but this may prove to be a costly mistake. By having all of your assets in joint tenancy, you may inadvertently cause an estate tax issue at the death of the survivor of the joint tenants.

Powers of attorney

Having health care and property proxies in place before your condition deteriorates is important. Should you become too ill to act, the person you named as your agent will make decisions for you. If you don't appoint

Firm up other decisions

Tying up loose ends should be a priority if you have a terminal illness. For example, inform your family if you've prepaid your funeral expenses. Doing so will ensure they'll contact the correct funeral home. Also notify your family of your preferences with regard to your bodily remains. That is, do you wish to be buried or cremated, or do you prefer something else, such as donating your body to science? And don't forget to tell your family if you'd like to be an organ donor.

In addition, you may wish to include a letter of instruction for your heirs. Although not legally binding, it could be invaluable in helping to provide a "moral compass" or at least allow your family to more fully understand your thoughts. That said, there is no substitute for discussing those thoughts with your heirs before your death.

an agent, it could lead to confusion about who is authorized to act. Or worse, there might be a legal battle as family members fight for control.

Particularly vital is making your doctor and other health care professionals aware of your preferences and of whom you've named as your decision maker.

Beneficiary designations

Review your estate plan to ensure that you've appropriately named your beneficiaries and that there is no confusion as to your preferences. In addition, be sure to examine your retirement accounts, insurance policies and anything else that might require a beneficiary.

Although the custodians of your IRA and 401(k) plan and your life insurance provider should have your beneficiary designations on file, retain copies of your own to avoid confusion when it's time for your assets to be distributed.

Annual exclusion gifts

Taking advantage of the $11,000 annual exclusion can significantly reduce taxes on your estate. Even though gifts within three years of death are generally disregarded and brought back into your estate for estate tax purposes, annual exclusion gifts are exempt from such treatment.

So, for example, if you have 10 grandchildren and give each one $11,000, you'll reduce your estate by $110,000. This is an estate tax savings of more than $51,000 at the top 47% estate tax rate.

Spousal transfers

Because you can transfer an unlimited amount of assets between yourself and your spouse (as long as you're both U.S. citizens) estate tax free and because assets transferred at death are allowed a step-up in basis, there may be opportunities to do some planning that will lead to future income tax savings.

For example, let's assume you and your spouse each have a $2 million portfolio. Your portfolio is composed of assets with little or no growth, but your spouse's includes a single asset with virtually no basis.

If you were to "trade" assets, you'd both still have the same value in your portfolios. But on your death, the basis on that property will be stepped up to $2 million. Thus, if the property is sold after your death but before further growth occurs, there will be no taxable gain. Compared with a 15% long-term capital gains tax on a $2 million gain, you'll have eliminated $300,000 of income tax that your spouse would have had to pay.

Find peace during a stressful time

Regardless of what estate planning actions you take, do your loved ones a favor and ensure that all of your documents are readily accessible and that the appropriate people know where everything is located. Doing so can give you peace of mind that your estate will be handled in the way you wish after you die.

Joint home purchase can reduce estate tax liability

Everyone knows that what you own at your death is included in your estate. Or is it? Using a joint purchase, you can take advantage of a little used technique to remove valuable assets from your estate, thus lowering your estate tax liability.

Joint purchase defined

If you purchase an asset, such as a home, jointly with your child, your share of its value will be included in your estate at your death. Assuming your share of the value is $1 million at your death and your estate is taxed at 47%, your estate will be subject to $470,000 of tax.

If you purchase an asset, such as a home, jointly with your child, your share of its value will be included in your estate at your death.

A better alternative in this situation may be a joint purchase. Although such a purchase is simply a different way to buy an asset with someone else, the nuance is that it's not a typical joint ownership.

How does it work? One party purchases the life interest and the other purchases the remainder interest. The life interest's relative value is calculated using IRS tables. This determination is a factor of the value of the property being purchased, the life interest holder's age and the Internal Revenue Code (IRC) Section 7520 rate.

No gift tax is incurred as long as the property is properly valued and each party paid his or her appropriate share. The remainder interest is the difference between the life interest and the property's total value — as long as the remainder interest holder pays that amount, there has been no gift.

The key is that the life interest is just that: an interest for life. Because the interest terminates at death, there is nothing to transfer and thus nothing to subject to estate tax. Whoever owns the remainder interest is now the outright owner of the entire property.

For example, let's say Mike, age 65, wishes to purchase a second home with his daughter, Marsha. Using a $1 million purchase price and a Sec. 7520 rate of 5%, the value of the remainder is roughly $473,000. Therefore, the life interest is valued at $527,000. Mike and Marsha each pay the appropriate amount.

If Mike dies 20 years after the purchase, and the property value increases 5% annually, the property will be valued at more than $2.65 million. Keeping the property out of Mike's estate, at a presumed 45% estate tax rate, translates to a savings of nearly $1.19 million.

Income tax considerations

When property passes at death, there is a step-up in value. In the case of a joint purchase, there is nothing transferred at death. Thus, the remainder interest holder's basis will be equal to what he or she paid for the property.

In the example above, if Marsha sells the property at her father's death, she will recognize a capital gain of $2.18 million. Assuming a federal tax rate of 15%, and ignoring state income tax, she'll be liable for a tax of $327,000. So she'll be trading a $1.19 million estate tax bill for a $327,000 income tax bill. If, however, the property were sold *before* her father's death, there would be additional income tax considerations.

Residency requirement

Generally when family members are parties to a split interest transaction, the remainder interest is valued at zero. Thus, the entire purchase is deemed to be a gift from the life tenant to the remainder interest holder. And, because it doesn't qualify as a present interest, the gift won't be eligible for the $11,000 annual gift tax exclusion.

The relevant IRC sections define "member of the family" and "applicable family member" as your and your spouse's ancestors and direct descendants and their respective spouses. So in the situation above, it seems as though the plan is foiled.

Fortunately, IRC Section 2702(a) provides an exception for a purchase of a home as long as a term holder uses it as his or her primary residence. Thus, a father and child can be the joint purchasers of a property to be used by the father as his residence, so long as the father is the term holder.

Use caution before taking action

A joint interest purchase can be a simple and powerful estate planning tool. Before you use a joint purchase, make sure you understand the estate and income tax ramifications of this strategy.

Want an irrevocable trust but uneasy about losing control?

A trust protector may be the answer

An irrevocable trust can offer tremendous estate tax saving benefits, but it also requires you to give up control over the trust assets. If you'd like to save taxes but are uneasy about losing control of your assets, a trust protector may be the solution. It's a relatively new estate planning tool that may allow you to have your cake and eat it, too.

What service does a trust protector provide?

Generally, you use an irrevocable trust when you want to permanently remove assets from your estate. And, though the estate tax benefits may be significant, permanently relinquishing control of your assets may be difficult.

For example, you may wish to have the ability to change the ultimate distribution of the assets or retain the right to terminate the trust. If you, as the trust's creator, retain such powers, its assets would be included in your estate. But by appointing a trust protector to act on your behalf, you would avoid that problem.

A trust protector is someone who has the power to act in your stead with regard to matters of import with your trust. He or she is somewhat of an overseer of the trust, as opposed to the day-to-day operations manager. A trust protector differs from a trustee in that you can give your trust protector broader authority to make changes to the trust.

What powers can you grant?

You may grant a trust protector virtually all of the rights that you wish him or her to have, such as the right to:

- Fire the trustee and name a replacement,
- Approve any of the trust business that involves the trustee,
- Grant special distributions to beneficiaries,
- Make changes to the trust's language for the benefit of beneficiaries, and
- Perform anything necessary to carry out your wishes.

In addition, you may grant the trust protector a limited power of appointment by giving him or her the ability to change how beneficiaries receive distributions.

A trust protector is someone who has the power to act in your stead with regard to matters of import with your trust.

Who should be your trust protector?

You can choose anyone you wish as your trust protector with a minor exception: He or she must be completely independent. Thus, a beneficiary of the trust cannot be your trust protector. The powers retained can cause unexpected estate consequences, such as having assets otherwise excludable to be included in the beneficiary's estate. You may similarly have an independence issue if, for instance, a beneficiary's spouse is named as a trustee.

This is so even if the beneficiary could act as his or her own trustee. A trust protector would generally not be subject to the same standard as a trustee. Indeed, a specific reason you would use a trust protector is to allow him or her to act in a manner beyond the scope of the trustee's powers.

It wouldn't be in your best interest to name the same person as trustee and as trust protector. After all, one of the reasons for having a trust protector is to ensure that the trustee is doing what he or she is supposed to be doing. Thus your spouse could be your trust protector, but not if he or she is already the trustee.

Do you need a trust protector?

If you would like to use an irrevocable trust while retaining some control over the trust's assets, it may be wise to use a trust protector. Employing a trust protector can give you the peace of mind that comes with knowing you've added more flexibility to your trust.

Create a dynasty

Using a trust to pass wealth tax-free to successive generations

Wouldn't it be great if you could pass your assets to successive generations estate tax free? For many, such dreams conjure up the names of the business magnates of the early 20th century such as John D. Rockefeller or Conrad Hilton. But those dreams can easily become reality if you create a perpetual or dynasty trust.

The rule against perpetuities

Estate tax law allows you to transfer an unlimited amount of assets to your spouse estate tax free. It also allows you to create a trust at your death for any beneficiary for his or her lifetime. In addition, you can extend the benefits to beneficiaries of successive generations — up to a point.

The rule against perpetuities says that eventually the trust has to end and be distributed to someone. One of the most complicated areas of estate tax law, this generally requires trusts to be limited in duration to that of "lives in being, plus 21 years."

Today, many states have abolished the rule against perpetuities, providing a significant estate planning opportunity. If you live or, more appropriately, die in a state that has eliminated the rule against perpetuities, you can create a perpetual trust, also sometimes called a dynasty trust.

If your state still adheres to the rule against perpetuities, you needn't fret. While you cannot create a dynasty trust that lasts forever, you can still create a trust that will be estate tax free for the period equal to "lives in being, plus 21 years." So this discussion is still relevant for you, although on a more limited basis.

Dynasty trusts up close

A dynasty trust is a long-term trust you create specifically to benefit descendants of multiple generations. Of course you can't simply create a dynasty trust and make your entire estate disappear from the estate tax system forever.

The "catch" is that you are limited under current law to passing assets tax-free up to your $1.5 million estate and generation-skipping transfer (GST) tax exemptions. A generation-skipping transfer is the amount going to anyone more than one generation removed from you.

Congress is considering permanently repealing the estate tax. By using a dynasty trust, you can effectively do just that — at least for a portion of your assets. A dynasty trust takes the principle of GSTs many steps further; it allows the trust to be passed from generation to generation without being subject to estate tax.

More than just tax savings

In addition to the estate tax savings, there are other potentially significant benefits. For example, trust assets, unlike assets held outright, are protected from creditor claims, including those of ex-spouses.

The trust also provides an element of control by restricting a beneficiary's access to funds. This can minimize squandering of money by heirs who are financially unsophisticated or spendthrifts.

You don't need a famous name to benefit from a dynasty trust

A dynasty trust isn't just for the mega-wealthy. Your foresight in creating one could reap financial benefits for your family for generations to come.

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Comprehensive Estate Planning Services

Founded in 1960, Weinstock, Manion, Reisman, Shore & Neumann offers estate planning, probate and trust administration, general business and corporate law, taxation, real estate and litigation services. Because 10 of our 13 attorneys are actively involved in estate planning, we specialize in helping clients meet objectives like these:

- Dispose of assets in a tax-efficient manner by using revocable living trusts.
- Minimize estate taxes by using sophisticated lifetime giving techniques, such as Grantor Retained Interest Trusts and Charitable Remainder Trusts.
- Provide liquidity and save estate taxes by using life insurance and irrevocable life insurance trusts.
- Efficiently administer probate and trust estates.
- Transfer business interests to younger family members in a tax-efficient manner.
- Minimize generation-skipping transfer tax on transfers to grandchildren and great-grandchildren.
- Implement deferred compensation and qualified retirement plans, including pension and profit sharing plans.
- Reduce income and estate taxes on the receipt of benefits from retirement plans.
- Avoid court intervention if disability strikes.
- Maximize employee productivity through the use of stock options and other incentive programs.
- Dispose of business interests among co-owners.
- Save on income taxes, both now and in the future.
- Select and form business entities, such as corporations, limited liability companies and family limited partnerships.

The professionals at Weinstock, Manion Reisman, Shore and Neumann bring over 150 years of combined experience to the services we provide. The stability of our firm enables our lawyers to work closely together with business specialists to give clients outstanding individualized attention.

Many of our lawyers are instructors at UCLA Extension and highly sought after as speakers for professional organizations in the community. Because we are at the forefront of current developments in law, we excel in designing strategies which help clients balance their business and financial interests with their personal and professional objectives in order to preserve and transfer their wealth.