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COMMENTARY

How Life Events Can Affect Your Estate Planning Goals

For the most part, with a flexible estate plan in place there isn't always the need to revisit it too often. What does bring clients back to reevaluate their plans are "life event" changes. These can involve events such as marriage, divorce, the birth of children or grandchildren, the death or incapacity of family members or other individuals named in the documents.

September 01, 2022 at 10:56 AM

Trusts and Estates

By Amy Neifeld Shkedy and Rebecca Rosenberger Smolen

A well thought out estate plan usually lasts quite a while. As a result, we have found that the majority of our estate planning clients tend not to be repeat customers. By that, we mean that they don't come back to us very frequently once they have their core estate planning documents in order. And that's the goal—to make sure that they have an estate plan in place that will last a while. Of course, we do have some clients with whom we meet with more regularly (generally no more frequently than annually), but this is generally the exception and involves the monitoring of more complicated planning strategies. For the most part, with a flexible estate plan in place there isn't always the need to revisit it too often. What does bring clients back to reevaluate their plans are "life event" changes. These can involve events such as marriage, divorce, the birth of children or grandchildren, the death or incapacity of family members or other individuals named in the documents, the purchase of a house, start of a business, sale of a business, just to name a few. Having said that, this article mainly focuses on "life events" such as the events or circumstances described above. Although not the focus of this article, tax law changes as it relates to the federal estate and gift tax exemption amounts (currently \$12.06 million per individual or \$24.12 million for a married couple) also tend to cause an influx of repeat business (or at least discussions about whether to consider additional planning).

The life events of marriage and divorce are big motivators for individuals to consider engaging in, or reevaluating, an estate plan. For young first-time marriages, our experience is that those couples aren't always super-motivated to begin the estate planning process right away (with the exception of those who may have already signed prenuptial agreements), and often wait until the birth of their first child. In the event that a married individual was to die before executing a will, the surviving spouse would inherit a share of the estate under intestate succession laws. Even with a proper will in place, spouses have certain inheritance rights (known as "elective share" rights in Pennsylvania) to the extent that they are not properly covered under a will. Having the certainty of a well thought out estate plan after marriage is certainly advisable. This would cover not only a will and possibly a revocable trust, but also a general power of attorney and a living will declaration and durable health care power of attorney.

Needless to say, divorce, on the other hand, is a big motivator for clients to revamp their estate plans to make sure their ex-spouse is properly cut out. In Pennsylvania, a divorce will generally revoke any estate planning provisions relating to an ex-spouse. Thus, to the extent that an ex-spouse was named in a will, unless it appears from the Will that the provision was intended to survive the divorce, any provisions for the spouse become ineffective under 20 Pa.C.S. 2507(2). Such revocations

also apply to will substitutes, such as revocable trusts, as well as beneficiary designations for life insurance, annuities, profit sharing plans or other such contractual arrangements providing benefits to a spouse (subject to ERISA rules in the case of qualified plans, which preempt state law). Notwithstanding these Pennsylvania statutory safeguards, it's advisable for each spouse to review and update estate planning documents upon the commencement of a separation or divorce in order to be sure they are as consistent with what is intended and appropriate under the changed relationship status as soon as possible.

For those individuals or married couples who may never have gotten around to implementing an estate plan, the birth of the first child is usually what prompts them to work on an estate plan in order to provide for their new family and set up the proper measures for their children. When we draft wills and revocable trusts to include a new child, we think it's always a good idea to make sure to account for future born or adopted children (and even future grandchildren and more remote descendants).

Otherwise, for a couple planning on having multiple children, they would have to keep coming back and incurring more and more legal fees. If the document is drafted to take into account future descendants, then there may not be the need for updates for a while (or, in some cases, ever). There may be exceptions, such as if a child has special needs and is in need of more specialized special or supplemental needs planning.

With life, of course, death is inevitable, but, the actual timing is always uncertain, and is usually brings a somewhat chaotic transition. So, having a well thought out and updated estate plan in place well in advance of that event makes a difficult situation a bit easier to navigate. At that time, a client's surviving family members or other individuals designated as executors need to implement the estate plan that was set in place by going through an estate administration. Seeking legal counsel for assistance during this process is always advisable. Estate planning documents may also need to be updated for certain family members who included the deceased in their estate plan. Usually this isn't necessary as the estate planning documents likely provided contingencies in the event of an individual's death, but sometimes cleaning up the documents to remove the deceased individual is a good idea, and it is a good opportunity to rethink one's estate plan, particularly if it had been launched a while ago.

There are, of course, many other life changing events that prompt clients to work with their estate planning attorneys to either update their plan or implement new strategies. For the business owner client who may be thinking about selling the business down the road, there may be opportunities to engage in certain advantageous transactions in order to remove some of the future net proceeds from his or her taxable estate, such as transferring business interests to family trusts or to do charitable planning. For the clients who have a child in need of assistance with the purchase of a home, they may decide to make a gift or a mortgage loan to the child, and, depending on the amount, the loan versus gift decision should be made with careful thought after consulting with an estate planning attorney as it may impact the use of a client's federal gift and estate tax exemption.

With life being so unpredictable, we never know what other circumstances may arise which would cause someone to want to update their estate plan. Naturally, as estate planners, we do our best to plan for every imaginable contingency. However, realistically, for many folks unanticipated circumstantial life changes will develop that warrant a fresh look at one's estate plan from time to time.

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