



Ruminations on Estate Planning

I occasionally teach a 36-hour estate planning class to advisors seeking to become Certified Financial Planners, and we spend about 95% of the course on understanding and developing strategies for dealing with estate taxes. This applies only to a trivial percentage of the population since estate taxes aren't an issue until a person's net worth exceeds \$5 million (under current law). If you do happen to fall within that parameter, you should seek qualified help immediately (if you haven't done so already). Estate taxes are very complex, and without advance planning, the family of someone dying today with a net worth greater than that \$5 million will pay 40% (or more depending on the state) in taxes on the excess.

The other 5% of my estate planning class applies to most everyone and deals with all the other issues besides taxes. The main purpose of estate planning (for those without estate tax issues) is simply making sure that things unfold as desired. Following are some areas to review:

1. **Make sure you have appropriate insurance.** Not everyone needs insurance, but too often people don't make conscious decisions about life insurance, disability insurance, or long-term care insurance. Most of us are either prone to inertia or simply don't want to think about the issues and therefore ignore them.
2. **Make sure the beneficiary designations on your insurance policies, retirement plans, etc. reflect your current desires.** Even if the beneficiary designations are current, it is probably worth actually getting the insurance company, custodian, or employer to confirm it in writing. Sometimes those organizations do lose paperwork, so it is helpful to have a copy from them on file. In addition, many people are mistaken about who they have named as beneficiaries, particularly if it was a long time ago. It may be easier to simply fill out a change of beneficiary form and keep a copy rather than try to get the institution to confirm your previous choices.
3. **Make sure your assets are titled correctly.** As with beneficiary designations, don't just assume that your home or other assets are titled a particular way. It is worth checking.
4. **Make sure someone can manage your property if you are unable to.** A durable power of attorney and/or a living trust (that has actually been funded) may be required to do this efficiently.
5. **Make sure someone will be able to make end-of-life decisions if you can't.** A durable power of attorney for healthcare is often required for this to happen.
6. **Make sure you have a living will** (as well as the durable power of attorney for healthcare mentioned previously) so your wishes are clearly indicated.
7. **Make sure you have an up-to-date will.** In the case of minor children, the parent will undoubtedly want to name a guardian rather than allow a court to choose someone. In addition, an individual who has a blended family or non-traditional family, or wishes to make charitable bequests, or would simply prefer assets to be distributed in a particular way needs either a will or the aforementioned living trust.

8. **Consider trusts.** If you wish to provide for someone who for some reason should not be given money outright (perhaps they are minors or known to act irresponsible with money), a trust may be an appropriate solution. In addition, trusts are frequently a good solution in cases where there is ownership of real estate in another state. Holding it in trust (or in an LLC or in joint tenancy with right of survivorship) will avoid ancillary probate (additional probate in that other state).
9. **Consider writing a letter of instruction.** This is not a legal document but simply a letter that tells survivors where to find things, who to contact for various things, and any other information they will need that they may not know. This may be particularly important in families where one person has handled all of the financial arrangements and others may not be as knowledgeable in those areas.
10. **Make sure your heirs don't fight over the estate.** A few simple steps can help prevent strife later. First, it can be a good idea to have open discussions with your heirs to let them know what to expect. The reading of the will is not the best time for them to find out they have been disinherited or otherwise treated differently than they expected. Second, it may be advantageous to begin gifting during life while heirs can make their desires known. Very often people don't know the emotional attachment their children (or others) may have to a particular item. Giving things away prior to death also provides the pleasure of seeing the heirs actually get enjoyment out of the gift. Third, many families have started using a type of auction to distribute things equitably. For example, assume a case where there are three children who are each to get 1/3 of the estate. Each one may be given 100,000 points with which to bid on items from the estate (no money is used). Each item is then auctioned off to the highest bidder. Everything that isn't bid on is sold and the proceeds divided evenly between the heirs.

Notes:

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