

## Before and After Death: Estate Planning

**T**he loss of a loved one is a difficult time in a person's life. It doesn't seem to matter whether the death was unexpected or long anticipated. The shock of the moment makes it difficult to know exactly what actions should be taken. For this reason, it is wise to be prepared for those times with an estate plan.

No matter whether you are getting your life in order or preparing your loved ones for your death, the more that is planned, the easier it will be for those you leave behind.

### Before I Die

There are things you can do before you die to make the duties of the personal representative easier. Have you even appointed a personal representative? A personal representative is someone whom you choose to carry out your wishes after you die. If you do not make that choice, the next of kin is very often appointed by the court. You can plan for death by having arrangements outlined, records available, and even having an estate plan. How you dispose of your assets will depend on how far you are in your journey through life when you die. If you have a young family, you should make provisions to ensure they are cared for when you're gone. If you are older, you may have other desires for your assets. You may even want to minimize the amount you have left when you die by making gifts during your lifetime that will not need to be added into the value of your estate. In 2007, you can gift up to \$12,000 to as many people as you wish without causing gift tax issues or creating tax consequences after death.

It is important to do estate planning regardless of your age. Your plan should be a living plan that can be modified as the stages of your life change. Involve your tax professional, your financial advisor, and a legal professional when you design your plan.

Here is a list of things you may want to consider:

- Prepare a will or other document outlining your wishes for burial and distribution of your assets.

- Choose someone to be your personal representative. That person should be named in a will or other document.
- Keep an inventory of the items you own and where they are located. If you die without that list, your personal representative will spend a lot of time and effort searching for that information.

Along with the inventory, identify the location of your tax records. You may also want to include the name of the tax professional you would like to handle your final tax affairs. This person would be familiar with your tax history.

If you have given gifts of property during your lifetime, it would be beneficial to write down the basis of property that has been gifted. This should be an ongoing document throughout your lifetime. If the gift required a gift tax return, you should have a copy of the gift tax return with your records. If a gift tax return was not required, you should still leave some sort of paper trail because the donee may need the basis information in the future.

### After I'm Gone

Have you ever stopped to think of what the personal representative of your estate will have to do when you're gone? Funeral arrangements are usually the first thing that will be done. Hopefully, you have made your wishes known. But when that's over, there is still a lot to do. Your personal representative is charged with paying the bills that need to be paid, filing and paying your tax obligations, and, finally, distributing your assets according to your wishes. If you don't make your wishes known, your state of residence will make the decision for you.

# Client Newsletter

To satisfy your final tax obligations, the personal representative must see that the required tax returns for the year of death and all years before that time have been filed and any taxes paid. If you keep copies of your past returns and good records, the representative will be able to see that all the returns have been properly filed. If the records are not readily available, your representative may have to contact the IRS to find that information. The personal representative will have to be approved by the court in order to represent you before the IRS. Even if you have given power of attorney to someone before you die, power of attorney is no longer valid after death. After the final individual tax obligations have been considered, the estate tax obligations must be reviewed.

Your estate could be responsible for filing two different kinds of returns. A Form 706, Estate and Generation Skipping Tax Return, may be due within nine months of the date of death. This return calculates the tax due on the value of the assets owned at the time of death. Currently, your personal representative would file this return if the value of your gross estate on the day you die exceeds \$2 million. Your

gross estate includes all your personal property, real estate in the United States or abroad, and investments. Your gross estate also includes the value of life insurance policies on your life if you are the owner of the policies and the cash value of policies that you own on other peoples' lives. You must also consider the value of any property you have a right to such as your share of estates, trusts, unsettled lawsuits, and any other jointly held assets. Add to that the value of any taxable gifts you may have made during your lifetime such as the lakefront property you gave to your children. If \$2 million is more than you have, you may not be off the hook yet. Some states require returns for much smaller amounts. For example, Wisconsin requires a Form W706 when the value of the estate is only \$675,000.

Even if you don't have that much property, the personal representative may have to file an estate income tax return, Form 1041 (U.S. Income Tax Return for Estates and Trusts). This return calculates the income tax on the income earned after death on the assets you had when you died but before they were distributed to the heirs.

Any income earned on your assets from the day you die until the assets are distributed or sold may be subject to tax. This income may be interest on your bank accounts; dividends on stock; retirement benefits; or annuities, rents, and the wages you earned but had not received before you died. Installment payments you were receiving before you died as well as the proceeds of the sale of your assets may be taxable. A Form 1041 must be filed if the gross income exceeds \$600 or there is any taxable income. You don't have to be rich to be required to file this return. This return is due at the same time you would normally file a regular tax return—April 15.

Estate planning is highly recommended. There are many opportunities to minimize the amount of tax due at death. Discussing alternatives with a professional may open your eyes to benefits you weren't aware of. I recommend that you be wary of advertisements for estate planning seminars. Instead, work with someone you know or were referred to; but don't limit your planning to tax considerations. There may be other health and legal issues that should be considered as well. **EA**



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