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## ESTATE PLANNING

### *Don't let the tail wag the dog*

**W**ith uncertainty surrounding the future of the federal estate tax, you may be hesitant to engage in estate planning. President Barack Obama and the GOP just negotiated a deal to extend the Bush-era tax cuts for the next two years. The prospective deal means no estate tax for estates under \$5 million, and a top rate of 35 percent for over \$5 million.



**L. ASHLEY BROOKS**

The deal isn't law yet. Even if it passes, it merely postpones any certainty on the tax impact to your estate. So if you have "let the tax tail wag the dog" when it comes to your estate planning, consider these important reasons not to leave it on the back burner.

**When you can't be in control, someone will be.** Disability planning is a priority in estate planning. Your spouse or adult child is not automatically empowered to manage your affairs. Without powers of attorney and advance medical directives, they are left to seek court-appointed guardian-

ship for that authority. Plan early, choose your agent and empower them.

**Long-term care – navigating the maze.** Periodic estate plan reviews are important, because your primary objectives are likely to change over time. Fluctuations in your estate value, changes to tax laws and increasing long-term-care costs may result in your will or trust provisions being more complex than necessary. A dated power of attorney should be examined for authority to carry out long-term-care planning. The absence of this authority can mean fewer options and greater expense.

**Probate: To avoid or not to avoid?** Probate is the process by which the circuit court oversees estate administration. It requires filing notices, an inventory and often one or more annual accountings. Probate avoidance may be an estate planning objective. There are multiple probate avoidance tools, but they should be examined carefully to ensure they meet other objectives. For example, naming a spendthrift child as "payable on death" beneficiary of an account may avoid probate, but provides no creditor protection for

his inheritance. Adding one child as joint owner on an account may enable her to pay your bills, but results in disinheritance of your other children when the account contents pass to the joint owner/child.

**Don't overlook the basics.** Have you reviewed your will or trust to ensure you understand the distribution pattern? For example, if an adult child/beneficiary predeceases you, would his or her children receive the share, or someone else?

**Creditor and "predator" protection.** An inheritance left outright to your beneficiaries is not protected from creditors, overspending or equitable distribution in a divorce. A fortified estate plan using trusts offers asset protection.

**Preventing disinheritance in the blended family.** "I love you wills" executed by spouses mirror each other – leaving all assets outright to the surviving spouse and typically naming children as contingent beneficiaries. If you have such a will, be aware that your spouse is free to change their will if they survive you and inherit your share of the property. Since your children of a prior marriage can easily be excluded, your estate

plan should address this issue.

**Remarriage and inadvertent disinheritance.** Frequently, remarriage occurs after the death of a spouse. If the new couple's assets are merged into marital property, and the new spouse survives and inherits the property, children of the original marriage can be disinherited unintentionally. This can be avoided through careful planning.

**Maximizing the "stretch-out."** Retirement accounts should be discussed thoroughly with your estate attorney to ensure maximum tax deferral for your beneficiaries, if so desired.

**Special planning for special needs.** An inheritance can jeopardize continued eligibility for public benefits like Medicaid and SSI. Special needs trusts can protect your beneficiary's inheritance and benefits, allowing the former to supplement the latter.

These issues highlight a few reasons why estate planning means much more than tax reduction. Give your family the gift of a current estate plan.

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