The Estate Planner

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Second trip down the aisle?

Update your estate plan to reflect your second marriage

If you're in a second marriage, or planning another trip down the aisle, estate planning can be complicated. You probably want to provide for your current spouse but not inadvertently benefit your former spouse. And if you have children from each marriage, juggling their interests can be a challenge.

Take inventory

Start by reviewing your current plan. Have you updated your will, trusts and beneficiary designations to name your current spouse? Keep in mind, though, that the terms of your divorce may require you to retain your former spouse as beneficiary of certain pension plans or retirement accounts.

If you leave your wealth to your current spouse outright, there's nothing to prevent him or her from spending it all, effectively disinheriting your children.

Next, assess your financial situation and think about how you want to provide for various family members. For example, do you want to provide for all children equally? Will you favor biological children over stepchildren? Are children from the first marriage significantly older than children from the second marriage? If so, their needs likely will be different. For example, if children from the first marriage are college age, they may need more financial support than children from the current marriage. On the other hand, if your older children are financially independent adults, they may need less help than your younger children.

Be sure to discuss your plans with your current spouse and with your children from both marriages. If you decide to treat family members unequally, it's important to explain your reasoning to avoid hurt feelings or disputes over your estate.

Use trusts

Trusts generally avoid probate, so your assets can be distributed quickly and efficiently. Trusts offer flexibility to determine how and when your wealth will be shared with your beneficiaries. For example, you might establish one trust for your current spouse and his or her children and a separate trust for your children from your previous marriage.

If you leave your wealth to your current spouse outright, there's nothing to prevent him or her from spending it all or leaving it to a new spouse, effectively disinheriting your children. To avoid this result, you can design a trust that provides income for your current spouse while preserving the principal for your children.

Trusts are particularly valuable if your children from a previous marriage are minors. Generally, if you leave assets to minors outright, they must be held in a conservatorship until the children reach the age of majority. It's likely that your former spouse will be appointed conservator, gaining control over your wealth. Even though your former spouse will be obligated to act in your children's best interests and will be supervised by a court, he or she will have considerable discretion over how your assets are invested and used.

To avoid this situation, consider establishing trusts for the benefit of your minor children. That way, a trustee of your choosing will manage the assets and control distributions to or on behalf of your children.

Consider the tax ramifications

A generous tax exemption (currently $5.43 million) eliminates gift and estate taxes for many families. But if your estate is large enough to make estate taxes a concern, multiple marriages present some challenges.

An important planning tool for affluent couples is the marital deduction, which allows one spouse to transfer an unlimited amount of wealth to the other tax-free. Generally, to take advantage of the marital deduction, you must leave assets to your spouse outright. As noted above, however, there's no guarantee that your current spouse will provide for your children from a previous marriage.

One effective strategy for meeting this challenge is to set up a qualified terminable interest property (QTIP) trust. This is an irrevocable trust that pays out all of its current income (at least annually) to your spouse and meets certain other requirements. It allows you to enjoy the benefits of the marital deduction and provide for your current spouse, while still preserving the principal of the trust for your children from a previous marriage or your current marriage (or other beneficiaries).

When you establish a QTIP trust, the marital deduction shields the trust assets from estate taxes. When your spouse dies, the assets are included in his or her estate and may be taxable depending on the size of his or her unused exemption.

Because your children won't receive their inheritance until your current spouse dies, a QTIP trust may not be the best choice if your spouse is significantly younger than you. Under those circumstances, consider other tools, such as an irrevocable life insurance trust (ILIT). (See "ILIT creates instant wealth" above.)

Plan with care

Remarrying can complicate estate planning, especially when there are children from both marriages. To avoid unintended consequences, work with your advisor to ensure your plan reflects your wishes. ✤

ILIT creates instant wealth

If you wish to take advantage of the marital deduction but also provide immediate benefits for your children from a previous marriage, consider an irrevocable life insurance trust (ILIT). Designed exclusively to hold an insurance policy on your life, an ILIT provides instant wealth for your children while allowing you to leave other assets to your spouse. In most cases, the insurance proceeds bypass your taxable estate, while the assets you leave to your spouse qualify for the marital deduction.

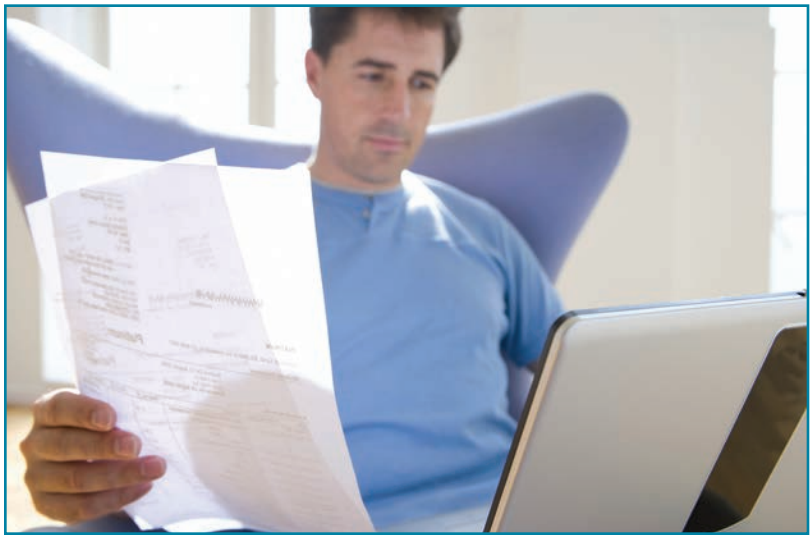
21st Century Estate Planning Accounts for Digital Assets

Do you possess digital assets? If you have online bank and brokerage accounts or keep your music and photos stored on your home computer or "the cloud," the answer is "yes." Thus, you need to account for digital assets in your estate plan. If you haven't done so, your heirs or other representatives may not be able to access these assets without going to court and, in some cases, may not even know that they exist.

Identifying and unlocking digital assets

Traditionally, when a loved one dies, family members go through his or her home to look for personal and business documents, including tax returns, bank and brokerage account statements, stock certificates, contracts, insurance policies, loan agreements, and so on. They may also collect photo albums, safe deposit box keys, correspondence and other valuable items.

Today, however, many of these items may not exist in "hard copy" form. Unless your estate plan addresses these digital assets, how will your family know where to find them or how to gain access?



Suppose, for example, that you opened a brokerage account online and elected to receive all of your statements electronically. Typically, the institution sends you an e-mail — which you may or may not save — alerting you that the current statement is available online. You log on to the institution's website and view the statement, which you may or may not download to your computer.

If something were to happen to you, would your family or executor know that this account exists? Perhaps you save all of your statements and correspondence related to the account on your computer. But would your representatives know where to look? And if your computer is password protected, how would they get in?

Even if your family knows about a digital asset, they'll also need to know the username and password to access it. If they don't have that information, they'll have to get a court order to access the asset, which can be a time-consuming process — and delays can cause irreparable damage, particularly when a business is involved. If your representatives lack access to your business e-mail account, for example, important requests from customers might be ignored, resulting in lost business.

Granting immediate access to digital assets

The first step in accounting for digital assets is to conduct an inventory, including any computers, servers, handheld devices, websites or other places where these assets are stored. Next, talk with your estate planning advisor about strategies for ensuring that your representatives have immediate access to these assets in the event something happens to you.

Although you might want to provide in your will for the disposition of certain digital assets, a will isn't the place to list passwords or other confidential information. For one thing, a will is a public document. For another, amending the will each time you change a password would be expensive and time consuming.

Even if your family knows about a digital asset, they'll also need to know the username and password to access it.

One solution is writing an informal letter to your executor or personal representative that lists important accounts, website addresses, usernames and passwords. The letter can be stored in a safe deposit box, with a trusted advisor or in some other secure place. However, the problem with this approach is that you'll need to update the list each time you open or close an account or change your password, a process that's cumbersome and easily neglected.

A better solution is to establish a master password that gives the representative access to a list of passwords for all your important accounts, either on your computer or through a Web-based "password vault."

It should come as no surprise that several companies now offer online services for passing on digital assets to your loved ones. Popular services include:

- PasswordBox,
- Entrustet,
- AssetLock™,
- VitalLock,
- Digital Beyond, and
- Deathswitch.

Each service establishes procedures for releasing passwords and other information about digital assets to a designated beneficiary in the event you die or become incapacitated. Some require a death certificate or other confirmation, while others send you periodic e-mails and release information to your designated representative in the event you fail to respond.

Addressing Who'll Receive the Assets

In addition to identifying digital assets and giving family members access to them, your estate plan must address ownership issues involving these assets. Consider working with your estate planning advisor to create a trust that provides the trustee with the authority to manage digital assets and transfer them to your beneficiaries according to your wishes. ✤

Planning for aging parents

5 tips for the sandwich generation

The "sandwich generation" is a large segment of the population. These are people who find themselves caring for both their children and their parents at the same time. As a result, estate planning — which traditionally focuses on providing for one's children — has expanded in many cases to include one's aging parents as well.

Including your parents as beneficiaries of your estate plan raises a number of complex issues. As you discuss these issues with your advisor, here are five tips to consider:

1. Plan for long-term care (LTC). The annual cost of LTC — which may include assisted living facilities, nursing homes or home health care — can reach well into six figures. These expenses aren't covered by traditional health insurance policies or Social Security, and Medicare provides little, if any, assistance. To prevent LTC expenses from devouring your parents' resources, work with them to develop a plan for funding their health care needs through LTC insurance or other investments.

You can pay an unlimited amount of medical expenses on your parents' behalf, without tax consequences, so long as you make the payments directly to medical providers.

2. Make gifts. One of the simplest ways to help your parents is to make cash gifts to them. If gift and estate taxes are a concern, you can take advantage of the annual gift tax exclusion, which

allows you to give each parent up to $14,000 per year without triggering taxes or using any of your $5.43 million gift and estate tax exemption.

3. Pay medical expenses. You can pay an unlimited amount of medical expenses on your parents' behalf, without tax consequences, so long as you make the payments directly to medical providers. (See "Estate Planning Red Flag" on page 7.)

4. Set up trusts. There are many trust-based strategies you can use to assist your parents. For example, in the event you predecease your parents, your estate plan might establish a trust for their benefit, with any remaining assets passing to your children when your parents die. Another option is to set up trusts during your lifetime that leverage your $5.43 million exemption. Properly designed, these trusts can remove assets — together with all future appreciation in their value — from your taxable estate. They can provide income to your parents during their lives, eventually passing to your children free of gift and estate taxes.

5. Buy your parents' home. If your parents have built up significant equity in their home, consider buying it and leasing it back to them. This arrangement allows your parents to tap

their home equity without moving out while providing you with valuable tax deductions for mortgage interest, depreciation, maintenance and other expenses. To avoid negative tax consequences, be sure to pay a fair price for the home (supported by a qualified appraisal) and charge your parents fair-market rent.

As you review these and other options for assisting your aging parents, try not to overdo it. If you give your parents too much, these assets could end up back in your estate and potentially exposed to gift or estate taxes. Also, keep in mind that certain gifts could disqualify your parents from certain federal or state government benefits. ✤

ESTATE PLANNING RED FLAG

You're not making direct payments of tuition and medical expenses

Now that the gift and estate tax exemption has risen to $5.43 million in 2015, you may be less concerned about these taxes. But if you don't take advantage of the exemption for direct payments of tuition and medical expenses, you're missing a valuable opportunity to reduce your potential gift and estate tax exposure down the road.

The exemption allows you to pay tuition and medical expenses on behalf of your children or other loved ones without incurring gift tax and without using up any of your exemption amount. This may not seem like much if your net worth is well under the current exemption amount. But what if your wealth grows beyond the exemption amount in the coming years and decades? What if lawmakers decide to reduce the amount? Either way, your estate could end up with a hefty tax bill, leaving less for your family.

You may already be making $14,000 per recipient annual exclusion gifts to your children, grandchildren or other loved ones, which can help minimize your estate, but you should also consider paying some or all of their tuition and medical expenses. Unlike the annual exclusion, there's no limit on the amount of tuition or medical expenses you can pay tax-free. It's a powerful technique for transferring wealth gift-tax-free while also reducing the size of your estate.

A few caveats: This strategy works only if you make payments *directly* to a qualifying educational institution or medical provider — advancing the funds to a loved one or reimbursing previously paid expenses doesn't count. The exemption covers tuition at all grade levels, but not payments for room and board, books, supplies, or other nontuition expenses. And it doesn't apply to medical expenses reimbursed by insurance.

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POWERS OF ATTORNEY

By BCMAA member Arlene Lakin, Esq.

There are various types of powers of attorney (POA) and there is much confusion about them. No matter what the document is titled, there is always a "principal" (that is you, if it is your document) and an "attorney-in-fact" (that is your agent or representative, and, no, the individual does not have to be an attorney).

First, there is the *limited* POA which provides someone with authority to take limited action on your behalf, hence the term "limited" POA. The best example are those POA forms you sign at your bank or with a brokerage company. Another example, is the limited POA you sign over to your attorney to represent you for a real estate closing when you are unable to personally attend. You are not giving your agent unbridled authority to do whatever they like, but simply, only that which is spelled out in the limited POA document itself.

Second, there is the *durable* POA (DPOA) which, simply stated, gives your agent (your representative; your attorney-in-fact) the legal authority to be essentially "you" for any actions that you are unable to do. Authority is essentially "unlimited." Old documents used to be called "family" POA or "general" POA. The reason a "durable" power of attorney is called "durable" is because the document is intended to endure should you become incapacitated. Your agent does not have to go into Court to do a guardianship to have authority to act on your behalf. If a guardianship is, nevertheless, instituted,the authority under an existing durable POA is suspended.

Durable POA's should be executed with the same formalities as with a Will, i.e.,there should be two witnesses and the document should be notarized.

On October 1, 2011, the Florida statute on durable POA's was totally rewritten. If your document was executed pre 10/1/11, as long as it was properly drafted under prior law, it does not have to be redone. However, you may want to re-do your DPOA because (a) you want to change the agents; or (b) you do not want to have to hassle with a bank/broker who believes that DPOA's pre-10/1/11 are no good.

Pre 10/1/11, under the old Florida statute, there was a statutory form, which was intended to be a "starting point." Some people made their own DPOA. Under the new statute, there is no statutory form. There are specific provisions that have to be addressed specifically, and they have been nicknamed "superpowers."

For persons who may want public benefits in the future, certain provisions in the DPOA must be included to assure eligibility. Some excellent estate planning attorneys do not include these provisions simply because they are not involved in public benefits.

When you name agent(s) for your DPOA, always remember: (1) ask the individual if they are willing to take on the responsibility; (2) give your agent(s) a copy of the executed DPOA; (3) select the most trustworthy individuals (not necessarily the one(s) living closest to you); and (4) keep the same agents as your Health Care Surrogate.

To revoke a DPOA, you need to send a written notice to the former agents via certified mail return receipt requested.

The new DPOA statute is very detailed. You should use an attorney when such a document is prepared. A well drafted DPOA can help avoid guardianship for you in case you become suddenly ill or are injured in an accident. Anyone competent over the age of 18 should execute a durable power of attorney.

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