



Estate Planning, Trusts, Probate, Elder Law

Thoughts from Jim...

Estate Planning for Women

Over my years of practice, I've seen an increase in the number of women looking to create an estate plan.

Estate planning is important for women because they have a greater likelihood of ending up alone later in life. Women have a longer life expectancy than men and tend to marry older men often making them the final word on disposition of family assets.

In my own case, I had the good fortune to convince my wife Patricia to marry me, despite the fact that I am six years older. As a bonus for me, she loves to cook and bought me my first order of "Grecian Formula" which "restores lost color to graying hair naturally."

Deborah Jacobs, writing for Forbes Magazine, suggests that women ask themselves a few important questions to help them craft their best estate plan, inclusive of powers of attorney, guardianship, life insurance, wills, and trusts.

1. Whom can you trust?

You should have a durable power of attorney giving a trusted family member or close friend the legal authority to make decisions for you should you become incapacitated due to mental illness, medical emergency, or accident.

2. Who would raise your children?

It's often the hardest question to ask because the thought of orphaning your children is so painful. But not asking the hard questions can leave your children at the mercy of the court. If you haven't named a guardian, the court will need to name one. This can lead to a custody battle between relatives wanting to take the children, or, the reverse, no one may want to take them.

3. Do you have life insurance?

Life insurance can help replace lost income when a spouse dies, or it may cover state or federal estate taxes. If you have life insurance through your employer or a pension plan, be sure to keep your beneficiary forms updated. You may want to designate a family member as the owner of the policy to avoid the proceeds being taxed as part of your estate.

4. Do you have assets of your own?

The estate tax applies to each person individually. California is a community property state, so property that is used jointly in the marriage (e.g., the marital home or a joint bank account) is presumed to be community property. If you are trying to balance the tax burden, you may need to transfer title

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AND MORE!

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to one spouse individually. Otherwise, you may be rebutting the community property presumption in court.

5. Is there money in the bank?

If your spouse dies, you will not have access right away to his individual bank accounts. You want to be sure that there is enough money in joint accounts or separate accounts to which you have access to cover immediate expenses until the spouse's estate is settled.

6. Should you shed assets to save taxes?

Before you start giving away the farm, you need to make sure you have enough money for yourself to live

and pay emergency or final expenses. You can give away as much as \$13,000 individually per year tax free, \$1 million over your lifetime. This year is an anomaly in estate taxation (0% on estates, 35% on gifts), but starting Jan. 1, 2011, unless Congress acts, you will be paying the death tax and the gift tax at a rate of 55%.

There are a great number of estate planning and financial planning vehicles you can employ to transfer assets prior to and after death and to lower your tax bill. Take stock of your goals and your financial reality, and then talk to your estate planning attorney. •

Q&A

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Wills

Why should I pay for an estate plan when I can do it for free myself online or with will-writing software?

The internet has brought a lot of convenience to our lives with its wealth of information, online shopping, and the ease of staying connected to our loved ones. But sometimes convenience means cutting corners, and the one area you don't want to cut corners is in protecting your loved ones and your property.

Legal document preparation services are not the same as going to an actual attorney, but they fail to clarify that in their user agreements. And, customer service representatives may look over your documents, but they cannot dispense legal advice, identifying problem areas or correcting mistakes. The documents are *customized* with your personal information, but they are not *tailored* to your needs.

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If a mistake has been made in your estate planning documents, it can be very costly -- financially and emotionally -- to fix a mistake. Do it right the first time.

Blended Families

My mother remarried after the death of my father. The newlyweds moved into his house. What impact does this have on my potential inheritance? Can his kids kick Mom out of her new home if their father dies first?

Late-in-life second marriages are becoming commonplace in American society, and with it, anxiety has been rising among stepchildren.

In California, community property laws can be both a blessing and a nightmare for the adult children of a blended family. On one hand, generally, a surviving spouse doesn't have a claim over to any property or account kept separately and in the deceased's name.

However, any property that was held jointly (i.e., homes, common bank accounts) is presumed to be

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The new joy of giving

Share the wealth this year

2010 is not only the year to die; it's also the year to give.

As it stands now, an individual can give away up to \$13,000 tax free this year as part of his or her \$1 million lifetime maximum. But anything over that \$13,000 will only be taxed at a rate of 35% — an historic low.

And, a year-long lapse for the generation skipping transfer (GST) tax means grandparents can make financial gifts to their grandchildren tax-free. Gifts must be made directly, though, -- not through a trust -- so some grandparents may be wary of making large sums of money available to young leisure.

There is still some trepidation among estate planning attorneys as to how to advise their clients to prepare for the 2011 estate tax. Congress hasn't made any moves to reinstate the estate tax for this year or to write new laws governing the tax rates for the coming years, and with the 111th session coming to a close, it's looking less and less likely that they will.

Until new laws are passed, or until Jan. 1 when the old laws return, millions of Americans are set to enjoy the benefit of a 0% estate tax rate for 2010. But, on Jan. 1, the estate tax rate and the gift tax rate will jump to 55%. Traditionally, the estate tax and the gift tax rates have matched because Congress didn't want people ducking the IRS by giving away their entire estates prior to their death.

Christmas is only nine weeks away. This year, at least, giving away some of your fortune may also end up being a gift to yourself. •

community property and, unless that presumption is rebutted in court, it passes entirely to the surviving spouse. And, even separate property may pass in whole or in part to the surviving spouse if the deceased partner leaves no will.

Older adults bring a greater amount of personal wealth into new relationships and, experts say, they are more practical about the financial realities their late-in-life marriage presents.

A prenuptial or postnuptial agreement can keep Mom in the house owned by Stepdad until her death at which point it passes solely to his children. Keeping property separate in trust accounts can prevent it from being transmuted into community property. And, a clause inserted into Stepdad's will can ensure that the separate property in his name passes to his children, not his spouse upon his death.

Reverse Mortgages

Can a reverse mortgage help my estate plan?

Yes, it can. Recently, a client of mine was able to utilize a reverse mortgage to implement an estate plan distribution that divided his father's home between he and his sister.

Prior to his death, his father lived in the home with his daughter and her husband, who cared for him. The home was the major asset of the estate, worth about \$600,000 and was to be split between his adult children.

The daughter, who was in her 60s, wanted to buy her brother's half of the house, but couldn't afford the payment on a \$300,000 loan.

They settled the matter by taking out a reverse mortgage on the home for \$300,000 cash that went to the brother, letting the daughter and her family stay in the home for the rest of her life with no payments.

A reverse mortgage allows you to turn the equity in your home into cash. Repayment is deferred until the homeowner dies or sells the house.

The son got the value of his inheritance, and when the daughter moves out or dies, the sale of the house or the settlement of her assets will clear the reverse mortgage, with the remaining equity going to her heirs.

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THANK YOU

FOR YOUR REFERRALS

Thank you to all my clients, and the many financial advisors, accountants, and attorneys who have referred family members and clients to me. Word of mouth is my largest source of new clients.

If you need a referral from me for a financial planner, a professional trustee, a care manager, a Certified Public Accountant, a realtor, or a long-term care insurance agent, please feel free to call me. I work with a number of highly competent professionals in many fields, and I am happy to give you several names and phone numbers.

James D. Perry
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Trusts

Why should I spend money to create a trust?

The easiest answer to that question is that for the price you pay now, you save far more money down the road. But that answer doesn't satisfy everyone. So here is one serious money-sucking situation that might make you think twice before dismissing your need for a trust.

In the event of your incapacity, the court may impose a conservatorship because the individual can no longer handle his or her own finances. Anytime you have to initiate court proceedings, you're looking at a significant investment of time and money – more of both if the proceedings are contentious.

Also, nearly anyone can petition the court to become your conservator if they can show that you no longer have the capacity to manage your affairs. You might become incapacitated for any number of reasons in your life, including dementia, illness, disease, or accident.

By creating a revocable living trust, you designate ahead of time a successor trustee who you want to be in charge of your affairs should you become incapacitated. Moreover, you can designate exactly what property that person can control and choose different individuals to manage multiple assets. Most people transfer the title to their house into a living trust so that the successor trustee would be able to manage the affairs of the home. •

Adventures in Estate Planning: What's in your will?

As Jim Morrison of The Doors sang, "People are strange." Sometimes we don't know how eccentric a person was until we read their will. Here are a few of the more interesting last requests that I've seen in estate plans.

- Paula Yates, wife of singer Bob Geldof, demanded to be buried in her white mink bikini.
- Choreographer and director Bob Fosse left about \$400 to 66 different people with the instructions, "Go out and have dinner on me." Recipients included Dustin Hoffman, Liza Minelli, and Melanie Griffith.
- One California man had a love of cigars in his lifetime that his wife did not share. His

will left her his entire estate...if only she smoked five cigars a day for the remainder of her life.

- "Queen of Mean" Leona Helmsley left nearly \$12 million in trust to her dog and \$5 million to two grandchildren only if they visited their father's grave every year. She left nothing to her other two grandchildren. •

