



ESTATE PLANNING & ASSET PROTECTION

Holdback Provisions: Preparing Your Estate Plan for All of Life's Contingencies

It is no surprise to find that parents want to provide for their children and grandchildren both during life and after a parent's death. To this end, many smart parents employ some form of estate planning, most commonly through the use of trusts. However, the manner in which the trust is structured can greatly affect whether your wishes are fulfilled. Without proper planning, circumstances such as a child's divorce or financial irresponsibility can result in unintended beneficiaries of your hard-earned assets.

An "asset protection" trust can be an ideal arrangement for protecting assets for the benefit of a child or grandchild. It can fulfill your desire to provide for your beneficiary's financial well-being, while at the same time, allowing you to exercise substantial control over when and how your beneficiaries receive the trust assets. You can give your beneficiaries varying degrees of access to the income and principal of the trust assets. However, have you considered this: what would happen if ten years after creating your trust, a beneficiary experiences financial difficulties? Would his or her creditors be able to attach those trust assets? This depends greatly upon your particular state law, but there is a good chance that the creditors of your beneficiaries may be able to reach the assets you intended for their well-being.

It may be possible to structure the trust to prevent unintended beneficiaries from accessing a beneficiary's trust share. One such method is to include special provisions in your trust agreement instructing the Trustee of your trust to withhold distributions of trust assets that otherwise would be provided for under the trust terms.

Without a trust distribution, the creditors have nothing to attach.

These provisions can also be very advantageous in a situation where a trust beneficiary has "Special Needs." This can be the case where a child is in an accident or where a grandchild is born with a disability. Allowing a special needs beneficiary access to trust assets may disqualify them from receiving government benefits. Your beneficiaries may not be receiving government

benefits at the time you create your trust, but the withholding provisions can be used to protect such beneficiaries should the need arise.

Following are just some of the compelling reasons that may prompt a Trustee to delay distributions to a trust beneficiary:

- The susceptibility of the beneficiary to undue influence or duress by an individual or a group;
- Alcohol or substance abuse by the beneficiary;
- A pending marital separation or dissolution of marriage or divorce of the beneficiary;
- Potential financial difficulty or a proven inability of the beneficiary to manage money;
- A serious tax disadvantage upon distribution to the beneficiary;
- The beneficiary's disability which has created a reliance on government support programs.

This list, of course, is not all-inclusive, and you can include other provisions that you feel would necessitate delaying a trust distribution. You should call our office and schedule a review of your estate plan if you have not reviewed it recently. ■

"There are two lasting bequests we can give our children. One is roots. The other is wings."

- Hodding Carter Jr.



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TAX PLANNING

Year End Tax Planning Tips

“In this world, nothing is certain but death and taxes.”

- Benjamin Franklin

While taxes may be a certainty, you can minimize your obligation with a little planning. The time to plan is before you sit down to file your taxes on April 15th. Minimizing your taxes is a yearlong process, with particularly important decisions to make as the end of the year approaches.

Keep good records. Good record keeping will help you remember all of your deductions. Without records, can you really remember that \$20 you donated sometime last spring? Few of us can. These records help you substantiate your deductions, which you may be required to do if yours is the lucky return chosen for audit.

Time income and expenses to your advantage. If you have control over income and expenses, time them to your advantage. If you expect you will be in a lower tax bracket next year, you may want to defer some income until next year or accelerate some expenses into this year. For example, you could prepay the second installment of your property taxes, pay the fourth quarter installment of state income taxes in December instead of January, or buy some supplies needed in your business.

Examine your investments. Did you sell any assets this year? If so, did you have a gain or a loss? You may want to offset the earlier transaction with an opposite one. For example, if you had a gain, you may want to harvest a loss to lower your taxes. Remember, also, capital losses exceeding capital gains can be used to offset up to \$3,000 of ordinary income (normally taxed at a higher rate).

While you are examining investments, do you have any mutual funds? Each fund has a “distribution date” upon which it makes distributions of gains and losses. If you do not own the fund on that date, you do not get saddled with the income. If you were considering selling the fund, it may be wise to do so prior to that distribution date, depending upon what income is expected to be distributed. Similarly, be aware that buying a fund right before its distribution date may saddle you with paying taxes on income earned by the fund before you owned it.

Contribute to retirement accounts. You have until year-end to fund 401(k) and similar retirement plans. These allow you to contribute tax-deferred dollars. You can contribute to IRA’s and Roth IRA’s up until April 15th of the year after the year in question. However, if you want to convert from a regular IRA to a Roth IRA, you must do so by December 31st. While Roth IRA’s do not save on your current tax bill, the assets grow *tax-free* rather than just *tax-deferred* like a regular IRA.

Be sure to take any minimum required distributions from retirement accounts. After you have reached age 70-1/2, almost all retirement plans have minimum required distributions. Be sure to take at least the required minimum distribution; otherwise, you could face a very severe tax penalty.

Flexible spending accounts. If you have a flexible spending account at work, typically you have until the end of the year to use it or lose it. Therefore, if you are approaching year-end, you may want to schedule medical appointments, purchase prescriptions, or buy eyewear to take advantage of the remaining funds.

Charitable contributions. If you are considering making a charitable contribution, typically it is best to make that contribution before year-end to get the deduction in this year rather than next year. However, if you expect to be in a much higher tax bracket next year, it may be to your advantage to defer the contribution until it can help you more.

Bunching deductions. Consider bunching deductions that are subject to floors. For example, medical expenses must exceed 7.5% of your adjusted gross income before they become deductible. If you can bunch any elective surgery, stock up on supplies, etc., you may be able to time the expenses so that they exceed that threshold and make some of them deductible.

Careful planning throughout the year can help you minimize your tax bill come April 15th. Be a savvy taxpayer and arrange your transactions to pay only your fair share of taxes. ■



TRUST ADMINISTRATION & PROBATE

Handling Matters After the Death of a Loved One: Just Do It

“A man’s dying is more the survivors’ affair than his own.”

- Thomas Mann

When someone close to us dies, it is a time of grief, confusion, and change. As we struggle through our grief, we go through the haze of the funeral and burial. Then, it is tempting to just bury our heads in the sands of grief. However, things must be done to handle the deceased’s affairs as they wanted them handled. Long delays can jeopardize their wishes.

Death Taxes. There are significant deadlines from a tax perspective. If the deceased had enough in assets to have a taxable estate, which varies from state to state, a return must be filed within nine months of death.

Income Taxes. If the assets generate income, such as interest or dividends, then the estate or trust may have to file an income tax return plus an income tax return for the decedent. These returns must be filed in a timely manner to avoid interest and penalties.

Probate. If a will is not probated within a time proscribed by law, it becomes very difficult to transfer title to assets. The assets owned by your Living Trust will not require probate, but other assets may. Assets in the decedent’s name, instead of a trust, cannot be transferred, mortgaged, or otherwise dealt with in the absence of probating the will. You may be thinking: “I don’t want to sell it anyway.” Perhaps unexpected expenses arise and you would need to sell or mortgage the property. Years down the road, the process will be much more cumbersome and will delay the sale of the prop-

erty, potentially causing a loss in value. The more volatile the asset, the more important a timely resolution.

Creditor Claims. Public Notice of the decedent’s death cuts short creditors’ opportunity to make a claim against the assets of the decedent.

Fiduciary Duties. The executor of an estate or trustee of a trust has a fiduciary duty to resolve matters in a timely manner. If they do not resolve matters in a timely manner, they will be responsible to other beneficiaries for any losses due to their negligence. If there are multiple beneficiaries involved, allowing things to sit will cause increasing friction between the beneficiaries. Some beneficiaries may need their bequests. Others may disapprove of the investments. Still others may have personal issues or think someone is trying to abscond with the assets.

There may never be an ideal time to wrap up the decedent’s affairs. But, it must be done. Doing it in a more timely manner will avoid complications with the government and the beneficiaries. Take appropriate time to grieve, but within the first two or three weeks set up an appointment with your estate planning attorney who can help you get things resolved. Taking the first step is the hardest, but once you have help with the process, you can offload the worry and focus on taking care of the deceased’s wishes and moving forward with your own life. ■

CLIENT REMINDERS



⌋ *Confirm* that you have documents evidencing that your assets are titled in the name of your Living Trust (or Family Limited Partnership, LLC, Corporation). Monthly statements from banks, investment firms and other financial institutions are good evidence. Also, document that your Trust is the “primary” beneficiary of life insurance and non-tax deferred annuities. (For IRAs, 401(k)’s and other tax-deferred retirement plans, *call us before naming death beneficiaries!*)

⌋ Please remember to call us if your address or phone number changes. To let us know if you would like to get updates and notices from us by email send an email to: firm@myestatematters.com

⌋ Let’s review your estate plan every year or two, or when your family or financial situation changes. Laws are continually changing. Call and schedule your review.

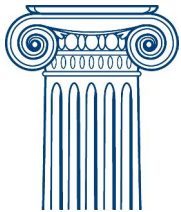
⌋ If you’ve refinanced your home loan, or added a second mortgage, the lender may have had you deed the home from your Living Trust back to your name. Call the County Recorder and ask how your home is titled. If it is in your Trust, you’re OK. If not, call us and we can help.

⌋ Call your insurance agent and make sure your Trust is named as an “insured party” on real-estate owned by your Trust.

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TIPS INSIDE**

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REVIEW YOUR LIFE INSURANCE

In the last decade the life insurance industry has gone through remarkable changes. Many companies have changed mortality rates, or have merged with other companies. Enhanced benefits are now available that were not available a couple of years ago. We encourage you to take the time to review your policy with your life insurance professional and your attorney. If left unattended, some policies will lapse or may not provide the benefits you were expecting. In other cases, you're probably paying more for your current policy than is necessary and getting less benefit. And, don't forget, under Utah law cash value inside life insurance policies is now off limits to your creditors and lawsuits filed against you. Call us at (801) 366-9966 to consult with us about this important plan-

HAPPY HOLIDAYS



ATTORNEYS & COUNSELORS AT LAW

Thank you to all of our clients and associates who have made this past year successful.

We are grateful for your continuing support and confidence in our law firm.

We wish you and your loved ones a very happy Holiday Season and a prosperous New Year and we look forward to serving you and your loved ones in the years to come!

Happy Holidays and Best Wishes from all of us!

Randall

[Signature]

Deason

Holly

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Carie