

## Estate Planning

Many people think they are either too young or not wealthy enough for their heirs to benefit from an estate plan. Regardless of your age or what you own, there is one simple question you can ask yourself to determine if you (and your spouse) should have an estate plan: *Upon the event of my death, do I want to maximize the benefit to my heirs by controlling where the estate goes and minimize taxes?* If you answered yes, you should consult with the appropriate financial, legal and tax advisors about your estate plan. An important element in estate planning is the use of wills, but even better is the use of trusts.

### **Create a Will**

More than half of Americans do not have a will and most do not have an updated will. A will allows you to determine such things as where your assets will go, who your Executor is and whether they must post a bond, as well as who will care for your minor children. A major drawback of the will is that it does not prevent your estate from going through probate. The probate process can be lengthy and costly. Without a will (or an updated one) your assets may go to unwanted beneficiaries and be managed by unwanted institutions or personnel. You should remember to tell your heirs where you keep your will. A revocable living trust can overcome the limitations of the will.

### **Create a Revocable Living Trust**

A revocable living trust (established by means of a document) can help you manage and protect your assets, and upon your death avoid probate and reduce estate taxes.

This document allows full control and management of your assets while you are alive and is subject to unlimited revisions. Upon your death, it makes permanent your aims and wishes. It can also provide for management of your affairs if you become incapacitated. For the average individual, a revocable living trust, when properly executed and funded can save thousands or millions of asset dollars and avoid the considerable time and cost of probate. It should be clearly understood that it is the estate of the individual and not the individual themselves that achieve these savings. Also, a living trust will reduce both the time required and the cost of transferring the assets to the designated beneficiary.

The best place to obtain a living trust document is from a lawyer. Trust law is subject to constant change and trusts from books or computer programs may be obsolete or otherwise not applicable to your situation.

To take advantage of your revocable living trust, you will need to transfer your assets to the trust during your lifetime. So consider retitling your assets into the name of the trust. Failure to do so will reduce the benefits of your plan.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax is scheduled to phase out gradually by 2010. There is a "sunset provision" that calls for everything in the law to revert back to prior law on January 1, 2011, unless Congress acts to extend the estate tax repeal. In case you think Congress will not "repeal the repeal", consider this – The estate tax has



been repealed and re-enacted four times in U.S. history, each time during a period of war.

**Naming a Successor Trustee**

The successor trustee is a person or entity that will take over as trustee upon the death, incapacitation or resignation of the last named trustee. It is the responsibility of the successor trustee to account to beneficiaries, file tax returns and faithfully administer the estate.

Once the successor trustee becomes trustee, they have all the power held by the original trustee. Due to this, it is extremely important that the successor trustee does not have a conflict of interest. It is usually best to name a trusted friend or family member. LMC does not recommend naming a bank or institution as successor trustee.

**Funding Your Trust**

Next to the decision to actually prepare a living trust, the most important step you will take is the funding of your trust. Funding your trust is the process of transferring your assets from you personally to your trust. To do this you physically change the titles of your assets from your individual name, or joint name if married, to the name of your trustee (this can also be referred to as the “title of the trust”).

There are a variety of assets that can be included in your trust. The most common are bank accounts, investment accounts, stock certificates that are held in name only, real estate, business interests and notes payable to you.

You also want to change most beneficiary designations to your trust so those assets will flow into your trust upon your death. However, with retirement accounts (401Ks, IRAs, etc.) the beneficiary should not be made the trust. You should name an individual as the beneficiary. In most cases this would be your spouse or children.

**Create a Durable Power of Attorney for Property Management**

The durable power of attorney is one of the

most effective tools for incapacity. This legal document not only provides for management of your affairs but remains in effect after you become incapacitated and can no longer make decisions for yourself. A power of attorney for finances and/or property management comes in several forms and can preclude the need for court action and may save substantial legal expense.

Durable powers of attorney and as a matter of fact, all of the above estate planning documents, need to be revised periodically or if your situation changes – marriage, divorce, a newborn child, moving to another state, or a significant change in your financial situation.

**Create an Advance Health Care Directive**

Generally people assign someone they know and trust, such as a spouse or an adult child to act as their agent on their behalf to make decisions about their health care while they are well and capable of doing so. This document gives their agent the power to allow or refuse particular kinds of medical care. It also provides several advantages such as choosing anatomical gifts, giving burial instructions and avoiding conservatorships.

**How should you proceed?**

Estate Planning during the next five or six years will be complicated so it is important to have your plan reviewed periodically. The tax law gradually increases the amount that you can shelter from taxes and reduces the maximum estate tax rate.

Here are the important estate tax figures to remember:

Year	Exemption	Maximum Tax Rate
2005	\$1.5 million	48%
2006 - 2008	\$2 million	46%
2009	\$3.5 million	45%
2010	No limit	Repealed

Of course, there are so many unknown factors in estate planning. You don’t know when you will die, or how big your estate will be when you die. Another thing to be aware of is that even though the estate tax is being phased out, the gift tax is scheduled to remain in force with a \$1 million exemption.



(Lawmakers were worried that without a gift tax, wealthy taxpayers would make large gifts to relatives in lower income tax brackets.) Also, once the estate tax repeal is complete in 2010, the “stepped up” basis rules are scheduled to be partially repealed.

In 2010 when the estate tax repeal takes effect your heirs will have to know your original cost basis of the assets in your estate. For many taxpayers, it will be a nightmare trying to track those figures for assets purchased many, many years ago. Now is the time to put together a personal financial statement that lists your assets, their value and your original cost basis.

Every estate plan is different, reflecting a unique combination of assets, goals, family relationships, tax considerations, and preferences. The current laws have made estate planning more complicated than ever. You need a strategy to ensure your wealth is protected and heirs aren't hit with a surprise tax bill. Before making any decisions, consult with your estate planning attorney to discuss your individual planning concerns and objectives. What your options are, will depend on your individual situation.

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This newsletter was co-written by Minda Parrish a local estate attorney. Minda has nearly two decades of experience in the area of estate planning. Combining the skills of a seasoned attorney with an unusual dedication to stand by each of her clients, she will find good answers, design effective solutions and listen carefully to your unique concerns. Please bring in this article for a free consultation with Ms. Parrish. Please visit her website at: [www.ParrishLaw.net](http://www.ParrishLaw.net)

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