

Sather Financial Group, Inc.
Private Wealth Management

End of 2013 Estate Planning Review & Checklist

A year ago at this time the financial industry was scrambling for clarity on the estate tax amid indecision over the fiscal cliff. Although it was later than anticipated, we finally got the needed answers on January 1, 2013. That said, just because there is no fiscal cliff to decipher doesn't mean your estate plan wouldn't benefit from a review.

Here are a few issues to visit:

The Basics: Wills, Power of Attorney, Power of Health Care & Directive To Physicians

Recent changes in state and federal estate-tax rules may mean your will is now outdated.

Your ***Will determines how your assets are distributed upon your death***. Obviously, a husband and wife each need a will. Additionally, everyone needs a ***Durable Power of Attorney, Durable Power of Health Care and Directive to Physicians***.

The "power" documents allow someone to make financial and health care decisions on your behalf in the event of your incapacity. The Directive to Physicians expresses whether or not a person wants to be kept on life support, whether they wish to be resuscitated etc. All of these documents need to be reviewed at least every five years (if not three years), or as circumstances necessitate.

Given these changes, now is a good time to revise your will and estate plan. In January, ***the federal estate-tax exemption jumped to \$5.25 million per person***. What's more, some states have different estate-tax exemptions. But many wills don't take into account possible changes in federal and state estate-tax rules. Next year, it is anticipated that the estate tax exemption will increase to about \$5.35 million (an increase of 2% or \$100,000).

Supercharging Your Estate: Trusts

If a person dies in the year 2013 they can leave up to \$5.25 million to anyone at their death without estate taxes being incurred. It is important to note that most people approach this as a death only event. You can also transfer assets during your lifetime. This can open up gifting opportunities.

Typically, for a husband and wife the first item to consider once you develop a Will is Trust provisions. ***Probably the most common for a husband and wife is a Bypass (or Credit Shelter) Trust***. For example, assume husband and wife have a \$10.5 million estate. Furthermore, assume husband dies this year. The Bypass Trust gets funded after husband's death and allows \$5.25 million of the \$10.5 million joint estate to be placed in trust for the remainder of the wife's lifetime.

The wife can be the beneficiary of the Bypass trust and can also be the trustee of the trust. The trustee is the decision maker and the one who is legally obligated to see that the trust rules are properly followed. ***The beneficiary (wife) can withdraw all of the income*** produced by this Bypass trust for any reason and can ***spend the principal for items which typically fall under the categories of health, education, maintenance and support***.

The Bypass trust is not exposed to estate taxes in the beneficiary's estate and is not exposed to the beneficiary's creditors. Since it is no longer exposed to estate taxes in this generation it can grow quite large with only income taxes being assessed. Once the beneficiary dies the assets of the Bypass trust will be distributed either outright or into other trusts for subsequent beneficiaries.

To further compliment your estate plan the Bypass trust is many times partnered with a ***Generation Skipping Trust (GST)***. The name itself is a bit confusing since the assets placed in this trust do not necessarily "skip" anyone—they just have the ability to do so. Functionally, ***the only one who is skipped is the IRS for estate tax purposes***. Anyone can leave up to \$5.25 million into a GST to collectively benefit many people. As such, a husband and wife can leave up to \$10.5 million (expected to be \$10.7 million in 2014) combined in a generation skipping manner. A parent who establishes a GST can effectively leave money in a protected manner for children, grandchildren and even into the great grandchildren's generation. Given this, the GST is a very effective tool to manage and protect wealth for multiple generations.

As with the Bypass trust, ***the GST is protected from creditors as well as ex-spouses (in the event of divorce)***. Furthermore, these ***assets are not exposed to estate taxes*** in estates of any of the beneficiaries. Additionally, the beneficiary can access the principal of the trust for health, education, maintenance and support items.

One final comment on the GST is that it is very important to recognize that this type of trust does not have to be funded only at death. For instance, if a husband and wife are actively gifting to a child or grandchild outright they could modify their plan to make the gifts to a GST for the child or grandchild's benefit. By managing gifting in this manner the parents reduce their estate, pass wealth to their heirs and the heir has the protection afforded by the GST.

Furthermore, while the parents are gifting into the GST the parents can serve as trustee of the child's trust effectively giving the parents tremendous control over the gifted assets and the management of the GST itself.

Check with a lawyer (preferably one who is Board Certified in Estate Planning & Probate Law) to make sure the language in your estate plan still applies with the new exemptions. If some plans aren't adjusted you could inadvertently leave little to your spouse or face an unexpected estate tax hit.

Many people's wills also don't reflect their current inheritance wishes because of a major life change. And if a bank or trust company is the executor of your estate, you might have a new executor due to consolidation in the banking industry. Make sure you trust that executor's judgment.

Beneficiary or Transfer On Death Designations

Every IRA, 401(k), pension, life insurance policy, annuity etc. has an opportunity for you to name a beneficiary of that account. It is important to understand that **beneficiary designations SUPERSEDE the language in your will.**

Retirement Plans--401(k)'s and IRA's: Department of Labor regulations allow retirement plan assets to be inherited, but this does not necessarily allow those assets to pass into a trust. Assume your will states that your IRA assets are to go to your children. If you have named your estate as your IRA beneficiary, your IRA assets will ultimately pass to your children. However, not before your heirs pay potentially costly, and unnecessary, income taxes. By simply coordinating your primary and contingent beneficiary designations with the wishes in your will you can avoid these problems and potentially avoid immediate taxation upon your death.

The Department of Labor will allow an IRA or 401(k) balance to be inherited directly by a non-spouse without incurring the full brunt of income taxes.

Similar concerns arise from designations like Pay-On-Death, Transfer-On-Death and Joint With Rights Of Survivorship on different accounts. These also need to be properly coordinated with your Will and final wishes as these designations will supersede the language in your Will.

Gifting

This year **the Annual Gift Tax Exclusion is \$14,000 per year per person.** That means that you can give \$14,000 to any person without any gift taxes being assessed against that gift.

In addition to the \$14,000 annual gift tax exclusion an individual can give away a total Lifetime Gift of \$5.25 million (or at death—but not both), which is also free of gift taxes. In both of these instances, these gifts can remove assets from your estate when evaluating estate tax consequences.

Another consideration is making gifts for Health Care or Educational related purposes. If you are inclined to make gifts for Healthcare or Education you must make the check directly out to the institution. If you do write the check directly to your grandchild's university (for tuition in example) that gift is in addition to the \$14,000 gift which can be made each year.

As such, it is important to remember that **you can make unlimited gifts for purposes of Healthcare or Education.**

Other items which may indicate you need to address your estate plan

Specific Bequests

- ☐ I want to make specific bequests to individuals not currently included in my plans-or delete the names of one or more persons (or charities) currently named.
- ☐ I would like to change the amounts of some of the bequests I have made.

Changes in Valuation

- ☐ The value of my estate has changed more than 20 percent in the last two years.
- ☐ I have, or will, receive a substantial inheritance soon.
- ☐ I have, or will, be the beneficiary of a trust soon.

Special Provisions for Children

- ☐ My health (my spouse's or children's health) has deteriorated substantially in the last year.
- ☐ My heirs may not be capable of handling an inheritance.

Newly Born or Adopted Children

☐ A child (grandchild) has been born (or adopted) since our last review.

Handicapped or Incompetent Children

☐ A child (grandchild or other dependent) has become handicapped or seriously injured since our last review.

Status of Family Marriages

☐ A member of the family has become married, divorced or separated since our last review.

☐ I have, or will have, been married and are there children from a previous marriage.

Cancellation of Loans to Children and Equalization of Inheritance

☐ I would like to discharge an obligation owed to me by canceling the loan in my will.

☐ I would like a clause to equalize any gifts made in the past (or to be made in the future) to certain children (grandchildren).

Life Insurance

☐ I have added (or dropped) more than \$50,000 of life insurance since our last review.

☐ I have changed (or would like to change) a beneficiary designation on an existing policy or annuity.

☐ I feel I may need more life insurance, but I don't know how much to purchase or what type to consider.

Gifts to Minors

☐ I would like to make substantial gifts to minor children (grandchildren).

Gifts to Charities

☐ I would like to add (delete) one or more charitable beneficiaries.

☐ I would like to change the amount of my bequest to certain charities.

Business Interests

☐ I have entered into a stock (or partnership) buy-sell agreement since our last review.

☐ I have bought or sold a business since our last review.

☐ My business situation has changed significantly since our last review.

Guardians, Executors, and Trustees

☐ I would like to name a particular person as advisor to my executor and trustees.

☐ I would like to reconsider the designation of the guardians, executors, and trustees I have named.

Other

☐ Have you reviewed your Durable Power of Attorney document recently (within the last three years)?

☐ Have you reviewed your Durable Power of Health Care document recently (within the last three years)?

☐ Have you reviewed your Directive To Physicians document recently (within the last three years)?

☐ Are you, or do you anticipate, being sued?

☐ Are you currently engaged in a lawsuit?

☐ Have you recently retired or will you soon?

☐ I would like to know how the latest tax law affects my estate plan.

☐ I would like to review my estate plans for the following reasons. _____

As with any of these issues, it is best to properly coordinate these decisions with your Board Certified Probate and Estate Planning Attorney, Certified Public Accountant and CERTIFIED FINANCIAL PLANNER™.

Please call to discuss any of these issues.

Sincerely,

Dave

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CERTIFIED FINANCIAL PLANNER™

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