Don't Neglect Estate Planning

The article, "More give in the gift tax," in this issue mentions that the federal estate tax exemption now exceeds $11 million per person. Accordingly, few individuals or married couples will owe this tax. Nevertheless, there is more to successful wealth transfer than reducing or eliminating estate tax. Ideally, you'll want your assets to pass to the desired recipients with a minimum of turmoil and expense.

To start, you should have a will prepared by an experienced attorney. Your will should not only name specific heirs for specific assets, but also identify an executor who will administer your estate and, if relevant, guardians who will care for any minor children.

Once your will has been prepared, don't file it away and forget about it. Review the document periodically, especially after major life events such as births, deaths, marriages, and divorces.

In addition to a will, other efforts should be included in your estate planning.

Beneficiary Designations

Many assets will pass to a beneficiary or co-beneficiaries at your death. They include retirement accounts, annuities, and life insurance proceeds, as well as certain bank and investment accounts. The good news is that these assets usually pass without having to go through probate, which might be expensive and time consuming.

The bad news? Generally, a beneficiary designation will override what's in a will. Keeping beneficiary designations current can be vital. Except when a legal agreement is in place, you probably won't want assets to pass to an ex-spouse under an old beneficiary form.

Employer-sponsored defined contribution retirement plans, such as 401(k)s, may be required to pass to a surviving spouse, unless a waiver has been signed. Complying with such rules may save your heirs from an unhappy ending.

Revocable Trusts

In recent years, revocable trusts (also known as living trusts) have become popular. As the name indicates, these trusts can be undone, with trust assets reverting to the trust creator, known as the grantor. Meanwhile, the creator continues to control the assets in the trust and have access to income from such assets.

Assets transferred into such trusts can avoid going through probate at the creator's death. As mentioned previously, retirement plans and other assets avoid probate anyway. The same is true for assets held as joint tenants with right of survivorship—such property passes to the surviving owners.

Therefore, probate avoidance applies to other types of assets if they are held in a revocable trust. To get this benefit, assets must be transferred into the trust.

Beyond probate avoidance, revocable trusts also might reduce administrative expenses by helping the trustee to identify and gain control over the assets. Additionally, a revocable trust can be valuable in case of incapacity. Control of trust assets may pass to a successor trustee or co-trustee.

Example 1: Nancy Hunter creates a revocable trust into which she transfers her bank accounts, investment accounts, and real estate. Nancy names her daughter, Judy Palmer, as successor trustee. Now, if Nancy loses the ability to manage the trust assets, Judy will take control.

Before naming someone as successor trustee, consider this question: Is this person able and willing to serve? If not, a corporate co-trustee may be the answer. The latter solution will cost money but could be less expensive than losses caused by an unqualified trustee.

Irrevocable Trusts

With irrevocable trusts, the grantor gives up control of assets transferred into the trust. Such trusts can serve many purposes, such as reducing estate tax, protecting beneficiaries who might handle money unwisely, and providing strong creditor protection. Modifying an irrevocable trust can require considerable effort and expense, if it can be done at all.

Other Components

A thorough estate plan also might include a letter of instruction, durable power of attorney, and health care directives. The lawyer who drafts your will and any trusts you might desire can let you know what else you'll need for a comprehensive estate plan.