

Life Planning

Long-term life planning that encompasses estate and tax planning is a challenging concept. It touches on multiple areas, many of which we choose to routinely ignore. While we can plan for incapacity and eventual death, the goal of keeping that planning current is often not a high priority. Life planning is putting parameters in place to protect our estates and families down the road, as ever-evolving realities present new challenges. The ongoing battles in Washington, D.C., only increase the complexities and at times threaten to make past planning obsolete.

Prior state and tax planning optimize what happens after you die. Estate planning assists in where assets go and how they may influence future generations. Tax planning can minimize the taxable value of the estate, while also ensuring excess taxes are not paid in the years prior.

Estate Planning Documents

For estate planning purposes, everyone in California should have the following documents drafted and executed by a competent attorney: will, trust, power of attorney for health, power of attorney for property, general transfer of assets to trust (a backstop and not the ultimate solution) and HIPPA.

A will can cover what happens just after you die, including burial and short-term bill payment. An original will must be filed with the court and is public record. A lost or contested will can be problematic.

A trust governs your assets and wishes long term, when it has been established and properly funded. It also avoids probate on the assets held in trust. If no trust is in place, anyone with assets of at least \$150,000 in California must go through probate, with a court determining how your assets are handled. Avoiding probate through the use of a trust is advantageous because it ensures your assets are treated in accordance with



your wishes while also protecting your privacy.

Powers of attorney are important and should be in place to cover your health care choices and property decisions. A power of attorney for health care covers your decisions should you become personally incapacitated and need medical care. It appoints someone to make your health care decisions when you no longer can and spells out your desires for resuscitation, organ donation and when to cease life-sustaining efforts.

Like a power of attorney for health care, a power of attorney for property gives a designated person the right to make property-related decisions while you are still alive but unable to make those decisions for yourself. This includes paying bills, filing taxes and, if you have a business, fulfilling obligations needed to run the business.

A HIPPA is a California specific requirement that authorizes health care providers to disclose your medical information

Documents Clients Need for Effective Estate Transfer & Tax Planning

to those designated to make your health care decisions.

Other documents that you also should have include:

- An updated list of assets
- Updated retirement account and insurance policy beneficiaries
- List of digital assets, accounts and passwords
- Letter of instructions (optional)

Tax Planning

To ensure the maximum value of the assets is passed on to your heirs, it is highly advisable that you work with your tax professional in advance to arrange your affairs to minimize taxes.

One underutilized tool is portability.

Exemption Planning

With the exemptions from gift, estate, and generation-skipping transfer tax currently at \$11.58 million in 2021 (indexed for inflation), but dropping down to

about \$6.5 million in 2026, many Californians are currently excluded from owing estate tax.

These exemption amounts ignore the practical realities inherent in our highly polarized political system. The current political change could lead to new tax laws that may significantly reduce exemption amounts. Indeed, President Biden includes in his tax plan a drop to \$3.5 million for the amount exempt from estate tax, and \$1 million for the amount exempt from gift tax. He also has stated that he wants to get rid of the step up in basis at death. What's unclear is how high a priority these proposed changes will be for the new administration.

Luckily, U.S. Treasury and IRS guidance clarifies that amounts gifted today will not be clawed back (and thus subject to tax) when and if the exemption amount drops to lower levels.

In California, for the past few years, we have seen aggressive efforts to add a California estate tax for estates valued at \$3.5 million and above. So far, such measures have not made it on the ballot, but they also have not disappeared from the discourse. We also have seen a wealth tax suggestion.

Planning based on the current exemption amount is an annual analysis. Those who can afford to gift away anything up to and including the exemption amount should do so; however, it's important to avoid aggressive tax decisions that can lead to unintended consequences. Too often, these aggressive tax decisions lead to dependency upon those to whom you have been overly generous. The right planning structure maintains independence and control while finding ways to optimize tax implications.

Portability

One underutilized tool is portability—a surviving spouse's ability to use the unused portion of the gift, estate and generation-skipping exemption amounts of the first spouse to die. Given that most estates are not taxed at the first spouse's death, this ability to use the extra exemption amount is valuable. An estate tax return (IRS Form 706) must be filed on time to elect portability, even if no estate tax is due.

With enough time and proper planning, income and estate tax can be dramatically minimized. The options on how best to affect this strategy are extensive and personal to individual circumstances. They are worth addressing with sophisticated tax advisors.

Personal Matters

You also shouldn't overlook the need to organize personal finances and other private business matters when conducting life planning.

Joint Accounts

Accounts can be held jointly, with the right of survivorship. These accounts go to the surviving account holder. These assets can be immediately available after the first death and can be used to pay short-term obligations; however, these accounts can be subject to gift

tax when established (or otherwise taxable at death).

Specific Bequests

Creating a list of specific bequests will ensure that certain, highly prized or sentimental items go to the right person. Unfortunately, this area is often more fraught with emotions than practicality.

We know of one instance where a mother trusted her executor son to give her only daughter the family heirloom necklace the daughter wore at her wedding. Instead, he quickly sold it at auction within the first weeks following his mother's death.

Additionally, items in a safe deposit box should be identified and allocated in advance and someone needs to be aware of the location of valuables. This includes banks and less official "hiding places."

Life Insurance

Life Insurance can cover estate taxes, debts owed or provide a lifeline to support a family who has lost their means of support. Life insurance can be either term or whole life. Term insurance covers an amount to be paid at your death within a specified time, while whole life builds up a cash value. Life insurance planning should be discussed as part of the overall estate planning. Life insurance trusts can be established to allow for current deductions while also supporting those causes important to you.

List of Ongoing Expenses & Obligations

When someone dies, another person must step in to meet ongoing obligations. This responsibility covers the daily ongoing commitments of life, along with any estate planning obligations such as filing a will with the court or notifying beneficiaries of an estate or trust. Stay organized so when someone else must step in for you, they can do so. Consider the following:

- Utilities;
- Family-related obligations;
- Friends and family, with contact information;
- Loans or other borrowings. Include car loans, mortgages, credit cards and

any other debts along with contact information;

- Advisers such as attorneys, accountants and consultants, including contact information;
- Charities to which you want to be involved and contribute long term;
- Estate planning documents and their location. Notify successor trustees and executors; and
- Accounts and consider consolidating or closing accounts no longer used or necessary.

Investment Policy

Having an investment policy statement in place ensures that your long-term wishes are met and that successor trustees and other obligors are protected in doing so. Should you not establish an investment policy, the Prudent Investors Act will apply. This may lead to diversification of assets, including the sale of family or long-term assets.

Children or Other Dependents

The care of dependents such as children, parents or other vulnerable family members should not be left to fate. One of the authors of this article had a mentally impaired uncle. Planning for his long-term care was stressful for his mother, who could not rely on her other child to care for him when she passed. Planning for a vulnerable family member should be detailed and well-funded.

Minor children are likewise vulnerable. Tragedy might not strike often, but it can be merciless when it does. Establishing a guardian for the child and a trustee for whatever assets they might inherit is crucial. Those individuals who might be the best persons to raise a minor child might not be ideal for managing assets. Guardians and trustees need not be the same person. You also should consider what should happen if the couple divorces.

A child's trust often states an age at which the child gets access to the trust or can be named the trustee. As a general rule, the older the child gets, the later their parents want to push out the age of inheritance, but any such transfers of wealth and responsibility should

be determined and articulated. The risks inherent in life, such as a bad marriage or substance abuse, also should be contemplated in planning documents.

Pets

Pets create a unique planning challenge. They are perhaps the most vulnerable of those you leave behind. Pet trusts are one option, establishing clear directives for their care and how you will fund it. Ultimately finding someone you trust to care for your pets is the most practical option. Long-living pets such as parrots or horses can be a real commitment in time and expense for the new caregiver. Establish clear directions and a commitment from the new caregiver.

Business Succession Planning

For those operating a business, planning for what happens when you retire or pass away very often takes a back seat to the short-term realities of running the business. Addressing succession planning when you have real operating challenges seems like a distraction, despite its importance. Yet, dying without such succession planning can mean that payroll is not met, products are not delivered and the business ultimately fails. Take time

to determine who you want to take control when you leave. It may be family members or other investors, and if you're unable to find successors, selling may be an option.

Choice of Fiduciary


A fiduciary is someone who has an elevated responsibility of care to another, such as a beneficiary. This vital choice determines who's in charge of ongoing trust management and the related obligations. These obligations are often not discussed with those chosen to handle them, and they are not updated when that person becomes undesirable or dies. Being an executor of an estate is a lot of work. The ongoing responsibilities of a trustee who must administer the trust for an unknown amount of time requires dedication. Choosing the right person and discussing the obligations, along with your wishes, ensures that the process goes smoothly.

Letter of Instructions

A letter of instructions provides detailed thoughts regarding your wishes and also your personal feelings. While looking at the practical side of death is crucial, it's also important to share your deeper thoughts and emotions. A letter of instructions can be a

bare bones list of what must be done upon your death, or it also can provide proper guidance on a deep, emotional level. To those surviving us, these letters can even be more valuable than material possessions.

Conclusion

Any list which encompasses the extensive planning necessary for death is overwhelming, but taking these steps does have its rewards. Even if you have completed many of the items on this list, you should consider revisiting them periodically to determine if they should be updated. A simple checklist and outreach to someone you trust ensures that when something happens to you, your loved ones and your wishes are protected. And, just as important, you minimize the tax liability and the financial burdens that could fall on your next generations. 

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