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The Elements of Estate Planning

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This article will lay out the basics for Estate planning.

Background

Many people are reluctant to do their estate planning because they subconsciously think that it will speed up their death. Not true. The only clients that I have had die recently after doing their estate planning are those who were terminally ill and that is what prompted them to come in for their estate planning. Others don't think that they have enough assets to do estate planning. I say that if you have a home, personal property and some life insurance or retirement benefits, you must consider estate planning.

There are two traditional levels of estate planning: (1) basic and (2) tax planned.

Common Elements of Estate Planning

When we meet with clients to plan their estate, the first thing we want to know is basically how much are the worth dead from the US Government's perspective. If their total estate exceeds the value of one estate tax exemption, we encourage them to consider doing a tax planned estate plan. The current estate exemption is \$2,000,000, but it changes and is scheduled to only be half that in 2011. Many clients exceed this with their life insurance. The face amount of your life insurance is estate tax countable. Once we determine which level of planning the client wants to implement, we advise them on the two methods of estate planning, wills or living trust. We give them the pros and cons of each and once the client decides which method to use to implement their estate planning, we then ask them if they have any specific bequests that they want to make to someone that is not in the immediate family or do they want to favor someone in the immediate family over another. Are they concerned about remarriage of their spouse? Do they have concerns over a child or grandchild's ability to manage money at any time? Are there any special needs requirements of any beneficiary? Are there any substance abuse issues with a beneficiary?

Once we get a feel for the family and their relationship with each other, we then find out who they want to put in charge of the family wealth. Of course, the spouse is almost always first. But, it is who will manage the assets if both spouses die or one dies and the other becomes incapacitated that gets tough sometimes. We advise our clients to think seriously about this decision as it can cause hard feelings among beneficiaries that are not treated the same, after the client dies. For instance if the client has three adult children that are either capable of managing money or are trustworthy enough to seek professional assistance with managing the family wealth, then consider naming all of them to act together. This will avoid any child from thinking that the siblings that might have been named over them influenced their parents into naming one over the other. Of course, if any child is totally

irresponsible, don't name them. We also discuss who should be the money manager for minor children and who should be the guardian to raise them. You want the best financial person to manage the money, but the best parent to raise the children if you die young. These are two separate jobs and can very easily have two different persons doing them, if properly named.

Next, we determine the ages at which the client's children can get control over the family assets after the death of the surviving spouse. I always suggest to phase it in 2 or more stages, no matter what age the children have attained. Statistics have shown that in 80% of cases regarding anyone receiving a large sum of money at one time, in 5 years its gone, no matter how old the person was. Finally, we want to know who is to be the beneficiary should all of the children and more remote descendants die. If nothing is specified, it will go to the clients' heirs. Many clients have been raised by only one parent and when they find out that their missing parent who divorce the parent that raised them is an heir, they want to make sure it doesn't go to that "deadbeat" parent.

Other Issues

We also provide powers of attorney for assets and healthcare as well as living wills, designation of agent to control disposition of remains, and beneficiary designations on all insurance, annuity, IRA and pension, profit sharing and 401(k) accounts.

This article has been a brief overview of some of the most common asset protection issues we see at WealthKeepers. We offer a 1-hour initial conference at no charge to discuss your asset protection issues. At the end of that conference we can usually quote you a fixed fee to prepare your asset protection plan and can offer you common fees of attorneys experienced in the preparation of the legal structures needed to implement your plan.

James C. Mulder is an attorney with over thirty years of experience in Wealth Transfer, Tax and Asset Protection Planning. He is Board Certified in Estate Planning and Probate Law and in Tax Law by the Texas Board of Legal Specialization. He is one of only fifteen attorneys in the Houston area that are Board certified in both Estate Planning and Probate Law and Tax Law. Mr. Mulder concentrates his practice in Wealth transfer, tax, and asset protection planning. The implementation of such planning includes the preparation of very comprehensive wills, trusts, business organizations and family partnerships. Mr. Mulder has prepared over 1,000 asset protection plans.