MONEY

it's time to review your estate plan...again!

Each person, regardless of age, net worth, employment or marital status should have a comprehensive estate plan in place. In addition, business owners face unique estate planning challenges, and are advised to review their planning regularly.

This special 'Advice from the Experts' column is contributed by Gerald M. Morello, Morello Law Group, P.C.

As an experienced estate planning attorney, I always encourage clients to review their estate plan on a regular basis to ensure that the various selections that are made within the estate plan, including who the key people are, the distribution schedule and the most current tax planning opportunities, are utilized.

Each person, regardless of age, employment status, net worth or marital status should have a comprehensive estate plan in place. A comprehensive estate plan should always include a Last Will and Testament, Revocable Living Trust, Financial Powers of Attorney and Patient Advocate, and Advanced Medical Directive forms. In addition, the estate plan should contemplate appropriate tax planning strategies to reduce or eliminate taxation upon death. Finally, business owners face unique estate planning challenges, and are advised to review their planning regularly.

Here are some of the important changes in the estate planning tax laws and various administrative law changes that should be addressed via an estate plan review and update:

2012 TAX ACT

The President signed on January 2, 2013, permanent legislation which creates significant changes to the Federal Estate Tax. The Act currently provides that an individual now may exempt $5.25 million from Federal Estate Tax. This is a significant change from the historically low amount that an individual could pass to his or her heirs estate tax free. The top Federal Estate Tax rate on estates valued in excess of $5.25 million is 40%!

SIMPLIFIED PLANNING FOR MARRIED COUPLES

Historically, a married couple needed to establish two separate AB type Trusts to protect both exemptions against the Federal Estate Tax. In other words, for a married couple, if you did not "protect it," you would "lose it." Now, with proper planning, most typical married couples can protect both the husband's and the wife's exemption against the Federal

Estate Tax ($5.25 million each for a total of $10.5 million) by doing some very simple, straight-forward planning. This effectively eliminates the need for ongoing administration of the deceased spouse's Trust during the lifetime of the surviving spouse. This simplified approach will not always be appropriate planning; its based on many factors the clients should be made aware of. An important point is that the surviving spouse, in order to capture the deceased spouse's unused exemption against the Estate Tax, must file a timely Federal Estate Tax Return with the IRS within nine (9) months of death of the deceased spouse. Again, if the 706 Return is not filed, you lose the exemption of the first spouse to die.

LADY BIRD DEEDS

A Lady Bird Deed (or Enhanced Life Estate Deed) is a Deed that estate planning attorneys utilize on a regular basis to ensure that an individual can protect a primary residence during a nursing home stay from the Medicaid spend-down rules, while ensuring that, at death, the home ultimately is transferred to the Trust in order to avoid the Michigan Estate Recovery Act as well as to avoid the probate process. The Michigan Estate Recovery Act currently provides the State of Michigan with the ability to be reimbursed for Medicaid costs by extracting the reimbursement from the sale of the primary residence after the taxpayer has passed away. A Lady Bird Deed is a simple, but very important, method of ownership arrangement for a primary residence that allows the home to be maintained as a protected asset from the Medicaid spend-down rules while you are alive, yet removes the asset from your probate estate and is distributed by your Revocable Living Trust upon your death. This is an excellent technique for most every client of ours that we assist with estate planning.

IRA Conduit Trust. The rules that govern IRA tax planning are complex, yet critically important in the estate planning arena. Most clients have retirement accounts, and the estate planning objective is usually continuing the power of tax deferral for the beneficiary after one's death. A properly designed Revocable Living Trust will have provisions that create an IRA Conduit Trust to receive the retirement accounts at death. The result is continuing tax deferral on these accounts for beneficiaries, with the lowest tax amount due to the IRS.

POWER OF ATTORNEY RULES CHANGES

A person appointed as an Agent under a Durable Power of Attorney executed after October 1, 2012 must sign an Acknowledgement before acting. Further, the Power of Attorney instrument must be very clear in authorizing the Agent to have the authority to implement Medicaid planning in order to preserve assets in the event of a nursing home stay or other advanced planning purposes. This change in Michigan law now makes a financial Power of Attorney law similar to Michigan's Patient Advocate Designation, which has long required the medical Advocate to sign a statutorily prescribed Acceptance. Now, both a financial Power of Attorney and a medical Power of Attorney under Michigan law requires the appointed person to acknowledge and accept the responsibilities under the terms of the document.

The primary purpose of the state statute is to deter the appointed financial Agent from using the Principal's monies for self gain. It is very important that a good decision is made on who can act over your financial assets if you are deemed incapacitated. ✦

INFO

estate plan updates

– Gerald M. Morello, Morello Law Group, P.C.

HERE ARE SOME additional recommendations on what to consider when updating your estate plan:

- *Prepare or update a Revocable Living Trust to avoid probate court, eliminate government interference, maintain privacy, simplify administration and protect your family's estate.*
- *Review assets to make certain they are owned or "funded" in the name of your Trust; confirm your beneficiary designations properly name your trust. Do not put a child on the deed to your home, stocks or mutual funds due to adverse tax consequences.*
- *Consider the best way to transfer assets at death to avoid Estate Tax.*
- *Roll-over 401k plan monies after changing jobs, or at retirement, to an IRA account. Then consider all options to maximize income tax deferral for heirs on the IRA at your death.*
- *Review whom you have appointed as Executor, Successor Trustee, Guardians for minor children, and Agents for financial and health care documents.*
- *Determine whether your estate plan contemplates the Tax Acts of 1997, 2001 and 2003 and the IRA rules changes.*
- *Review your total net worth, and determine whether your estate plan is appropriate.*
- *Determine whether you have acquired real estate since your Trust was developed and whether ownership of that real estate is appropriate.*
- *Determine whether your heirs' circumstances have changed, which might affect your planning, such as a disability, births, deaths, marriage or divorce.*
- *Consider the tax benefits of leaving monies to grandchildren, especially IRAs.*
- *Consider provisions in your Trust to provide monies for younger heirs for education and health care, and an age requirement to receive the inheritance, such as age 25.*

ESTATE PLANNING is not just a one time event. Instead, a comprehensive estate plan should be reviewed on a regular basis. You should review and update your estate plan as necessary with an experienced estate planning attorney to ensure your important legal affairs are in good order. ✦