HILLS & FRANK
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Ten Common Estate Planning Mistakes

Your estate plan may be simple or complex. There are many details, often overlooked, that can undermine a plan's effectiveness. Here are ten common estate planning mistakes.

1. Titling property jointly with your children as a substitute for a will. Unlike a will, a transfer of an interest in your property is irrevocable, which may prevent you from changing the disposition if circumstances change before your death. Also, titling your personal residence jointly can result in partial loss of the capital gain exclusion if it is sold before your death.

2. Failing to plan for the possibility of children getting divorced or having probems with creditors. Parents often have cause to regret having made outright gifts to their child when the child subsequently divorces and the ex-son- or daughter-in-law is awarded an interest in the gifted property by a court, or when the property is taken pursuant to a legal judgment against the child. Such problems can be minimized through proper use of trusts or a business entity, such as an LLC.

3. Failing to make sure that all your assets pass in accordance with your wishes upon your death. Many types of assets (life insurance, IRAs, brokerage accounts) can pass to your heirs or others based upon beneficiary designations. The provisions of your will cannot change a beneficiary designation. Remember to account for things you've already designated. You should review your will, as well as all other beneficiary designations, when formulating your estate plan.

4. Underestimating the true value of your estate for federal estate tax purposes. For instance, many people are unaware that the proceeds of life insurance on their lives are includable in their taxable estates if they own the policies. This could bring their total estates to more than the amount sheltered from estate tax by the estate tax exemption ($3.5 million in 2009).

5. Failing to consider state death taxes in light of recent changes in the law. Many states have "decoupled" their death taxes from the federal estate tax, which means your estate could be subject to death tax in a state even if no federal estate tax is due. This could result in an unpleasant surprise upon your death, one that might be avoidable with proper planning. The laws of each state where you own property should be carefully reviewed to determine the potential exposure to state death taxes and how to minimize them.

6. Not recognizing that there is now a difference between the amount that can be transferred free from gift tax during your lifetime and the amount that can pass free from estate tax upon death. The maximum amount that can be given away during life without incurring gift tax is $1 million, whereas the amount sheltered in 2009 is $3.5 million, with repeal of the estate tax (but not the gift tax) currently scheduled for 2010. Without further legislation, the estate tax will be reinstated at levels in effect prior to passage of the Economic Growth and Tax Relief Reconciliation Act of 2001. You can make yearly gifts up to the annual exclusion amount ($13,000 per person for gifts made by an individual and $26,000 for those made jointly by husband and wife) that don't count against your $1 million gift tax exemption.

7. Failing to maximize the benefits of the income tax basis "step-up" at death. Low-basis/high-value assets should generally not be given away during your lifetime, since the basis for capital gain computation purposes will be increased to fair market value at death. If the asset is given away, the basis remains at the property's original cost.

8. Failing to indicate your desired funeral arrangements. A pre-arranged funeral can greatly relieve family members from additional stress upon your death.

9. Failing to plan for disability. In the absence of adequate medical care directives, powers of attorney, or trusteeship of assets, costly and time-consuming court proceedings may be required in order to appoint a guardian or conservator to act on your behalf if you become disabled.

10. Not reviewing and updating your estate plan on a regular basis. Changes in the law and in your personal financial and family situations over time make it essential that you periodically review your estate plan to make sure it still carries out your wishes.

Some of these common mistakes can be avoided with a few, simple actions. Be sure to consult with your tax, estate planner, and financial professional. Hills & Frank has professionals on staff in all these areas. Early and thorough planning can help you pursue financial goals and leave a lasting legacy.