WOW 2011

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When Might you Consult a Lawyer

- Marriage
- Children
- Separation or Divorce
- Planning for Incapacity
- Accidents or Damage to Property

Tips to Help You and Your Family with Legal Planning

- Maintain and update financial balance sheet
- Maintain consistent location for important documents
- Provide passwords to those you intend to count on down the line
- If you need a lawyer, seek recommendations and review credentials
- Although not required under FL law, engagement letters are always recommended
- If you are considering marriage or facing separation/divorce, consult with counsel to better understand obligations and rights
- If you are in an accident or lawsuit for damage to property, consult with counsel independent of insurance adjustor

When Should Your Estate Plan Be Reviewed?

Estate Tax Law Changes: Exemptions and tax rates have changed dramatically over recent years

Family Circumstances Change: A new child or grandchild, an unforeseen disability or illness, a divorce, a death, etc.

Financial Circumstances Change: Either a significant increase or decease in assets and/or liabilities

Recommendations:

- Stay aware of legislative changes
- Don’t hesitate to call your lawyer to ask questions and confirm planning is up to date
- Maintain a current net worth statement, including current value, estimated cost basis and ownership, and provide to lawyer and financial advisors regularly

Estate Tax Overview

- Temporary Increase in Federal Exemptions for Estate, Gift and Generation Skipping Transfer Taxes - $5 million
- Temporary Reduction to the Maximum Estate, Gift and Generation Skipping Transfer Tax Rate of 35%
- Temporary Portability of Estate Tax Exemption
- State Death Tax Exemptions for the most part have not kept in step

Federal Estate Tax - Historical Perspective

Year	Exemption	Maximum Rate
2001	$675,000	55%
2002	$1 million	50%
2003	$1 million	49%
2004	$1.5 million	48%
2005	$1.5 million	47%
2006	$2 million	46%
2007 and 2008	$2 million	45%
2009	$3.5 million	45%
2010	$5 million (or repeal with limited carryover basis)	35%
2011 & 2012	$5 million (2 year increase in exemption)	35%
2013	?	?

Gift Tax Overview

- Federal Gift Tax

  2010

  – $13,000 annual exclusion gifts
  – $1,000,000 gift tax lifetime exemption
  – Unlimited med/ed exclusion
  – Unlimited marital deduction
  – 35% Rate

  2011 and 2012

  – $13,000 annual exclusion gifts
  – $5,000,000 gift tax lifetime exemption
  – Unlimited med/ed exclusion
  – Unlimited marital deduction
  – 35% Rate

- No Florida Gift Tax

Generation-Skipping Tax Overview

- The “Grandchildren’s Tax”
- Generation-skipping tax <u>in addition</u> to gift/estate taxes 2011
- $13,000 annual exclusion
- Unlimited med/ed exclusion
- $5,000,000 exemption scheduled (temporary)
- Maximum 35% Rate (temporary)

The Power of Lifetime Gifts - Annual Exclusion Gifts

- Annual Tax-Free Gifts: $117,000 (assuming 3 children,6 grandchildren)

- Estimated Estate Taxes Saved: $58,500 (assuming 50% estate tax rate)

- Impact of 20 Years - No Growth
  - Total Transferred - $2,340,000
  - Estate Taxes Saved - $1,170,000

The Power of Lifetime Gifts - Annual Exclusion Gifts

- Do It Yourself
- Stop Anytime
- Start Sooner

The Power of Lifetime Gifts - Use Lifetime Exemptions

- Pros:
  - Limited opportunity to gift as much as $5,000,000 during lifetime - the sooner you use it, the more power to grow and remove appreciation from future estate tax
- Cautions:
  - Planning may be more complex with larger gifts - advisable to consult with counsel regarding structure
  - Must also consider possible “claw back” issue if you exceed historical $1 million exemption. Will lifetime gifts be brought back in to estate tax computation without corresponding exemption for deaths after 2013?

Methods for Gifting

- Gifts to Uniform Gifts or Transfers to Minors Accounts
- Gifts to 529 Plans
- Outright Gifts
- Med/Ed Exclusions
- Gifts to Trusts

UGMA or UTMA Gifts

- Benefits:
  - Easy method of gifting to minors
  - No annual accounting requirement
- Cautions:
  - Do not recommend for larger gifts
  - If a gift, under FL law the account must be paid to minor upon attaining age 21 (some states age is 18)
  - If Donor is custodian, the account is includable in Donor's estate.
  - If part of an annual gifting plan, monies set aside can become significant and may be more than parents (and/or Donor) wishes young adult to have access to at an early age

529 Plans

- Benefits:
  - Can gift up to 5 years of annual gifts in initial year to account
  - Designed to avoid income tax if used for qualified higher education expenses (which generally include tuition, fees, books, supplies, and equipment required for enrollment or attendance at an "eligible" educational institution)
  - Can designate successor beneficiaries if designated beneficiary doesn’t require all of the funds set aside
- Cautions:
  - There can be state contribution limits per beneficiary
  - If set aside more money than necessary for education, funds are subject to income tax and penalties if withdrawn for another purpose
  - If Donor is “owner” of account, account includable in Donor’s estate
  - If Donor dies within 5 years of making a 5 year contribution, portion of annual gifts that have not expired are brought back into the estate

Outright Gifts and Med/Ed Exclusions

- Can gift up to $13,000 per year without using any portion of lifetime exemption
  - Can be a great help with expenses other than tuition
  - Consider giving to a young adult and encourage him or her to open a retirement account and use a portion of these funds to make their annual contribution
- Medical expenses and tuition paid directly to providers is exempt from gift tax and does not count toward $13,000 annual exclusion or lifetime exemption

Gifts to Trusts

- Pros:
  - Annual and lifetime exclusion gifts can be made to Trusts
  - Trusts can be for a term of years and can have targeted purposes behind distributions
  - Provides greater control over investments and distributions
  - Can use to incentivize beneficiaries
  - Dynasty Trusts are long-term trusts which benefit multiple generations. Particularly attractive with increase in gift/estate/GST exemptions - can avoid gift/estate/GST tax “forever”
- Cons:
  - Annual Accounting Requirements
  - Annual Income Tax Reporting in certain instances
  - More risky investments are not likely to be considered
  - May be more restrictive as far as access/use of monies by beneficiaries

Protective Benefits of Dynasty Trusts

- Minimize taxes
- Trust owns property, not the beneficiaries
- Protection from:
  - Divorcing spouses
  - Business creditors
  - Personal injury plaintiffs
- Protection from beneficiary excess
- Professional asset management

Guidance to Trustees

- Some Trusts rely on an Independent Trustee who has sole discretion and therefore does not have any requirements to distribute
- A Statement of Intentions can provide Independent Trustee with guidance as to your wishes in general terms
- If you include mandatory distributions you can include an "override" or "holdback" provision if Trustee determines distributions are ill-advised
- These types of trusts may provide greater creditor protection

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