

Legal Update

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ESTATE AND FINANCIAL PLANNING IS NOT JUST FOR THE RICH

By Jon Vegosen

Because federal tax law now allows individuals to make gifts of \$11.4 million tax-free over their lifetime, some people are relegating their estate and financial planning to the bottom of their “to do” lists. People with fewer or even modest assets may assume that estate planning is either unnecessary or it should be a low priority. There are several reasons, however, to prioritize estate planning.

First, the Illinois estate tax applies to individuals with estates larger than \$4,000,000. Second, the federal lifetime exemption amount is only a temporary measure. Unless Congress acts to extend the Tax Cuts and Jobs Act of 2017, the exemption could drop back to the five million dollar range at the conclusion of 2025. Moreover, if Congress changes in the 2020 elections, it could significantly reduce the lifetime exclusion amount. Third, irrespective of the size of one’s estate, there are many compelling reasons and benefits to engaging in estate and financial planning, including the following:

- **Comprehensive Personal Plan:** It is important to develop a thoughtful and cohesive plan that factors in your health, life, and disability insurance, investments, retirement accounts (and who the designated beneficiaries are), 529 education plans for your children, special needs of certain family members, and emergency resources. These are not only for your benefit while you are alive, but also for the benefit of your spouse, heirs, and charitable causes to which you want to leave bequests. If you are contemplating marriage, you may also want to consider whether you need a premarital agreement between you and your fiancé, especially if you are getting remarried and have children by a prior marriage. In addition, income tax planning is now a vital aspect of estate planning. You need the right professional guidance to capitalize on these opportunities.
- **Business Succession Plan:** Another issue to consider is what will happen to your business if you were to die prematurely. We recommend including provisions in your estate planning documents with a memo or letter that is cross-referenced setting forth your wishes. The memo or letter could identify, among other things, who you would want to lead the business and what you would like done with the business (for example, carry on the business for a period of time and then put it up for sale). Of course, whomever you designate to carry out your wishes would need to spend considerable time and energy to accomplish your goals. In fairness, that person should be compensated for his/her efforts. We usually recommend that such compensation also be provided for in the memo or letter. Using a memo or letter allows you to alter your plan as circumstances change without the formality of amending your will or trust.
- **Will:** It is critical to have, at the very least, a will. In this way, you – rather than the law – get to decide who will inherit your assets and who will administer your estate. Moreover, if you have minor children, it is important to designate your children’s guardians in your will. If something happens to

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you and your spouse, you do not want to leave the raising of your children to individuals who do not align with your values and goals.

- **Trust**: You may also want to create a revocable living trust. Through such a document, during your life, your assets would be placed into a trust for your benefit, allowing you as the trustee to do what you want with them. In addition, you can change the terms of your trust whenever you want. When you pass away, the assets in your trust would be transferred to beneficiaries that you have designated in the trust, and the successor trustee you name in your trust will administer the trust. Among the advantages of a living trust are that:
 - the expense of probating your will can be avoided in the place where you reside;
 - if a trust owns real estate in another jurisdiction than the one where you reside, a probate estate will not need to be opened in the jurisdiction where the real estate is located; and
 - unlike wills (which must be publicly filed with the court in the county in which one passes away), trusts are private documents and not filed or made publicly available.
- **Powers of Attorney for Property and for Health**: No one can predict whether or when an accident will occur or a serious health condition will arise. The reason to have a power of attorney is in case something happens to you and, either temporarily or permanently, you are unable to make decisions for yourself. Under a power of attorney for property, you can designate a person to make decisions on your behalf with regard to assets and financial matters. Under a power of attorney for health care, you can designate someone to be your “health care agent” to make health care decisions on your behalf. People often designate their spouse, a parent, a child, a sibling, a trusted friend or advisor, or someone else that they know will carry out their wishes. Of course, you will want to make sure that the individuals you designate are willing to serve and that they understand and will respect your wishes. You can also provide burial instructions for your remains or for other contingencies.
- **“Road Map”**: If you want to make things easy on your loved ones in case of your disability or demise, you may want to leave a sealed envelope or a box that contains important information and documents. This could include your bank accounts, credit card information, tax returns, financial statements, copies of your passport and birth certificate, a list of your trusted advisors (e.g., attorney, accountant, financial planner, or wealth manager), a list of your service contracts, a list of your digital assets and passwords, mileage or other point reward information, and other valuable information. Your family members will be most grateful, and you will save them considerable time, effort, and angst.

Conclusion

If you have been putting your estate and financial planning on the back burner, irrespective of your net worth, there is no time like the present to give it the attention it deserves.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen, 312.701.6860, jvegosen@fvldlaw.com, or your regular FVLD contact.

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