Estate Plannir

Mistakes to Avoid & Helpful Ti

By LIBBY CARTY MCNAMEE

The mere notion of estate planning strikes fear into the hearts of many, often for good reason. No one wants to be the novice who unwittingly lands in a trap for the unwary and loses hard-earned life savings. However, with some vigilance, proper preparation, and professional advice, estate planning can be a source of additional security rather than stress as you move towards your later years in life.

Here are ten tips to get you started in the right direction. Remember, estate planning is for the living, not the dead.

1. Prepare a Will. First and foremost, prepare a will and make sure to execute it promptly. Don't procrastinate and be part of the 57 percent of adults in this country who die without one—"intestate"—according to a national poll conducted by www.Find Law.com. Then, Virginia law, not you, will decide how to divide up your assets among your heirs, potentially damaging the value of your estate.

David Addison, a partner in the Trusts and Estates Department at Richmond-based Williams Mullen, advises against drafting a will yourself, declaring it a "big mistake." He explains, "A will is probably the most important document you will ever sign. It is worth having a professional prepare it." Furthermore, he does not recommend any type of pre-packaged will or trust kit, warning that the results can be "disastrous."

Many people mistakenly believe that if they die without a will, everything will go automatically to their surviving spouse. That is not the case if there are children from a previous marriage. Virginia law allows only one-third of the estate to go to the present wife, while two-thirds will go to the kids from the previous marriage.

2. Living Trust. Consider a living trust, which passes ownership of your assets at death and serves as a bridge that avoids the long and costly probate process, and the necessity to file anything in court. Unlike a will, which only takes effect on your death, a trust is a functioning entity once you create it during your lifetime. Once the trust is created, you should transfer your assets into the trust while you are living. By taking steps to "fund" the trust, you will be able to avoid having the assets pass through probate at the time of your death. However, as the grantor of the trust, the law will treat you as the owner of the trust for income-tax purposes prior to your death.

3. Power of Attorney. Avoid the tragic Terry Schiavo drama and create a power of attorney and healthcare proxy to protect your wishes in case of incapacity. Virginia recognizes an advanced medical directive, which is a combination of a living will and a healthcare power of attorney.

4. Estate Tax. Take into consideration your exposure to the onerous estate tax, informally known as the "death tax." Don't underestimate your net worth. You are currently entitled to an exemption of a million and a half dollars, but that amount includes life insurance, retirement accounts such as IRAs, and the value of your real estate, for both home and business. Everything left to a spouse is estate-tax-free at the time of the first spouse's death. However, there may be estate-tax consequences if the estate exceeds the exemption and passes to beneficiaries other than the surviving spouse.

5. Life Insurance. Don't buy extra life insurance to pay the estate-tax bill unless you own that life insurance outside of the estate. Many are unaware that life insurance is considered part of their estate, only raising the potential estate-tax bill. If you want to protect your life insurance as a separate tax entity, consider setting up an irrevocable life insurance trust.

6. Gifts. Consider using gifts to the

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advantage of your estate. You can give up to $11,000, or $22,000 per couple, every year to an unlimited amount of children, grandchildren, and their heirs without having to pay gift taxes out of your estate. Furthermore, the person who receives the gift does not have to pay income tax on the gift. If the gift exceeds the annual gift tax exclusion, there will be no tax payable until total lifetime taxable gifts exceed $1,000,000. Any such taxable gifts will reduce the real-estate tax exemption available at death dollar for dollar.

7. Children & Grandchildren. For those seeking to reduce the size of their estate in addition to the $11,000 gift limit, Marc Cram, Certified Financial Planner at Legg Mason, Inc., recommends that clients pay for their children's and grandchildren's education and medical needs. "As long as the check is made out directly to the provider of the education or medical services, then the individual will not incur any gift taxes. This tax benefit applies even if the client had already given the child or grandchild $11,000 that year," explained Cram.

8. Assets. Be careful how you title your assets. Many couples own their property jointly with right of survivorship so that it passes directly to their spouse upon death. This type of ownership can be beneficial but can also create unwanted tax problems. Although joint ownership does avoid probate, it can also expose the surviving spouse to higher estate taxes at the time of his or her own death. If estate taxes are a concern, you should probably split the assets between you and your spouse, then create a trust for the benefit of the surviving spouse that makes use of his or her estate-tax exemption. Under this arrangement, there will be no tax on the trust assets at the death of the surviving spouse. Don't hesitate to seek legal advice from an estate-planning attorney in order to implement this plan.

9. Regular Updates. It's important to keep your will updated throughout major life changes, such as marriage, divorce, death, the arrival of new grandchildren, and inheritances—as well as after any substantial amendments to the federal and state tax codes. Also, at the same time make it a separate priority to regularly review your advanced medical directive and re-evaluate your life insurance and retirement account beneficiaries.

10. Professional Input. Seek help from estate-planning attorneys and certified financial planners, and consider it money well spent. Contrary to popular belief, there are many such professionals who are open to assisting middle-income investors of modest means.

Keeping these tips in mind, and understanding and side-stepping these potential pitfalls can help you to ensure that your desires will come to fruition while protecting the value of your estate for your heirs and their heirs to come. ■

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