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Estate Planning: Is it for the young?

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—AUCTORIS

ARCHITECTS OF WEALTH PRESERVATION STRATEGIES



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In August, we wrote about basic issues that are compelling reasons for NexGens to have an estate plan in place. Should both parents pass, guardianship for children is one of the primary concerns for parents of young children. Devising thoughtful distribution patterns for both income and principal to their children at appropriate ages/amounts while identifying areas where additional funding with appropriate guidance would be allowed is a strong motivating factor toward creating wills and trust documents. Incentive trust provisions is a strategy that many employ to inject their family core values into their documents.

Values-based planning has become somewhat cliché and is often more a marketing ploy than a well-thought-out process of clarifying deeply-held core values intrinsic to a multi-generational family legacy. Clearly identifying these values early on is an important step before agreeing to an appointment with an attorney. Often, our experience is that parents do not completely agree on their values. A discussion of these differences and negotiation to resolve them is better done before incurring expensive hourly fees. Our firm uses a questionnaire developed by Scott and Todd Fithian of the Legacy Group to form a foundation for husband and wife to have substantive discussions of the legacy they want to leave to their children. This can lead to research into strategies that might assist in resolving the differences in values between husband and wife.

In family business situations, it is informative to have a clear understanding of the family's core values—particularly regarding ownership of company stock. Family-agreed-upon restrictions, as to who can own company stock, could have significance in the planning for young families. For example, we have worked with numerous families whose value system dictates that only bloodline can own or inherit stock. They usually have restrictive agreements governing who stock can be passed to and what rights they may have. Knowing that these restrictions exist and providing copies to the planning team will be important to creating documents consistent with family estate values. It is also important in knowing what economic resources are available to provide ongoing survivorship income to spouse and children.

Often we encounter questions about the probate process. What is it? How complicated is the process? How expensive is probate? How can I avoid the probate process? Probate is the process of closing the estate after a death, paying liabilities, taxes, transferring title to assets consistent with the will arrangement and filing any necessary tax returns. In states with the Uniform Probate Code, the process is generally very simple and straightforward. Consequently, it is not considered an expensive process in those states. To determine if your state of residency is subject to the Uniform Probate Code (UPC) you can search the



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website <http://www.law.cornell.edu/uniform/probate>. For those states that have not adopted the UPC, the process can be complicated and somewhat expensive. California is often mentioned as having a relatively expensive probate process. Your legal advisor should be very familiar with the probate law of his or her state and consequently inform you of the complexity and expense of the process.

This leads to a question of whether it is necessary to have a "Living Trust," also known as a "Revocable Living Trust," as part of the estate plan. Some attorneys are strong advocates for having a living trust, while others are less so. In states where the probate process is complicated, cumbersome, lengthy and expensive, a living trust is almost always recommended for the following reason. If a living trust is created and assets are actually transferred into the trust (an essential part of the planning process), the assets in the trust are no longer subject to the probate process. Instead passing under the provisions of the trust document, the living trust avoids the expense and complication of probate. It also avoids publicity since trust-owned assets are not subject to public disclosure. This confidentiality has motivated many in states where probate is not an issue to create the living trust as part of their plan.

An additional reason for having a revocable trust might be to have an orderly method to provide ongoing oversight if a traumatic event causes a loss of ability to manage assets. Clear direction and orderly succession are part of the thought-process in creating the revocable trust document. The trust is revocable--meaning if one wants to change it, they can at any time. Banks and financial institutions are familiar with this arrangement and remain untroubled by assets being titled in the name of the trust. Clients have had to produce the document to prove its existence and the power to sell or transfer assets. However, for a relatively minor inconvenience, clarity can be created, cumbersome administration avoided and an unnecessary expense bypassed—making this trust worthy of your consideration.

Another motivating factor for a few young families to complete their estate plan is the possibility of the federal or state estate tax placed on their estate. As of 2015, everyone has a federal estate tax lifetime exemption of \$5,430, 000. If married, both spouses have this exemption and therefore can pass \$10,860,000 to the next generation estate tax-free. Many formerly taxable estates may pass tax-free to heirs now. Some of the complexity of planning has been simplified by a recently passed "Portability Provision." In simple terms, it allows any unused exemption in the estate of the first-to-pass spouse to be applied upon the demise of the second spouse. Your legal advisor can explain in more detail than intended in this article, but



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for our purposes it means that until an estate exceeds the lifetime exemption amount (an amount which is adjusted annually for cost of living increases), there is no estate tax.

However, for those living in states that have enacted a state estate tax or inheritance tax, the exemptions often do not align with the federal exemption, and are often quite a bit lower. This can lead to surprising tax bills if not carefully considered. For a list of the 24 states that have their own estate tax (18) or inheritance tax (6) law you can google <http://www.retirementliving.com/taxes-by-state>. If you live in one of those states, it would be prudent to discuss with your advisor the details of the exemption amounts and plan accordingly.

For those who, at a young age, already have the asset base that exceeds the federal or state exemption amounts, the planning may become somewhat more extensive and complicated. The tax on the amount above the exemption is 40% (and can be as high as 50% in states that have their own estate or inheritance tax). Most entrepreneurs do not keep 40%-50% of their estate in assets that can be readily turned to cash. The tax is due 9 months from the date of death, which adds a time constraint to an already difficult situation. We recently worked with a 30-year-old with a considerable estate, who had been advised by counsel to apply for life insurance in excess of \$50 million. A rare situation indeed, but when the planning team evaluated his base of assets and forecasted a conservative rate of growth, it became clear that the need for liquidity in his estate could become severe. The recommendation was made to obtain life insurance while he is young and healthy and at premiums that are relatively inexpensive. Life insurance is but one strategy for consideration and a good estate planner will be familiar with other strategies that may be used in conjunction with life insurance to address the liquidity issue.

In a following newsletter, we will discuss some of these strategies and provide examples of applications we have seen in client situations. Whether the needs are relatively simple or more complex, the importance of having an orderly plan of disposition reflecting your family values cannot be overstated. In a time when grief wears resiliency thin, having a clear plan that is communicated and understood, with a cadre of professionals who are clear about their roles, can make a significant difference. Ignoring the issue or procrastinating is no excuse—all of us are "too busy." If you make this project a priority, I promise you will have a deep sense of satisfaction when it is completed.