

The Need For Estate Planning Lives On

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Although the House of Representatives recently voted in favor of a complete repeal of the federal estate tax, the measure is expected to be defeated in the Senate. Therefore, we estate planners and our clients must deal with the strange on again, off again estate tax that resulted from the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Tax Act"). The 2001 Tax Act gradually increases the amount that can pass free of federal estate tax (and reduces the tax rates on the excess) from its present \$1 million per estate this year, to \$1.5 million in 2004 and 2005, \$2 million for years 2006 through 2008, and \$3.5 million in 2009. In 2010 the federal estate tax is repealed, *but only for one year*. Beginning in 2011, unless Congress acts, the federal estate tax reverts to what it was before the 2001 Tax Act, so that only the first \$1 million can pass free of federal estate tax. Many states, including New York and New Jersey, have their own independent estate tax systems, imposing estate tax at much lower thresholds.

In light of the possibility of estate tax repeal, some may wonder whether there is still a need for estate planning. The answer is an emphatic, "Yes!"

Whether or not we continue to have a federal estate tax, good estate planning still provides the client with an opportunity to direct precisely how he or she wishes to dispose of his or her assets. If a possible re-marriage by the surviving spouse is a concern, or if a beneficiary has problems with creditors, a trust created by will can be an excellent solution. In addition, if a beneficiary is young or not yet financially responsible, a trust under the will can provide that the beneficiary shall be entitled to income on a current basis, but that the trust shall distribute stated portions of its principal only when the beneficiary attains certain ages or reaches specific educational goals.

If a beneficiary has medical impairments, so that he or she qualifies for Medicaid or similar needs-based governmental programs, a supplemental needs trust can be designed so that the beneficiary can continue to receive governmental assistance, while at the same time being able to receive supplemental benefits from the trust, such as additional medical care, clothing, shelter or an occasional vacation.

Guardians for Minor Children

One of the most important purposes of a will, even for persons of modest means for whom estate taxes are of no concern at all, is the selection of guardians of the person and property of minor children. The guardians are the people who will be charged with managing the child's assets and instilling in the child the values as the parents would have wished after the parents are gone. Although the selection of the guardian must still be approved by the Surrogate's Court or Probate Court having



who's who

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jurisdiction over the parent's estate (and the Court almost always acquiesces to the parent's choice), if there is no will, or if the will does not specify, the Court will make the selection on its own, based on what it perceives to be the "best interests" of the child.

Business Succession Planning

A good estate plan can also provide for the orderly continuation of a business, through buy/sell or redemption agreements, irrevocable life insurance trusts, and the like. The plan can make financial adjustments, so that those family members who continue to run the business, as well as those members who do not have either the interest or the aptitude to do so, are treated fairly.

Fulfilling Charitable Desires and Continuing Family Values

With or without an estate tax, the needs of charitable organizations will continue, perhaps becoming even more pressing as government deficits mount and grants from governmental and large corporate supporters diminish. Of course, wills can provide for simple or detailed charitable bequests, and more sophisticated structures, such as charitable remainder annuity trusts or unitrusts, in which an individual will receive a fixed amount or a stated percentage of the trust's assets for life or for a term of years, at the end of which a charity or charities will receive the remainder, and still result in an estate tax charitable deduction.

Family foundations, either in trust or corporate form, are another excellent way in which the philanthropic goals of a client can be achieved. Family members can be managers of the foundation, evaluating the grant proposals submitted by the charitable organizations and deciding how best to further the values of their benefactor. The family members can also be compensated for their efforts through trustee commissions or corporate directors' salaries, creating a truly win-win situation for charity and family alike.

In conclusion, estate planning is much more than just avoiding or minimizing estate taxes. The client's need to express his or her wishes as to the manner in which to dispose of property, and who shall be in charge of fulfilling those wishes, will continue whether or not there is an estate tax. ■

Helpful Tip: Estate planning isn't limited to planning for the certainty of our own mortality. It also seeks to provide for the orderly administration of one's affairs in the event of incapacity. That is why everyone should have a current general power of attorney and a health care proxy, as well as a will.

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