THE ESTATE PLANNER

November/December 2017

ESTATE PLANNING FOR SECOND MARRIAGES: 5 TIPS TO CONSIDER

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Estate planning for second marriages: 5 tips to consider

For traditional nuclear families, the goal of estate planning is usually straightforward: Leave everything to the surviving spouse who, in turn, will leave everything to their joint children. Things get more complicated when a person divorces and remarries, particularly when he or she has children (or stepchildren) with more than one spouse. Here are five tips to consider if you're divorced and getting married for the second (or third) time.

1. Update your will and other estate planning documents. It's critical to review your will, trusts, health care directives, powers of attorney and other estate planning documents to ensure you're not unintentionally benefiting your former spouse or his or her family or giving them control over your affairs. Check whether your former spouse or members of his or her family are appointed as executor, trustee, guardian, agent or attorney-in-fact in any of your documents. In many states, a divorce decree automatically revokes property dispositions to, as well as appointments of, your former spouse, but it may not automatically revoke dispositions to or appointments of your former spouse's relatives.

2. Consider a prenuptial agreement. If you have children from your previous marriage, you may wish to leave the bulk of your estate to them, particularly if your new spouse is financially independent. The laws in most states, however, make it difficult to "disinherit" your spouse.

For example, many states provide a surviving spouse with an "elective share" — typically between one-third and one-half — of the other spouse's estate, regardless of the terms of his or her will or living trust. And in community property states, absent a specific agreement to the contrary, each spouse generally is entitled to half of all community property.

You can use a prenuptial agreement (or a postnuptial agreement if you're already married) to waive your respective rights to each other's property. These agreements can also be used to serve a variety of other purposes, including retaining control of a business and defining premarital assets and debt.

3. Review beneficiary designations. Determine whether your former spouse is still named as beneficiary of any life insurance policies, annuities or retirement plans and update the beneficiary

designation if appropriate. Also, keep in mind that, if you've named any minor children from your previous marriage as beneficiaries, and you unexpectedly die, your former spouse will likely become their legal guardian and gain control over their property. If this scenario is unacceptable, consider designating a trust as beneficiary for your child's benefit.

Have you established any irrevocable trusts that name your former spouse as a beneficiary? If so, do the trusts provide that his or her rights terminate automatically in the event of divorce?

Also, find out whether your divorce decree grants your former spouse any rights with respect to life insurance, retirement plans or other assets. If the answer is yes, your ability to update certain beneficiary designations may be limited.

As you name new beneficiaries, be aware that your new spouse may have mandatory rights to certain assets, such as qualified retirement plans. If you wish to name someone else as beneficiary — a child from your previous marriage, for example — you'll have to ask your new spouse to waive these rights in writing.

4. Make the most of trusts. If you leave wealth to your spouse outright, there's no guarantee that he or she won't spend it all or share it with a new spouse, leaving your children from your previous marriage with nothing. The creative use of trusts can avoid this result and ensure that all your loved ones are provided for.

For example, you might establish a trust for your new spouse (and any children you have together) and a separate trust for your children from your previous marriage. Another option is to set up a trust that provides your new spouse with income for life and preserves the principal for your children.

If you're affluent enough that estate tax is a concern, consider a qualified terminable interest property (QTIP) trust. This type of trust allows you to take advantage of the unlimited marital estate tax deduction without having to leave all your wealth to your new spouse outright.

Second marriages: Choose trustees carefully

If you're remarrying, it's critical to choose your trusts' trustees carefully. Naturally, your new spouse and your children from your previous marriage will have conflicting interests in your wealth, particularly with respect to trusts that provide an income interest to your spouse and a remainder interest to your children. To minimize tension and disputes, consider appointing an independent or corporate trustee.

To qualify, the trust must meet several requirements, including paying out all its current income to your spouse. If these requirements are met, the trust assets are shielded from taxes in your estate and the principal is preserved for your children or other beneficiaries. Bear in mind that, when your surviving spouse dies, the remaining trust assets will be included in his or her estate and potentially be subjected to estate tax.

5. Use life insurance. If you don't want your children to wait until your new spouse dies to receive their inheritance, a QTIP trust may not be the best option. Instead, consider using life insurance — placed in an irrevocable life insurance trust if necessary to avoid estate tax — to provide immediate benefits for your children while leaving other assets to your spouse.

To ensure that your objectives are met, begin planning as early as possible, ideally before your divorce is final. The terms of your divorce decree can affect your ability to provide for your children and a future spouse, so it's a good idea to consult your estate planning advisor during the divorce process. Also, keep an eye on Congress as they debate whether to repeal the estate tax. If tax laws are changed, many common estate tax planning strategies will no longer be applicable.

Should you name a trust as IRA beneficiary?

An IRA is a popular vehicle to save for retirement, and it can also be a powerful estate planning tool. Some people designate a trust as beneficiary of their IRAs, but is that a good idea? Possibly, but only if there's a good reason for doing so. Setting up a trust as IRA beneficiary is complicated, and one misstep can erase the IRA's estate planning benefits.

IRA benefits

The benefit of an IRA is that your contributions grow and compound on a tax-deferred basis for many years, and the longer you leave the funds in the IRA, the greater the tax savings. If you don't need to tap your IRA funds during your life — other than required minimum distributions (RMDs) — you can stretch out its benefits even longer by designating your spouse or child as beneficiary.

> ***If you decide to use a trust as an IRA beneficiary, be sure it's designed properly to meet the requirements of a "see-through" trust.***

For traditional IRAs, you must begin taking annual RMDs by April 1 of the year following the year in which you reach age 70½ (your "required beginning date," or RBD). The distribution amount is calculated by dividing your account balance by your remaining life expectancy.

If you name your spouse as beneficiary, he or she can transfer the funds to a spousal rollover IRA and delay distributions until his or her own RBD. If someone other than your spouse inherits your IRA, that person must begin taking distributions immediately but can stretch them out over his or her own life expectancy

Keep in mind that, if you designate multiple beneficiaries, distributions will be based on the *oldest* beneficiary's — that is, the *shortest* — life expectancy. To maximize the benefits of the IRA, it's advisable to create separate accounts for each beneficiary so they can take distributions over their own life expectancies.

One thing you should never do, unless you have a specific reason, is designate your estate as beneficiary or fail to name a beneficiary at all. Under those circumstances, the IRA must be distributed to your heirs within five years (if you die before your RBD) or over *your* remaining statistical life expectancy (if you die after your RBD).

Why use a trust?

There are a couple of good reasons to name a trust as IRA beneficiary. One is to prevent a spendthrift beneficiary from emptying the account too quickly and defeating your tax-deferral purposes. The other is to ensure that your children from a previous marriage will benefit from an IRA you leave to your current spouse.

If you decide to use a trust, be sure it's designed properly to meet the requirements of a "see-through" trust. Otherwise, distributions will be accelerated as if you'd failed to name a beneficiary. To qualify, the trust must:

- Be valid under state law,
- Be irrevocable (or become irrevocable on your death), and
- Name only identifiable individuals as beneficiaries.

In addition, the trustee must furnish the trust documentation to the IRA custodian by October 31 of the year following the year of death. You should also consult with the IRA custodian to ensure that the trust's terms don't conflict with any of the IRA's contractual terms.

Typically, see-through trusts are set up as "conduit" trusts, which automatically distribute, rather than accumulate, RMDs to avoid high trust income tax rates. RMDs are based on the oldest beneficiary's life expectancy, so consider using separate trusts for each beneficiary to maximize the benefits of tax deferral.

Handle with care

Under the right circumstances, naming a trust as IRA beneficiary can be a good strategy. But to avoid derailing your plans, be sure to work with your estate planning advisor.

Year end in review

Revise your estate plan to reflect life changes during the past 12 months

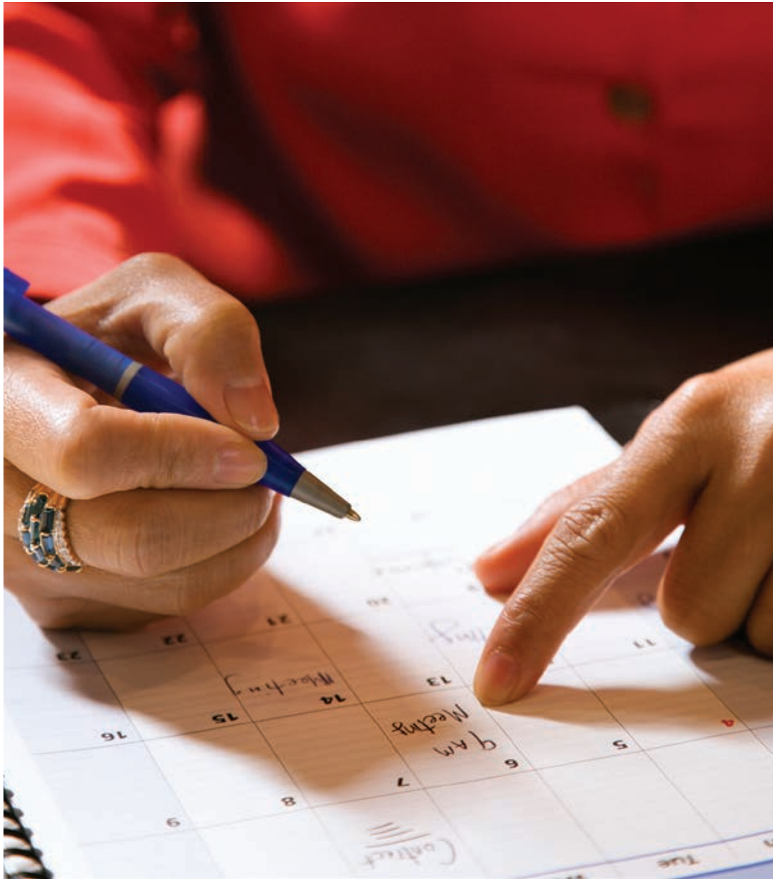
As the calendar soon turns to a new year, it's an excellent time to review your estate plan. Never intended to be static, you should consider it a work in progress. Let's take a look at life-changing events that can affect your estate plan.

Have your circumstances recently changed?

Your circumstances could be affected by certain life events that should be reflected in your estate plan. And the plan should be reviewed periodically anyway to ensure that it still meets your main objectives and is up to date.

What sort of life events might require you to update or modify estate planning documents? The following list isn't all-inclusive by any means, but it can give you a good idea of when changes may be required:

- Your marriage, divorce or remarriage,
- The birth or adoption of a child, grandchild or great-grandchild,



- The death of a spouse or another family member,
- The illness or disability of you, your spouse or another family member,
- When a child or grandchild reaches the age of majority,
- When a child or grandchild has education funding needs,
- The death of the person named as guardian for minor children in your will, your personal representative or the trustee of your trust,
- Changes in long-term care insurance coverage,
- Taking out a large loan or incurring other debt,
- Sizable changes in the value of assets you own,
- The sale or purchase of a principal residence or second home,
- A significant promotion at work or change in job circumstances,
- Your retirement or retirement of your spouse,
- Receipt of a large gift or inheritance,
- The sale of a business interest, or
- Changes in federal or state income tax or estate tax laws.

If you have minor children, your will should designate a guardian to care for them should you die prematurely. It should also make certain other provisions, such as creating trusts to benefit your children until they reach the age of majority, or perhaps even longer.

Your durable power of attorney authorizes someone to handle your decisions relating to your financial affairs if you're disabled or otherwise unable to act. Likewise, a medical durable power of attorney authorizes someone to handle your medical decision making in those circumstances.

Your circumstances could be affected by certain life events that should be reflected in your estate plan.

Typically, these powers of attorney are coordinated with a living will and other health care directives. The powers of attorney expire on your death. A living will spells out your wishes concerning life-sustaining measures in the event of a terminal illness.

Although a letter of instruction isn't legally binding, it can be incredibly useful. The letter may provide an inventory and location of assets; account numbers for securities, retirement plans, IRAs and insurance policies; and a list of professional contacts that can help your heirs after your death. It may also be used to state personal preferences (for example, specifics for funeral arrangements).

Are you ready for the new year?

The end of the year is a natural time to reflect on the previous 12 months and to review and revise your estate plan — especially if you've experienced major life changes. Your estate planning advisor can help determine if any changes are needed as 2018 gets under way.

ESTATE PLANNING RED FLAG

Your spouse's estate missed the portability election deadline

Portability allows a surviving spouse to apply a deceased spouse's unused estate tax exemption amount (currently, $5.49 million) toward his or her own transfers during life or at death. To secure these benefits, however, the deceased spouse's executor must have made a portability election on a timely filed estate tax return. The return is due nine months after death, with a six-month extension option.

Unfortunately, estates that aren't otherwise required to file a return (because they don't meet the filing threshold) often miss the deadline. Several years ago, the IRS offered a simplified procedure for obtaining an extension, but it was available only through the end of 2014. After that, the only option was to request a private letter ruling from the IRS, a time-consuming, expensive process (currently, the user fee alone is $10,000) with no guarantee of success.

Earlier this year, the IRS issued Revenue Procedure 2017-34, making it easier (and cheaper) for estates to obtain an extension of time to file a portability election. For all deaths after 2010, the Revenue Procedure grants an automatic extension, provided:

- The deceased was a U.S. citizen or resident,
- The executor wasn't otherwise required to file an estate tax return and didn't file one by the deadline,
- The executor files a complete and properly prepared estate tax return on Form 706 on or before January 2, 2018, or, if later, within two years of the date of death, and
- The following language appears at the top of the return: "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)."

If you would benefit from portability, be sure that your spouse's estate has filed a portability election. Depending on the size of your estate, the election can save up to nearly $2.2 million in gift and estate taxes.

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#EstatePlanning

Estate planning is not a trending topic for millennials. It is not popular to plan your death when you think you are young and invincible. You may be starting college, your career, or even a family. Why would you want to imagine the end when your life is just beginning?

Accidents happen every day. In fact, accidents are the leading cause of death for young adults. Every adult individual, regardless of age, should have an estate plan in place. An estate plan is not only about your death. It gives you a voice in unforeseen circumstances. It gives you an opinion in the event something happens to you and you are disabled, incapacitated, or otherwise unable to speak for yourself.

Turning the age of 18 is a milestone. You are now an adult. But this also means your parents no longer have legal authority to do anything on your behalf. For example, they cannot access your bank accounts or medical records. If something happens to you, it is important to have basic documents that will allow someone to speak for you and make decisions on your behalf if you are unable to do so yourself.

One such document is a power of attorney. A power of attorney allows you to appoint another person to handle financial or legal matters on your behalf. Under a power of attorney, your agent has the ability to access your bank accounts to manage your financial affairs, pay your bills, or sign documents on your behalf. Absent this document, the court must appoint someone to handle your affairs if you are unable to do so yourself.

Another basic document is a designation of health care surrogate. This document allows you to appoint a person to act as your health care surrogate to make medical decisions on your behalf. You can give your surrogate the immediate right to act or the right to act in the event you become unable to do so yourself. When acting, your surrogate will be able to speak with your doctors and health insurance providers, access your medical records, and consent to your medical treatment if you are incapacitated. You can also include a living will provision within the document.

The last basic document (but certainly not the least in order of importance) is a last will and testament, or simply a will. This document allows you to appoint a personal representative of your estate and to direct the distribution of your assets in the event of your premature death. Your personal representative will inventory your things, close all of your accounts (including your social media accounts), pay your bills, and distribute your assets. Absent this document, your assets will be distributed in accordance with Florida law.

You may be thinking, *"What assets?"* You may own a home. If you are single and own a home in your sole name, without a will, it will be distributed in accordance with Florida law. If you own a home with your significant other or spouse, it is important that you understand the legal effect of a jointly owned home which will avoid probate if owned as joint tenants with rights of survivorship or tenants-by- the-entirety as opposed to a home held as tenants-in-common which will be subject to probate.

You may have retirement accounts or life insurance accounts offered through your employer. You want to make sure that beneficiaries are listed on these accounts; otherwise, they will become assets of your estate and subject to probate. As such, these otherwise exempt assets would be subject to the claims of your creditors.

You may have minor children. It is essential that your will names a guardian for your children in the event of your premature death. Your spouse will be the guardian if you are married; however, you and your spouse could pass away simultaneously in a common accident. It gets riskier if you are a single parent. If something happens to you and your will designates a guardian for your children, the court will be guided by your opinion as to who should raise your child, rather than by the opinions of your relatives.

It is never too early to think about the end. You may be young, but you are not invincible. Your life is just beginning, but an accident could happen. You want to protect the important people and things in your life. You do not know what the future has planned for you, but you can certainly plan for your future.