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So you think your estate planning is completed…

You've worked with your attorney, reviewed the drafted documents, even met again to ask questions, and, then, signed the final documents...

Or,

You've attended that trust seminar, met with a representative, provided your personal information, gone through the process and now have a binder containing all your documents...

And, you think your estate planning is completed. Well, it may not be, and your documents may not be revisited until your health declines or your family must handle your estate.

The following is a brief outline of common areas in which estate plans may be lacking.

1. If you have a revocable living trust, are most or all of your assets titled in the name of your trust?

Some assets (such as retirement accounts) should not be titled in your trust. Depending on the overall estate plan, perhaps the daily checking account also will not be titled in the trust. However, your real estate and major financial accounts usually should be titled in your trust.

Your living trust is intended to avoid a conservatorship if you are incapacitated and the probate process upon your death. If valuable assets are not titled in your living trust, they may need to be probated. It is common for assets to inadvertently not be titled in the trust and, therefore, the probate process becomes necessary.

While titling assets as joint tenants, community property, community property with right of survivorship, ITF (in trust for) or POD (payable on death to) will avoid probate, upon your death those assets will pass to the joint tenant, surviving spouse or beneficiary and be part of that person's estate when they die. Those assets will not be subject to the terms of your living trust and may cause unnecessary estate taxes in the surviving spouse's estate.

For example, your trust may provide that property distributed to your children or grandchildren will be retained in a trust until that child or grandchild reaches age 25, 30 or even older. If, instead, the property is in joint tenancy or in a POD account, the child will receive that property at age 18.

2. Does your living trust have a schedule listing the assets that are part of your trust? Is that schedule completed and signed?

The probate process may still be avoided if assets that are not titled in the trust are listed on a property schedule attached to the trust agreement. Ideally, that list of assets indicates that the assets are a part of the trust and is signed. Although an attorney will have to petition the court for an order confirming that the assets are a part of the living trust, the probate process may be avoided as to those assets.

It is extremely common for living trusts to either not have such an attached schedule of assets or for the schedule to be left blank.

3. Have your estate planning documents been recently updated?

Estate tax laws, probate laws, family dynamics and perhaps also your personal goals are constantly changing. Have you read your documents within the past three to five years or requested that the drafter of your documents do so? Your documents may not reflect your current desires or be the most efficient method of avoiding or minimizing estate or income taxation.

Be aware of the recent changes in estate, gift and income tax laws. Your documents that served as the best mechanism to avoid such taxes at the time you signed them may no longer accomplish that purpose.

Have you married, borne children, lost parents or moved since your documents were drafted? Have you acquired real estate (maybe a vacation home) in another state or another country? These are all areas of personal change that will affect your estate plan. While California has no estate or inheritance taxes, other states do and their exemptions from tax may not be identical to the United States federal estate tax exemptions.

For example, currently under federal estate tax laws, there is a personal exemption from estate tax in the amount of $3.5 million. Certain other states have lower personal exemptions. If you own property in those states and your estate plan is not sufficiently flexible to take this into consideration, your estate may unnecessarily be subject to death tax.

It is also common for recently married or separated couples or those enjoying the bliss of sleepless nights associated with a new-born child to assume that their estate plans will address their changed family. Unfortunately, that is not always the case. If your desires of whether to include or exclude the spouse or child are not indicated in your documents, that person may receive a portion of your estate as dictated by the California Probate Code. In the unlikely event that neither you nor your child's other parent survives the child reaching adulthood, a guardian

should also be named in your documents.

4. Have you and your attorney and/or financial planner reviewed changes in your or your family's financial situation?

We see many estate plans that were well structured a number of years ago, but due to recent changes in the economy, should be amended. Perhaps the value of your estate is now primarily in your retirement accounts or in your real estate. Perhaps the value of your life insurance policy now makes up more of your taxable estate than it previously did. Perhaps some of your beneficiaries' current needs are greater than they were. All these factors may require changes to your estate plan.

5. Who are the beneficiaries (primary and contingent) of your retirement and annuity accounts and life insurance policies?

Generally, these accounts and policies are not titled in your living trust. However, you should periodically review the beneficiary designations of these accounts to ensure that they still reflect your current desires.

An unfortunately common situation occurs when the beneficiary designation forms are not reviewed and re-executed following a couple's marriage or divorce. Retirement accounts may be subject to the highly technical federal law known as ERISA, and a new spouse's signature may be required on the beneficiary forms in order for them to continue to be effective. Following divorce, even if both parties agree as to the disposition of a retirement account, if the beneficiary designation form does not reflect that desire, the administrator of the account may have no choice but to follow the directions on the form; namely, to distribute the account to the beneficiary named on the unrevised form.

In addition, when you review the beneficiary designation forms, take a minute to consider whom the contingent beneficiaries should be. If your child should die before you do, will that child's children receive the deceased child's share? Is that what you wish? Keep in mind that you may usually attach additional pages to the beneficiary designation form to ensure that the primary and contingent beneficiaries reflect your desires.

Also, keep in mind that regarding retirement accounts not only are you planning around estate taxation but usually also deferred income taxation. Your beneficiaries will be taxed on the distributions from your retirement accounts as part of their taxable income. For this reason, you may want to ensure that your beneficiaries can "stretch out" their benefits as long as possible. Will they have this option? If you have named a trust as the beneficiary, is that trust drafted to preserve this option for the trust beneficiaries?

Although life insurance proceeds are not subject to income tax, they are subject to estate tax unless the policy owner is someone other than you. That may be another individual or an irrevocable trust.

6. Are your financial power of attorney and health care directive current?

You should review your financial power of attorney and health care directive to ensure they reflect your current desires. Are the agents named still the individuals you wish to make financial and health care decisions for you? Are your agent's powers "springing" or effective immediately upon signing? Is this what you wanted? Does your health care directive still reflect your desires regarding your health care?

7. Have you reviewed the more complex/specialized aspects of your estate plan?

If you have set up an irrevocable life insurance trust, has it been administered correctly? Have you made gifts to the trustee, rather than directly paying life insurance premiums? Has the trustee timely sent "Crummey" notices to the trust's beneficiaries, advising them of their right to withdraw funds from the trust?

If you own a business, the Internal Revenue Code may permit your heirs to pay estate taxes in installments over an extended period of time, up to 14 years. (IRC section 6166) Your estate may also take advantage of special valuation of business real estate or other assets based on their current use rather than on their highest and best use. (IRC section 2032A) Has the change in values of your overall assets changed your estate's potential ability to take advantage of such periodic payments or special-use valuation?

With the current low interest rates, are the tax benefits of charitable lead trusts and other more advanced estate planning methods now more attractive to you?

In summary, your life is dynamic, ever-changing and progressing; your estate plan should be also. ■

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