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Trusts And Estates

When Is It the Right Time to Update Your Estate Plan?

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When is it the right time to update an estate plan? Technically, as long as it is addressed before you die and while you retain capacity to do so, the timing would be right. However, of course, most of us know that one of the greatest mysteries of our lives is the date (and cause) of death for each of us. Another mystery is whether (and if so, when), we will become incapacitated. So, as a practical matter, the best time to update an estate plan is whenever there is a change in our personal lives that would militate a change to who should receive our property, what is the best structure for leaving such property and/or who should be appointed as fiduciaries to implement our estate plans.

The first encounter most of us have with estate planning is as a young adult, filling out beneficiary designation forms for an IRA, a retirement plan, or life insurance policy. Before our lives get more complicated with spouses and children, most people tend to simply name parents and/or siblings as beneficiaries for such funds. Unfortunately, sometimes people neglect to make updates to such forms, as they truly would have wanted to do, and assets end up passing to the "wrong" beneficiaries at death. In Pennsylvania, we have a law that makes provisions for "pretermitted" spouses or children who are not included in a will that is drafted before they were in the life of a decedent, but, such statutory provisions do not extend to beneficiary designation forms.

Typically, the next time for updating an estate plan is upon marriage or the birth of a first child. Often, a married couple will want to make provisions for a surviving spouse either through an "I love you will" structure where everything passes to the surviving spouse, or through a modified structure where a portion of a decedent's assets passes to the surviving spouse in trust or outright and the balance passes to other family members. When children come along, a primary challenge is identifying a guardian to raise them if both parents would die before each child has reached the age of majority (i.e., 18 years), and another consideration is to determine how to structure their inheritances. Without an estate plan, the funds would pass to the children in equal shares, outright, when they reach the age of 18. Most parents do not want their children to have control over a significant inheritance at age 18 because of the concern that they would not use the funds wisely and might be too easily deterred from focusing on building a sturdy foundation for their future through education and

establishing themselves in a career path. So, typically, a trust is created to delay the control of the inherited funds by children until at least the age of 35.

Not too long ago it was critical for anyone who reached the stage of amassing more than $600,000 of wealth (whether through savings or life insurance) to update documents to provide for a classic "A/B" estate plan. The purpose of such a plan was to create one share to be funded with the exemption from the federal estate tax ($600,000 for most of the 1990s), and another to qualify for the "marital deduction" to avoid the imposition of federal estate tax, at rates as high as 55 percent, on the death of the first spouse to die. After an initial plan in Congress to gradually increase the exemption to $1 million, and then to $3.5 million, under the 2010 Tax Act, the exemption suddenly skyrocketed to $5 million. Although the increase to $5 million was originally scheduled to revert to $1 million in 2013, it ended up being made permanent, and indexed for inflation. This year, the exemption, per person, is $5.34 million. What this means is that, for a married couple, if both spouses were to die in 2014, they could pass $10.68 million to the objects of their bounty free of federal estate tax.

With the exemption at $5.34 million, instead of $600,000, there are far fewer individuals who need to be concerned with implementing an "A/B" estate plan for tax planning purposes. Even for those who are in a position to consider planning for the federal estate tax, a new feature of the federal estate tax law that makes the exemption from the tax "portable" makes planning less of a necessity (under the old rules, an unused exemption was "wasted" after the death of the first spouse, now the surviving spouse may "inherit" any unused portion of the exemption). Although less necessary, it remains advisable to consider planning options, both because of the limits of portability, and because a carefully structured estate plan continues to provide significant non-tax benefits, such as providing creditor protection for beneficiaries and helping preserve assets for successor beneficiaries.

Most parents find it appropriate to revisit their estate plans as their children become young adults and become capable of playing a role as fiduciaries in their estate plans. At that juncture, they might replace friends, parents and siblings in their estate plans with their children. Also, they might reconsider earlier plans for deferring their children's control over their inheritance to a certain age—by either allowing for "outright" distributions instead, or perhaps raising the age at which the children will have control over their inheritances.

As parents become grandparents, it's a toss-up as to whether or not they update their estate plans. Some grandparents feel it is not their role to provide inheritances for grandchildren, entirely deferring to their children's discretion on that front. Others create trusts that primarily benefit their children but allow distributions to grandchildren as well. Another common approach is to give a cash gift at death as a "remembrance" to grandchildren. For others, funding 529 accounts (for tax-deferred education savings) or creating trusts to benefit grandchildren is the right approach.

Another common juncture at which estate plans are updated is when a significant increase in wealth occurs or is anticipated. This typically is due to a windfall such as an inheritance, lottery winnings, or a successful business venture that will generate a liquidity event. At such juncture, planning is often initiated both to provide the optimal tax planning for the increase in wealth and to ensure that the wealth will pass to the appropriate beneficiaries in an appropriate manner. A new focus on "sharing the wealth" with charities often enters the picture at this stage—since there can be a sense that there is more than enough resources

to meet a family's needs and a preference to support targeted charities rather than allow the diversion of such surplus funds to pay more taxes.

Despite the fact that updating an estate plan is typically the last thing on a "to do" list, since every other task has an earlier deadline, it should be made a greater priority with an artificial deadline. Whether the deadline is a particular birthday, a vacation, or an impending surgery, the key is to get your affairs in order while the going is good. If you leave it to the last minute, it might never be properly addressed, and your life's savings might be carelessly dissipated and disbursed, with undesirable (and entirely avoidable) consequences for your loved ones. •

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