

Eight key questions about estate planning

❑ **Do you have a will?** Everybody needs a will. You need a will even if you and your spouse have put almost everything in joint names (in case you die after becoming the sole surviving owner). You need a will, to dispose of personal things and tie up loose ends, even if you place the bulk of your assets in a living trust. And you need a will if you wish to name a guardian for your children.

❑ **Is your planning up to date?** Wills—and trust agreements—should be reviewed and revised as needed. If you have changed your marital status or your state of residence, become a parent or grandparent, or experienced dramatic changes in the size of your estate or the nature of the assets that it contains, review your estate planning now.

❑ **Is your choice of executor and trustee still realistic?** When people make their first, simple wills, usually they name a spouse, relative or close friend as executor and trustee. As your estate grows, and your estate plan becomes more complex, however, designating an inexperienced individual to handle your estate is no kindness.

Your executor, the *personal representative* of your estate, will be called upon to assemble, inventory and evaluate all your assets; oversee the preparation of complex income and estate tax returns; counsel your beneficiaries; and keep detailed records.

If your estate is to be held in a continuing trust for your beneficiaries, your trustee will be called upon to provide prudent investment management, to continue to counsel beneficiaries and to provide comprehensive reports. Both jobs are demanding, and both place the inexperienced at risk in terms of personal financial liability.

A trust institution such as ours employs experienced trust and estate specialists, people who know how to avoid unnecessary delays, safeguard estate assets and make informed tax choices. What's more, our estate and trust services are moderate in cost. Indeed, we often are able to save money for families because our fees include specialized services that individual executors or trustees often have to obtain from outside sources, at added cost to the estate or trust.

❑ **Have you planned your whole estate?** Your life insurance, your IRAs, your money in the company retirement plan—these are examples of estate assets that typically are not controlled

by your will. Instead they go directly to the beneficiaries you designate. Make sure your beneficiary designations are up to date and compatible with the other elements of your estate plan. If you established a living trust some years ago, check to make sure that title to later-acquired assets has been transferred to your trust.

❑ Time to consider a living trust? If your estate plan does not include a revocable living trust, review the potential advantages with an experienced trust officer. For example:

- With an institution such as ours as trustee, you benefit from objective, personalized investment management.
- You may authorize the trustee to provide full personal financial management in the event of your disability or prolonged illness, eliminating the possible need for a court-appointed guardian or conservator.
- The assets held in your trust will avoid the delays and some expenses of probate at your death.
- Life insurance proceeds and other nonprobate assets may be made payable to the living trust, to be invested and managed for your beneficiaries.
- The terms of a living trust agreement generally remain private, unlike the terms of a probated will, which become a matter of public record.

❑ Are you and your spouse wasting one of your estate tax exemptions? In 2009 the amount that an individual may leave tax free to his or her children or other beneficiaries is \$3.5 million. With the rules currently in place, the estate tax will be repealed in 2010 for one year, and in 2011 it will drop to \$1 million. (Congress is expected to take action to rethink that schedule.)

Whatever amount the estate tax exemption will be, it is always available to both spouses. However, to take full advantage of both exclusions, husbands and wives need more than simple (“Everything I have I leave to my spouse”) wills. With simple wills the surviving widow or widower ends up owning everything outright. Generally, that means everything over the survivor’s exclusion will be exposed to estate tax when it passes to the children or other beneficiaries.

The better way: Husbands and wives can replace their simple wills with estate plans that include bypass trust provisions. That way, whoever dies first can leave the survivor all the

income from his or her exclusion, yet ensure that that amount will bypass the survivor's taxable estate. And that means the survivor can shelter *another* full exclusion from tax at his or her death.

The results can be dramatic, as shown in the table below:

Estate Tax Savings With Bypass Trusts

Estate value	Tax with simple wills	Tax with bypass trusts	Savings
\$ 1,000,000	\$ 0	\$ 0	\$ 0
1,500,000	210,000	0	210,000
2,000,000	435,000	0	435,000
2,500,000	680,000	210,000	470,000
3,000,000	945,000	435,000	510,000
5,000,000	2,045,000	1,495,000	550,000
10,000,000	4,795,000	4,245,000	550,000

Assumptions: Both spouses die in 2011 or later when, under current law, the exemption amount will drop to \$1 million and the maximum estate tax rate will be 55%. There are no separate assets or appreciation of assets in the survivor's estate. State death taxes have not been taken into account.

Note: Are you married to someone who is not a U.S. citizen? If so, special restrictions on the marital deduction may apply. We recommend that you seek professional guidance now. You may be able to craft a trust plan that will keep your marital deduction options open.

❑ Do you have a buy-sell agreement for your business? Business interests often require special planning. A buy-sell agreement with other owners or key employees can provide a business owner's estate with needed liquidity. And if the pricing formula in the agreement is realistic, it may prevent tax valuation disputes.

❑ Can you use your exemption to pass interests in the family business? In 2009 you can use up to \$1 million of your \$3.5 million exemption to make lifetime gifts that are free of gift tax. In addition, if you give shares representing minority interests in your business to your children, your gifts may qualify for significant *valuation discounts*. That means your gift tax exclusion could free *more* than \$1 million from tax. In addition, all future growth in the value of shares that you transfer by gift will be sheltered from estate tax at your death.

≈

© 2009 M.A. Co. All rights reserved.

Any developments occurring after January 1, 2009, are not reflected in this article.