

## NEW TRENDS IN ESTATE PLANNING - ARE YOU UP TO DATE?

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Estate planning involves arranging our financial and medical affairs to provide for the orderly management and transfer of property at the time of our disability or death. Proper planning and documentation can reduce taxes, avoid Probate Court involvement, assure that the right property passes to the right people at the right time with the right restrictions and provide that the intended individuals will be in charge.

This article will highlight several recent trends that the authors have observed in estate planning and wealth transfer.

1. Fewer estates will be taxable, but all will still require careful documentation. For 2011 and 2012, the federal estate tax exemption is \$5,000,000. This means that there is no federal estate tax on estates less than this amount. On amounts over this exception, the tax rate is 35%. With non-taxable estates, more and more couples are using joint Living Trusts as the cornerstone of their estate plan. This is because Living Trusts can be used to avoid Probate Court and provide a detailed, private distribution of assets. This is important even in a non-taxable estate.
2. With taxable estates over \$5,000,000, proper documentation can still reduce or eliminate the estate tax. Popular estate tax reduction techniques include using two Living Trusts with married couples, annual gifting, discounted gifts of family homes or businesses, charitable gifting, private annuity sales, and the like. In 2011 and 2012, a personal representative can elect to allocate the unused portion of a decedent's unused estate tax exclusion amount to the surviving spouse, if an appropriate form is filed with the IRS.
3. Careful planning to avoid Probate Court involvement during incapacity is on the rise. If an individual is incapacitated and does not have proper documentation, Probate Court supervision may be needed before the family can take medical or financial action for the incapacitated individual. Disputes may arise about who is entitled to supervise finances or to make medical decisions. Living Trusts, financial powers of attorney, medical durable powers of attorney (so-called "patient advocate designations", including living will statements) and health information authorizations under the Health Insurance Portability and Accountability Act ("HIPAA") are all being increasingly used. Each document serves a specific purpose in specifying the wishes of the creating individual for property or health management.
4. There is increasing concern over the wrong people gaining control over an individual's assets. Without a Will, Living Trust, power of attorney, proper ownership arrangements or clear beneficiary designations, the wrong people may inherit an individual's property or control that property during disability. Careful documentation is important. An example of a potential problem would be joint ownership of land or an investment account with an adult child, which might result in:
  - A. The child's creditors trying to take the property;
  - B. Other children not sharing equally in the asset if the parent dies;
  - C. Improper withdrawal of funds by the child, often the result of drug, gambling, business or marriage difficulties; or
  - D. The need for the child and/or the child's spouse to sign off before the property could be sold.

5. The arrangements or terms controlling the distribution of an inheritance are becoming increasingly detailed. More and more individuals are imposing detailed requirements before an inheritance is given to a child or other beneficiary. For example, children may be given assets only as needed for medical or educational needs, until specified ages are reached, such as 1/2 at age 30 and the remainder at age 40. Much more detailed standards are often used. A distribution might be allowed for wedding expenses not to exceed a fixed amount. Distributions can be tied to educational achievements, job performance, drug free testing or the like. Using a special needs trust to limit distributions to supplement government assistance for those receiving such benefits is important to assure the assistance is not lost. A Living Trust is usually used to detail these restrictions. If this is done in a Will, extended Probate Court involvement can result.
6. The amount gifted to charity is increasing steadily. One of the long term trends in estate planning is an increase in the amount gifted to charities. The vast majority of Americans give something to charity annually during life. A much smaller percentage give something to charity at the time of death. However, this amount is increasing. A very popular technique is designating a charity as the direct beneficiary of an individual retirement account or other retirement benefit. This results in avoidance of any income or estate tax on the amount passing to charity, since charities are generally tax exempt. Gifts made to charity in a Living Trust or Will are increasingly made as "endowments" in the name of the donor. The charity invests the principal forever and spends only the income annually.
7. Having long-term health care insurance is becoming more common. As the number of Americans 65 years old or older increases, more people are purchasing long-term health care insurance. This can assure that a higher percentage of the insured person's assets will remain available at death to pass to beneficiaries. People are becoming more aware of the high risk of needing long-term health care and the related expense. Be sure that you rely on a specialist when considering this means of insuring against your risk.
8. Using specialists in the estate planning process is on the rise. As estates grow, the laws become more complicated, financial products become more varied and family circumstances become more complex, more people are using a team of advisors that concentrate in this area. This trend will likely increase as more special industry designations and associations are developed.

Estate Planning is a dynamic process. The laws, our family circumstances, our wealth and our wishes change continually. Making sure our current wishes are properly documented is important. Current trends can be an indication of what others are doing in similar circumstances. Thus, these trends can serve as a valuable resource in our individual planning. In any case, careful planning and documentation for each person's unique circumstances by an experienced attorney is recommended.

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