Non-Tax Reasons for Your Well-Tailored Estate Plan

October 31, 2012

When was the last time you took a good hard look at your estate plan? For many people, it has been years or even decades -- yet, the estate plan that was appropriate for your life and family even a few years ago may no longer make sense. Tax year 2012 is a good year for gifting and engaging in estate planning for tax reasons, as discussed in our Alert from earlier this year, *Unprecedented Transfer Tax Planning Opportunity*, issued March 19, 2012. However, in addition to reduction of federal and state transfer taxes, there are numerous non-tax reasons to review your estate plan.

Imagine if you will a beautiful designer jacket, hand-stitched, an interior lined with silk. But, as you slip that jacket on, you realize the sleeves are too short, the shoulders are too broad and the beautiful fabric is not your color. Estate plans, like clothes, are not "one size fits all", but instead should be carefully tailored to carry out your specific wishes. Aside from tax-driven decisions, the process of tailoring your estate plan requires a regular review in order to assure that your non-tax objectives are still sized right and properly addressed in your estate plan.

Your Estate Plan is More Than a Will

Your estate plan should include a will, but it may also include a revocable trust, which can help you plan for incapacity and avoid probate, and an insurance trust or other trust that provides a vehicle for tax planning. In addition to those instruments, there are other documents that make up your estate plans.

For example, you should have a power of attorney that appoints an agent to act for you in regard to your financial matters, as well as a living will (sometimes called an advance directive for health care) that expresses your wishes should you face serious illness, and a power of attorney for health care that appoints an agent to make health care decisions should you become incapacitated. (In some states, a living will might be combined with a power of attorney for health care into one document that can be referenced easily by a physician.)

In addition to instruments prepared by your estate planning attorney, your estate plan should also include retirement plans, insurance, and other accounts and benefits that transfer through beneficiary designation; and, in certain specific situations may include owning certain real property jointly with right of survivorship so that the death of one owner, the surviving owner automatically owns all of the property. You should review these beneficiary designations regularly to make sure that they are consistent with your current wishes and the rest of your estate plan.

Changes in Family Circumstances

If your family's circumstances have changed since you last reviewed your estate plan, there is a chance that your instruments no longer properly express your desires. All of the following are events that should trigger a review of your estate plan:

- The birth of a child or grandchild -- Only in your will can you appoint a guardian for your minor child should something happen to you and your spouse. You can also make specific bequests, form a trust or start investing in a Section 529 college savings plan to help provide for education and support of children and grandchildren. Also, if any of your children or grandchildren have disabilities, you should consider setting up a special needs trust for their benefit to prevent them from being disqualified for government benefits that would otherwise be available to them.

- Marriage -- At common law, marriage automatically invalidates a will made prior to the marriage. Although most states have adopted statutes that prevent this automatic invalidation, some states still provide for automatic invalidation of a will created prior to marriage. Additionally, if you have children from a prior marriage, you need to determine whether your estate plan provides for both your children and your current spouse. You may also want to make changes to the beneficiary designations on retirement accounts, insurance policies and bank accounts.
- Divorce -- Many people do not consider the effect of divorce on certain beneficiary designations. For example, if you are divorced, have you changed the beneficiary designations on your insurance policies, retirement plans and bank accounts?
- Death -- After the death of a loved one, it is difficult to make decisions or changes in your life. But after some time has passed, consider how that death impacts your estate plans. Was your loved one appointed as sole executor of your estate?

Changes in Professional Circumstances

If you have moved, changed jobs, retired or started your own business since you last reviewed your estate plan, there may be changes you need to make. The following are some considerations for each of these circumstances:

- Relocation -- Some states require that a resident of that state serve as executor. Do your executor appointments still make sense?
- Retirement or change in job -- If you have retired or changed jobs, your employment benefits have likely changed and there may be gaps you should address. For example, perhaps while you were working your employer offered life insurance as part of your benefits package, but now that you are retired that benefit may have lapsed.
- Owning a successful business -- Many business owners do not consider succession planning early enough. If you are the owner of a business, have you considered transferring interests in the business to your children, your spouse or a third party? Additionally, if your business is organized as an LLC or a partnership, do your organizational documents provide for what happens if a member or partner dies? Laws regarding business entities have recently changed in many states and your organizational documents may not reflect these changes.

Lapse of Time

Time generally brings with it many of these major life events. However, even if you have had no major changes in your family or professional circumstances, simple lapse of time can make review of estate plans desirable. For example, if your children are now adults, perhaps you would like them to be named as executors or trustees under your instruments or as successors to serve in those roles should those originally appointed fail or cease to serve. If your children are now young adults, you might also consider having your estate planning attorney prepare powers of attorney and living wills for your children as well, so that someone will be able to make health care and financial decisions for them if needed. Perhaps you have come to realize that some of your beneficiaries are not very good at handling money and, therefore, should not receive outright distributions but instead should receive distributions in trust. Or, perhaps you have come to realize that you need to plan for the possibility of incapacity.

Conclusion

A well-tailored estate plan requires a thoughtful and deliberative process, taking into account both tax and non-tax considerations. If any one of these issues triggers a concern that you would like to discuss further, please contact any of the attorneys in the Firm's Tax Department.