Yes, Now Is A Good Time To Discuss Your Estate Plan

BY GREGG D. STEPHENSON, RAY QUINNEY & NEBEKER

MY MOTHER LIKED TO remind me from time to time that the failure to plan is still a plan, it's just not a well thought out plan. Thinking about death is an uncomfortable subject for many, but that does not change the fact that death is coming.

If you were to die today, what would happen to your assets? If your spouse inherits your assets, will he/she manage them properly? If you are in a second marriage, how do you want your assets split between your spouse and your children? What if your spouse remarries, will he/she protect your assets for your children? If your children inherit your assets, will they know how to properly manage them? Do any of your heirs have financial problems? Do any of your heirs have mental health issues, or substance abuse issues, that would make receiving a significant sum of money dangerous or problematic? If you own a business, is there a plan in place to ensure that the business can survive your passing? Have you nominated guardians for your children? Who will administer your estate? These are significant questions, and planning today can save your family from a great deal of difficulty at your death.

Even if you have a plan in place, a periodic review of your documents is essential. Changes in your family situation may have occurred that should be reflected in your estate planning documents, or you may have decided to alter how your estate is to be divided among your beneficiaries. On the other hand, changes in your financial situation may also have occurred that impact your desire for how your estate is to be administered at your death. A periodic review of your assets and your estate plan can ensure that you are still comfortable with the ultimate distribution of your assets.

What Is Estate Planning?

Estate planning is simply the process of reviewing what you own, how you want what you own to be administered upon your death, and who should be in charge of ensuring that what you own is administered according to your desires following your death. While many people have an estate plan in place, surveys typically show that a majority of Americans have not completed an estate plan. There are many reasons why it is important to have a carefully thought out estate plan, including ensuring that your assets will be distributed and managed in the way you want.

For a lot of individuals, the plan for their assets at death is quite simple – they can pass to a spouse, and then children in equal shares. But as any estate planning attorney can tell you, for many families it is not that simple. How the assets should be divided, and what strings should be attached to any distributions, requires a thoughtful discussion of the options and your personal situation. For example, a child with significant health needs, or mental health issues, should not receive his or her inheritance outright. Instead, a trust should be used to manage that child's inheritance for his or her benefit. Careful consideration should be given to who is going to receive your assets, and in what manner.

Estate Taxes

The estate tax laws have changed significantly over the past decade. In December of 2017, Congress passed the Tax Cuts and Jobs Act, and doubled the estate and gift tax exemptions from $5,000,000 per person to $10,000,000 per person. Adjusted for inflation, the estate and gift tax exemption for 2019 is $11,400,000. The $10,000,000 estate and gift tax exemption will fall back to $5,000,000 on January 1, 2026 unless Congress acts to extend the current level. The tax rate for assets in excess of the estate and gift tax exemption is set at 40 percent.

While the increase in the estate and gift tax exemption to $10,000,000 (adjusted for inflation) may expire in 2026, it is a significant increase that provides individuals with planning opportunities that have not been available with lower exemption levels. For example, a married couple with a net worth under $10,000,000 may no longer need the complex estate tax planning provisions typically found in estate planning documents.

The higher estate tax exemption may also allow individuals to simplify their estate plan. Individuals who previously set up limited liability companies, life insurance trusts, or took other actions in an effort to reduce the value of their estates and the impact of the estate tax, can now review whether such complicated estate tax planning tools are still necessary, potentially easing the administration of their assets during life and the administration of their estates at death. On the other hand, high net worth individuals can take advantage of the higher exemption to complete more sophisticated planning for their children and later descendants, such as the funding of trusts that will protect assets for multiple generations.

Appointment of Fiduciaries

Of primary importance is selecting who you want to manage your affairs at your death or incapacity. Even if you have estate planning documents in place, you should review your documents from time to time to ensure that the individual you appoint to serve as trustees under your trusts, personal representatives under your wills, and agents under your powers of attorney remain appropriate.

Power of Attorney & Advance Health Care Directive

In addition to a will and trust that will govern the administration of your assets at death, it is also important that you have both a Durable Financial Power of Attorney (to name an agent to handle your finances if you cannot) and an Advance Health Care Directive (which combines the appointment of an health care agent to make health care decisions for you in the event of your incapacity with a living will) in place.

Review of Beneficiary Designations

As a final note, any review of your estate plan should include a complete review of the beneficiary designations on your retirement accounts and life insurance policies. Beneficiary designations must be updated to match the overall estate plan, or the plan may fail to accomplish your goals. A well drafted will and trust agreement cannot override a poorly thought out beneficiary designation.

Conclusion

So, to answer the question "When should I review my estate plan?" is simple – if you have not reviewed your estate plan recently, then do so as soon as possible. In many cases, once a well thought out estate plan is in place, there will not be a need for changes for many years, but the plan should be reviewed nevertheless. ■

Gregg D. Stephenson
Mr. Stephenson is a shareholder at Ray Quinney & Nebeker. His practice focuses on estate planning, business succession planning, and estate and trust administration. He assists clients in structuring estate plans and transactions to achieve their goals in a tax efficient manner. Mr. Stephenson has experience with irrevocable life insurance trusts, charitable trusts, dynasty trusts, defective grantor trusts, family partnerships, and other estate planning techniques. He also represents clients in probate proceedings and the administration of estates and trusts.