**WHEN DO YOU NEED “ESTATE PLANNING”?**

Estate planning documents are often considered to be a will and may be powers of attorney. Depending on your own legal and financial circumstances, there are many reasons why you might need a “checkup” or new documents from your estate planning attorney. This is particularly true for producers whose farm or ranch operation has grown or when their children are providing increasingly more financial and sweat equity for the operation. A good estate planner considers the client’s asset holdings, dispositions under beneficiary designations, and any asset changes that might be needed to accomplish the desired estate plan.

**When and how to revise an estate plan**

Important events for estate plan revision are any change in family or financial circumstances (e.g., a marriage, divorce, childbirth, new business, benefits, or life insurance). As financial assets grow or change, a review is important to ensure that: the total asset values do not now exceed the lifetime estate tax exemption amount ($2 million per decedent in 2006); assets are titled in a manner that accomplishes the tax planning of existing wills; beneficiary designations on retirement plans do not circumvent the intent of the wills; and life insurance proceeds have been removed from the taxable estate where appropriate.

One reason often heard for not having an estate plan is that the individual has no children. Naming a child’s guardian is one key issue that can be accomplished by a parent’s will. In addition, a will is needed for those who want to favor certain friends, family members, or charities rather than letting assets be distributed to immediate family members under Colorado’s intestacy law.

Even if a will is current or state intestacy law provides for acceptable estate distribution, estate planners can also assist in preparing lifetime documents, including powers of attorney and living wills. Powers of attorney, in which one appoints a trusted agent to act on ones behalf in certain circumstances, can avoid costly court proceedings should a person become unable to manage his or her own affairs or make health care decisions. Financial powers of attorney should be updated every five years.

Health care powers of attorney should be updated to comply with new privacy requirements and “Schiavo” concerns. Living wills can be signed to direct the removal of life support and nourishment (one issue in the Terri Schiavo case) without a family member or court having to intervene. Living wills are state-specific documents. While Colorado accepts any other state’s validly executed living will, some states require their own forms.

Once wills, powers of attorney, and living wills are signed, most people think their estate planning is done. However, the will may not accomplish the client’s desires unless there is coordination between the assets passing under the will and those that are not. For instance, jointly held assets will pass directly to the surviving owner and not to a credit shelter trust established for estate tax savings in some decedents’ wills. Likewise, retirement plans, life insurance, and bank accounts designated as “POD” (payable on death) or “TOD” (transfer on death) all pass under beneficiary designations and not pursuant to the terms of a will.

**What about beneficiary designations?**

Retirement account beneficiary designations have become complicated under the tax regulations. Without carefully stated beneficiary designations, accounts may pay out to the beneficiary over the five years following the participant’s death. These distributions are taxable to the beneficiary, and a short payout can create an unnecessary income tax burden. Payment of retirement accounts to trusts is especially tricky and might require revised trust provisions.

Additional life insurance may be needed or existing policies may be inappropriate. Three estate planning reasons for life insurance are: (1) providing liquidity to pay estate tax liability, (2) providing adequate cash flow for the decedent’s family’s support, and (3) creating wealth for inheritances. Businesses may also need insurance proceeds to buy out partners or shareholders in the company. When appropriate, insurance policies should be removed from taxable estates by placing them in an irrevocable life insurance trust or transferring them to a partnership.

**Lifetime gifts can relieve tax**

Once a person’s taxable estate exceeds his or her lifetime estate tax exclusion amount ($2 million in 2006), only lifetime wealth planning and transfers can further reduce the potential tax liability (absent an estate tax repeal). At the $2-million asset level, all income tax, gift tax, estate tax, and generation-skipping transfer tax issues should be considered to reduce the total tax liability. Annual gifts must be qualified and can be leveraged for the annual gift tax exclusion ($12,000 per donor per recipient in 2006). Lifetime gifts using the $1-million lifetime gift tax exclusion amount can be leveraged and also remove all future appreciation and income from the donor’s estate. Gifts to grandchildren or dynasty trusts can additionally use and leverage the lifetime generation-skipping transfer tax exemption amount.

Business succession planning may require key man insurance, buy-sell agreements, and trusts or partnerships to hold or purchase the business or insurance. Coordination of these vehicles under tax laws and the client’s succession plan is critical to success.

So perhaps it is time to revisit the will in your files. Just as with an annual checkup with your doctor, you should check in with your estate planning attorney at least every five years. The cost of avoidance may not be harmful to your health, but could be harmful to the financial well-being of your survivors.

This article was written by Constance D. Smith, an attorney at Caerus Law PC. She is a Fellow of the American College of Trust and Estates Counsel, a Colorado Super Lawyer, named a Best Woman Lawyer and Best Lawyer in Colorado.

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