



legal matters

The Changing Future Estate planning is not a one-time event.

Changes in your life and the legal environment mean you need to regularly reevaluate your financial planning.

BY JOHN ALLEVATO



Estate planning is not a static process; many events both in your life and in the

world at large may require a reevaluation of an existing plan or implementation of a new plan.

Within the past year, one of those events occurred which is significant enough to cause everyone to review existing estate plans, and consider whether material changes are now warranted. This outside event was the passage in Washington of last year's tax bill, which provided mostly good news for those with larger estates, with one repercus-

sion—you need to revisit your existing estate plan.

Time to recheck your plan.

In addition to last year's law change, other life events may trigger a visit to your estate planner to determine if changes or modifications are needed to an existing plan or if a new plan is to be designed. Use this column as a guide to when you should dust off your existing plan and meet with your estate planning attorney to consider a tune up.

Sometimes, such as when you suffer the loss of a parent, wealth is thrust upon you and may require changes to your existing plan.

1. Significant changes in the law. The laws surrounding estate planning are complex and involve wills and trusts law, estate and gift taxation, and probate administration in your particular state. Changes in any of these laws could require you to reconsider your estate plan. The laws most often affected, and tinkered with by legislators, are our federal estate and gift tax laws. Last summer, significant changes were made in these laws, including a repeal of the estate tax for

one year (2010). The next year (2011), the law will be reinstated as it existed in year 2001.

Obviously, this is nonsensical, and you can presume it will be modified in the future at some point. Recent efforts to make the estate tax repeal permanent were defeated in the Senate, but with eight years left to fix this mess, expect some more changes in the future.

Repeal wasn't the only change enacted last summer. The amount of wealth (let's call this the exempt amount) which can be passed to your heirs (other than your spouse) free of estate tax was increased from \$675,000 to \$1,000,000 effective this year, with staged increases in later

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years bringing the amount to \$3,500,000 in year 2009. You can still leave your spouse an unlimited amount of wealth without generating estate taxes.

Estate tax rates were lowered a bit—but are still very high. In fact, if you pay estate taxes this year, you do so starting at a rate of 41 percent up to a maximum rate of 50 percent.

What does this mean to you? Married couples with larger estates—say, over \$600,000 or so (counting for this purpose the face value of all life insurance policies and the fair market value of retirement plans and IRAs) probably had their pre-existing estate plans pass their wealth into one or two trusts after their death. These trusts were designed under the old rules where the exempt amount was \$675,000. Now, with the exempt amount at \$1,000,000 and increasing to \$1,500,000 in year 2004, and then \$2,000,000 in year 2006 and so on, that estate plan and those trusts have to be revisited to insure that the allocation between the trusts is still appropriate for your circumstances.

One thing is for sure—there is no “one size fits all” solution to this. Estate planning is now a more complicated exercise for you and your estate planning attorney, despite the apparent repeal of the estate tax. The 2001 changes in the law mandate that those of you who have “tax-motivated” estate plans, i.e., those where estate taxes were a consideration in the design of the plan, have those plans reevaluated.

Life changes

Periodically, other events may change in your life that require estate plan reevaluation. At each of these junctures, get it out and take a new look.

2. Marriage. This might be the time you consider your first estate plan, even if it is a simple one. Don't forget to also receive, as part of the plan, a durable power of attorney, living will, and medical or health-care power of attorney (your health-care directives).

3. Children. This is the time you must have an estate plan, or update an existing plan. Your wills should designate the guardians of your minor children. In addition, even if you don't have a large estate or are subject to tax-motivated estate planning, you should consider a trust for your children so that they don't take ownership of all your wealth at age 18—when they are considered adults and not under supervision of the law. To do this, you must establish a trust during your lifetime to take, hold, manage, and administer your wealth if you and your spouse die leaving children who are minors. The trust can actually stay in place even if the children are adults, until the time selected by the parents for ultimate distribution of the assets to the children. In the meantime, the assets are available to or for the benefit of the children—to pay to their guardian their living costs, and to pay for their education and other incidentals that children invariably need.

As your children mature, you will find yourself fine tuning this plan to meet their needs and their special circumstances—whether that be their marriage, their children, their special education, caring for special needs children, etc. The trust is dynamic in that you can continually change it while you are alive to meet the ever-changing needs of your family.

4. Divorce and remarriage. Prior to a new marriage, depending on circumstances surrounding your financial affairs, you may want to consider a prenuptial agreement, an arrangement which can protect your assets in a second or later mar-

riage situation, perhaps preserving assets for children of the previous marriage. In addition, if your new spouse has children from a prior marriage, then certain provisions need to be present in your new estate plan to take care of your loved ones while at the same time keeping Uncle Sam's hands out of, or at least away from, the cookie jar. This is a key time for revisiting an established estate plan and to insure that your heirs are protected, while at the same time potentially bringing another important person into the plan.

5. Death of parents. Sometimes, such as when you suffer the loss of a parent, wealth is thrust upon you and may require changes to your existing plan. For example, it is common for younger adults to name parents as executors or guardians of children. A parent's death is a time for reflection, and possibly a time for overhauling an estate plan.

6. Geographical move. If you relocate to another state, it is important to have an attorney in that locale review your estate plan. While revisions may not be necessary, state laws vary greatly as to probate and the laws surrounding trusts and estates. Although your prior plan should still be satisfactory and is not invalidated by relocation, prudence dictates having it reviewed in light of your new state's laws.

7. Passage of time. If you have engaged in tax-motivated estate planning, no more than five years should pass before you review your existing plan. You should review it even more frequently the older you get. In addition, upon reviewing an existing estate plan, you will find provisions in the plan which are no longer needed or appropriate for your present situation in life. Don't let a plan yellow on the shelf—sit down and review it periodically with your planner.

Don't get frozen in the headlights. It

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is at times difficult to plan an estate, especially where you expect that circumstances will change and make your plan obsolete. For example, you may have a child with special needs, or one that is not doing well in life. You want to protect them, but you think their dire circumstances may be temporary. Don't let that uncertainty prevent you from going forward with a plan that is appropriate for today. Just about any provision of an estate plan can be changed while you are alive, so do your planning for now. Not to be macabre, but I often advise clients to do what would be the right thing if they were in an accident on the way home from my office. That way, the plan reflects and responds to the needs of your family and loved ones today. As changes in your life and the lives of your loved ones inevitably occur, you can adapt your plan to fit the situation. ■

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