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Lynn's Top Five

Five Major Estate Planning Pitfalls to Avoid

By Lynn Ballou, CFP, EA

As a financial planner who specializes in private wealth management, all manner of items come up for discussion in client meetings. One of the most important areas of discussion, and one of the most complex, centers around estate planning issues.

Let's face it --- talking about our own eventual demise is not a lot of fun. However, NOT talking about it with your key advisors and not moving forward on those talks can leave your loved ones severely unprotected and financially over-burdened potentially even leading to many years of anguish and frustration.

I am fortunate to have a Wealth Management practice located in this area, because we are surrounded by some of the top legal minds in the area of Estate Planning --- attorneys with many years of experience, many of whom are Certified Specialists in Estate Planning through the State Bar of California. I recently contacted two valued colleagues, both Certified Specialists in Estate Planning, and asked for their input on this topic. The wealth and depth of information was so profound, that I will be writing further columns using their sage advice on the topic as well. For now I thought it might be best to start with the most worrisome issues to motivate us into action!

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1) A WILL OR TRUST ALONE DOES NOT AN ESTATE PLAN MAKE! This point was well made by estate and tax attorney, Paula Leibovitz, who not only has her practice in Orinda (Dooley and Leibovitz), but lives here as well. Her point to me in our recent chat was that many of us believe once we've done our will and trust, we're done! However, as she points out, "people forget beneficiary designations, which are like 'mini-wills', for their retirement plans and life insurance policies." It's not enough to just sign a document at your attorney's offices --- assets must be retitled in the name of the trust, and beneficiary sections should be completed for retirement plans, annuities and life insurance policies with guidance from your estate planning attorney. Paula goes on to remind us that your "retirement plans can be a significant portion of your estate!" So not giving a lot of thought to the beneficiary wording can cause significant and unintended results.

2) DON'T EVEN THINK ABOUT RETITLING YOUR RETIREMENT PLAN INTO THE NAME OF YOUR LIVING TRUST! Tread carefully with retirement plans. Clients leave their attorney's office with their new trust and will in hand with instructions to make sure their assets are titled in the name of the trust (see #1). However, "changing the title of your retirement plan to the trust or trustees of your trust is a big no-no!" This warning is given by Annette Knox, estate planning attorney with Donahue Gallagher Woods LLP in Walnut Creek. The reason? You will have made an inadvertent taxable distribution! What is needed instead? Careful crafting of the beneficiary section (aka designation) so that it coordinates with your entire estate plan design. Annette also points out that a second no-no is designating your living trust as beneficiary of the retirement plan without advice from your attorney. She told me that "your trust must be carefully drafted to qualify as a 'designated beneficiary' under IRS rules and regulations; if it is not, your heirs are in for more serious tax worries."

3) NOT PLANNING FOR INCAPACITY. As a financial planner, this is one of the most frequent omissions I see. As Paula mentioned, "we're being kept alive longer and longer." That means that the likelihood of needing powers of attorney for health, financial and other matters is increasing rapidly. When we work with our estate planning attorney, frequently we are thinking only about what we'd like to have happen with our assets when we pass away. However, we need to have plans in place for care of ourselves and our assets if we are still alive yet somehow lacking in capacity to deal with these matters. Well designed "powers" are invaluable in these situations.

4) MAJOR LIFE CHANGE WITH NO CHANGE IN YOUR WRITTEN ESTATE PLAN. You may have the best estate plan ever, but if you have subsequently experienced a divorce, inherited significant assets or lost a spouse, then it's time to check in with your attorney and update your documents to be in sync with your new situation. For example, I am stunned at how frequently the newly divorced don't update the beneficiary section of their retirement plans at work, or life insurance policies to reflect their new marital situation. Timing is key, though: These matters typically cannot be addressed and reworded until a divorce is actually finalized, so as to protect the interests of both parties and dependent children.

5) FAILING TO KEEP YOUR ESTATE PLAN CURRENT. Paula recommends that estate plan documents be reviewed every two to three years. Annette and I have discussed how changes in the tax laws can drastically change your motivations with regarding your plan. It's astonishing how we can go back and look at our documents, even those crafted within the last few years, and shake our heads about how things have changed in our lives --- children have become adults, grandkids have come along --- with no corresponding alterations in our written plan. Don't let that happen to you!

Congress is currently debating on major legislation with regard to the estate tax exemption, so if all of this isn't enough to light a fire under you to get your estate plan updated, maybe this new legislation and need for updates to your plan will do it! Take advantage of the many talented experts in our community, and seek out their guidance. You may never know what a great service you provided to your loved ones, but they will! Now that's a great legacy to leave!