

# Estate and Protection Planning

## Don't Fall Victim to These Common Pitfalls

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It's ironic that one of the most impactful — and costly — components of a well-executed financial plan pertains to benefits the owner will likely not live to enjoy. However, anyone who has served as an administrator or executor of an estate realizes the importance and value of comprehensive protection planning. This article highlights some of the most common pitfalls or landmines that we see people encounter during the planning process. (If you're reading this article, hopefully these points will serve as a reminder that there is still time to make adjustments to your plan!)

### **BENEFICIARY PLANNING ON IRAS, 401(k)s AND ANNUITIES**

There are several benefits to bequeathing retirement or annuity assets to a named beneficiary as opposed to leaving the estate to be distributed according to a will or state-specific intestate laws. Depending on the titling of the account, there are a variety of ways to reduce the immediate tax implications, while still allowing the funds to remain invested. Such planning becomes even more important when accounts are substantial in value and multiple generations are involved. This type of "stretch" potential can provide significant tax savings if done correctly. Variables to discuss include account type, relationship to the beneficiary, and most importantly, the goals of the decedent. Good advisors and attorneys can get very creative in planning for these situations.

### **REVERSIONARY INTEREST IN A TRUST**

As the likelihood of falling outside the limits of the federal estate and gift tax exemption (currently \$11.4 million for an individual and \$22.8 million for a married couple) increases, many estate planning and legal experts encourage their clients to pay taxes up front instead of waiting for bills of as much as 40 percent at death. It is important to structure the trust in a way that avoids having a reversionary interest, or too much control by the trust grantor, so that assets will not be taxed at significantly higher rates at death and termination of the trust.

### **PROPERTY OWNERSHIP IN MULTIPLE STATES**

Because most property laws are established and interpreted by individual states, you should work with an attorney familiar with the property laws in the state of your primary residence to coordinate ownership titling in other states where you own property. The estate attorney can help establish a revocable inter-vivos, or living trust, that will



reduce the time and cost associated with probate and asset distribution, and avoid the necessity to establish a separate estate in each location. This would be less than pleasant for the executor.

### **DIGITAL FOOTPRINT**

With more people owning digital assets (Bitcoin, for example) and social media accounts, your online footprint has become increasingly more important to discuss with your financial planner. Steps can be taken to ensure any digital property is accounted for and distributed according to your wishes. Specific language should be included in the will to ensure this is addressed correctly. You might think a list of user names and passwords would be sufficient for heirs to access your accounts, however doing so would be illegal unless provided for in your estate plan and will.

### **EXEMPTION AMOUNT CHANGES**

The estate tax exemption is not set in stone. The current exemption amount is scheduled to sunset in 2025, but could expire sooner, given the ever-changing tax code. Your advisor should be alert to changes and work with you to adjust your estate plan appropriately. Irrevocable gifts made prior to the phase-out are grandfathered; however, grantor trusts are a little different.

### **IRREVOCABLE LIFE INSURANCE TRUST**

Some irrevocable trusts are established for the purpose of using gifted assets to create an enhanced, or leveraged, benefit for beneficiaries at the owner's death while also protecting funds from the estate tax. The strategy could involve an annual or one-time payment to an irrevocable trust to cover the expense associated with maintaining the insurance policy. Unfortunately, these policies often fall into the "set and forget" category. As a result of negligent monitoring, these policies can lapse, and the expense to create the trust and pay premiums to that point are lost. The trustee could also be sued for breach of fiduciary duty. This is a significant issue that many clients and advisors don't recognize if they do not regularly deal with this type of complex strategy.

### **PERSONAL BELONGINGS**

Leaving it to beneficiaries to determine ownership of personal items, such as jewelry, family heirlooms and artwork, can cause a tremendous amount of discord and aggravation during an already stressful time. If you have executed your will, or placed things in an irrevocable trust, consider using a codicil or going through the process of decanting the trust to revise and specify how you want your possessions distributed. Most states allow for these types of changes.

### **NAMING A TRUSTEE**

You might think it appropriate to appoint a family member or close friend as trustee over your assets. However, you may wish to reconsider, as the requirements of a trustee are substantial. As a fiduciary, your trustee is legally bound to act in the best interest of the trust as well as the beneficiaries. Instead of a relative or close friend, name a professional

third-party representative as trustee — or at least as co-trustee to assist with the process. For the peace of mind of knowing that your estate will be handled correctly and according to the law, the cost is typically worth the expense. This can also prevent internal family disagreements as assets are being distributed.

### FINAL TAKEAWAYS

It's easy to view estate planning as a "one-and-done" process. But in reality it's the complete opposite. As laws change, people's lives evolve, and assets grow, the need to review and adapt your plan increases exponentially in importance. Without proper administration and review, a plan that was once flawless could quickly be rendered useless. Consider reviewing your plan with your advisor or legal counsel after any life changing event, or at least every five years, to ensure that all your protection planning bases are covered.

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