

Sather Financial Group, Inc.

Private Wealth Management

End of 2019 Estate Planning Review & Checklist

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

Your Will determines how most (but not all) of 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 (also called a Medical Power of Attorney) 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 a person wants to be kept on life support, whether they wish to be resuscitated etc. These documents need to be reviewed at least every three years, or as circumstances necessitate.

The federal estate-tax exemption is now \$11.4 million per person. What's more, some states have different estate-tax exemptions. However, many wills don't take into account possible changes in federal and state estate-tax rules.

Supercharging Your Estate: Trusts

If a person dies in the year 2019 they can leave up to \$11.4 million to anyone at their death without federal 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.

Many people have commented that their estate is well below the \$11 million figure. As such, they don't see the need for trust planning. Since the estate tax was implemented approximately one hundred years ago, the exemption amount or tax rate have been changed about once every three years. Just because we have a generous estate tax exemption today, does not mean it will always be this generous.

Typically, for a husband and wife, the first item to consider once you develop a Will are the 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 \$25 million estate in a community property state (like Texas). Furthermore, assume husband dies this year. The Bypass Trust gets funded after husband's death and allows \$11.4 million of the \$25 million joint estate to be placed in trust for the remainder of the wife's lifetime.

The surviving spouse is 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 or capital gains taxes being assessed. Once the beneficiary dies the assets of the Bypass trust will either be distributed outright or into other trusts for subsequent beneficiaries.

To further complement your estate plan, the Bypass trust is often paired with a Multi-Generation Trust (GST). The GST is a very effective tool to keep the IRS at arms-length for several generations for estate tax purposes. Anyone can leave up to \$11.4 million into a GST to collectively benefit many people. As such, a husband and wife can leave up to \$22.8 million combined in a multi-generation manner. A parent who establishes a multi-generation trust can effectively leave money in a protected manner for children, grandchildren and even great grandchildren. Given this, the multi-generation trust is a very effective tool to manage and protect wealth for multiple generations.

As with the Bypass trust, the multi-generation trust is protected from creditors as well as ex-spouses. Furthermore, these assets may be structured so they are not exposed to estate taxes in estates of beneficiaries. Additionally, the beneficiary can access the principal of the trust for health, education, maintenance and support items.

One final comment on the multi-generation trust is 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 multi-generation trust 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 trust.

Furthermore, while the parents are gifting into the multi-generation trust, 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 trust 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 current 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 don't reflect their current inheritance wishes because of a major life change. Furthermore, 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 IRAs: Department of Labor regulations allow retirement plan assets to be inherited—either outright or in trust. Assume your will states that your IRA assets are to go to your children. If you instead name your estate as your IRA beneficiary, your IRA assets will ultimately pass to your children--but, 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.

If a non-spouse inherits retirement plan assets they will be subject to “required minimum distributions” each year. This is true whether your heirs receive retirement assets in their name or in trust.

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

Trust Planning—if you want your heirs to inherit retirement plan assets and still have the benefit of a Marital Trust or Generation Skipping Transfer trust—you must make sure the beneficiary is properly worded. Usually, if retirement plan assets are to be left in trust the beneficiary will need to be styled somewhat in the following manner: “The Testamentary Trust, Established Under the Will of John Doe, For the Benefit of Fred Doe.” Normally, we request specific beneficiary language from the attorney that drafted the estate plan to ensure they are correct.

Gifts

This year **the Annual Gift Tax Exclusion is \$15,000 per year per person.** That means you can give \$15,000 to any person without any gift taxes being assessed against that gift. Married couples can “split” gifts meaning your spouse could effectively gift to the same person \$15,000 (for a total of \$30,000 between the two gifts).

In addition to the \$15,000 annual gift tax exclusion, an individual can give away a total Lifetime Gift of \$11.4 million (or at death—but not both), which is also free of gift taxes. In both 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 \$15,000 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.**

If the answer is yes to any of these questions, let's schedule a meeting to reassess 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% in the last two years or the composition of my estate has changed significantly.
 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

Dave Sather, President
CERTIFIED FINANCIAL PLANNER

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CERTIFIED FINANCIAL PLANNER™