

Time to prepare your will



Studies indicate that most Americans don't have wills, trusts or powers of attorney. Ignoring your estate plan can land your children with ill-suited guardians or give them a pile of cash that they're too young to handle. (Allen J. Schaben / Los Angeles Times / November 11, 2009)

If you're rich, the best estate planning advice would be to die quickly. If you're not, the best advice is to either review or rewrite your estate planning documents to make sure your heirs aren't left high and dry if you die.

That's because estate taxes that could allow Uncle Sam to nab up to 45% of your bequeathed assets are currently -- and very temporarily -- kaput.

A decade-long phase-out of the estate tax eliminated the tax completely as of January. The catch: If nothing's done, estate taxes will boomerang back to historic levels in 2011. That means any bequest of more than \$1 million would be hit with a heavy levy on any amount above that limit after December.

But estate planning isn't just about taxes, and it's not just for the rich.

The legal vacuum that was created by the temporary elimination of the estate tax has created potential pitfalls even for people with modest estates.

For example, if you were to die this year and had an old "by-pass" trust, the elimination of the estate tax could cause you to accidentally disinherit your spouse, said Clay Stevens, director of strategic planning for Aspiriant, a wealth management firm in Los Angeles.

These trusts, aimed at reducing estate taxes, often have boilerplate provisions for bequeathing children an amount equivalent to the estate tax "exclusion." This year, that exclusion is unlimited, so everything goes to your kids and unintentionally there would be nothing left for a spouse, he said.

Then, too, as long as the estate tax is phased out, so is something called the "step-up" that reduced capital gains taxes on your appreciated assets after you died.

You can still get that break if you make a few strategic fixes to your estate plan this year, Stevens said. But, if you do nothing, your heirs could face capital gains taxes on all but a pittance of your appreciated property.

"This is the one year when you can't procrastinate," said Herbert E. Nass, a New York lawyer and author of "101 Biggest Estate Planning Mistakes." "Absolutely everyone should review their documents."

What if you have no documents? Then get cracking.

Studies indicate that the vast majority of Americans don't have wills, trusts or powers of attorney. That can leave heirs in a rough spot, said Danielle Mayoras, coauthor with her husband, Andy, of "Trial & Errors: Famous Fortune Fights."

Act now, avoid trouble later

Ignoring your estate plan can land your children with ill-suited guardians or give them a pile of cash that they're too young to handle, she said.

If you become incapacitated before you die, it can mean that your care could be dictated by a stranger -- or even an enemy. And, doing nothing can cause your heirs to bicker and battle in court -- sometimes for decades.

"People never think their family is going to end up fighting," Andy Mayoras said. "But, especially in this economy, families are fighting over money more and more."

Nass contends that neglect of an estate plan may have cost one wealthy New Yorker his life. Wall Street titan Ted

Ammon, in the throes of an acrimonious 2001 divorce, was killed by his estranged wife's boyfriend, Nass said. The boyfriend went to prison, but the estranged wife got the estate because Ammon hadn't yet changed his will.

"That was big news out here for a long time," he said.

What do you need? First and foremost you need a will, which distributes your assets at death. Wills can be simple -- a matter of a few paragraphs -- or very complex. It depends on your wishes and whether you expect to draw up additional documents, such as a trust.

If you don't want a trust, your will should name personal guardians for any minor children, economic guardians who can distribute assets to your children and other heirs, and an executor who will make sure the terms of the will are carried out. Finally, it should include a simple statement about what you own and who should get it.

If you're leaving assets through a will, it's wise to also execute powers of attorney for both financial and healthcare matters, Stevens adds. That will give somebody you trust the ability to pay your bills and make medical decisions for you if you become incapacitated before you die.

But if you want your heirs to be able to avoid probate -- a time-consuming and costly legal process that involves a court reviewing the distribution of assets bequeathed through a will -- you'd be better off to also create a trust. If you have a trust, your will essentially can be a one-liner: "I want all my nonretirement assets to go into my trust."

(Retirement accounts such as IRAs should be left directly to people, not trusts. That gives your heirs the ability to withdraw those assets, and pay taxes on them, over a longer period of time.)

A trust would then distribute the assets based on the formula you'd drawn up. Trusts can accommodate difficult issues, such as whether you want to attach a few strings to your bequests as you might if you're leaving assets to heirs who are not financially or personally responsible.

Divide and conquer . . . the IRS

Trusts also typically contain clauses that dictate who would handle your financial affairs should you become unable to handle them yourself. And many include a "by-pass" or a "two-step" provision that essentially splits the trust in two.

Splitting the trust is aimed at saving estate taxes. That's because husbands and wives can leave each other all their assets without tax consequences, but if they want to leave money to anyone else, any amount over a set threshold is subject to tax.

The amount that's "excluded" from estate taxes has been a moving target for the last 10 years, but is unlimited today and likely to amount to \$1 million in 2011.

As a result, savvy couples with estates in excess of \$1 million (in any year but 2010) would each execute a by-pass trust, leaving the amount of the estate tax exclusion to their kids or other heirs and the rest to their spouse.

That would preserve the estate tax exemption for the spouse who is the first to die. In the case of someone with \$2 million in assets, that could save heirs a tidy \$550,000 -- or 55% of the second \$1 million.

But the most important thing may be to simply make your wishes known so your heirs know that you've thought about them and how you'd like to provide for them when you're gone. That alone could eliminate a lot of family bickering.

Both Nass and the Mayorases wrote books about what celebrities have done wrong with estate planning. They say they did so to give parents and their children a way of bringing up the topic to explore how they could do it better.

"It's a way to get the dialogue started," Andy Mayoras said.

Danielle Mayoras adds that entertainer Ray Charles' estate plan provides a blueprint of how to do it right. He got his 12 children and their nine respective mothers in a room to talk about what he was planning, which was to give most of his money to charity. But everyone was provided for in some way, she said.

"The beauty of doing that is that everything is out in the open," she said. "It gives the family some comfort and the ability to talk about it."

business@latimes.com