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Snippets

An Estate Planning and Financial Planning Newsletter
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In this Issue:

Benefits of a Life Insurance Review

It is important to periodically review your life insurance policies. We have found that some clients are unknowingly under-funding their life insurance and their policies may lapse in the near future. This means a policy can lapse even if the premium is being paid. We have also found that some clients are over-funding their life insurance and paying more for the coverage than may be appropriate for their particular situation. Here are a few compelling reasons to have your current life insurance policies reviewed on a periodic basis:

- Approximately 70% of life insurance policies are underperforming, are at a risk of lapsing, or could be replaced at a lower cost with the same or better terms.
- Approximately 25% or more of non-guaranteed Trust Owned Life Insurance (TOLI) will lapse prior to the death of the insured.
- Approximately 75% of policies could increase the death benefit by 40% or more by acquisition of a new policy.

The bottom line is that life insurance policies do not often perform as originally illustrated and modifications in premium levels should be made from time to time. Several of our clients' insurance agents have already brought these issues to their attention. However, we have found that there are many clients who have had no contact with their insurance agent since the purchase. This is where we can help.

Many clients have asked for our advice regarding their life insurance. To address these requests, we have engaged an independent firm that is not affiliated with any insurance company and does not sell insurance. We can help you make sure that you are paying enough, but not too much, for your life insurance. Here are a few real life scenarios where the use of an independent life insurance review has significantly benefited our clients:

- Client #1 found out through an independent life insurance review that by continuing to pay the same premium, the cash value of their policy was going to run out in 7 or 8 years and the policy would lapse with no value. Because our review of the insurance policy caught this early enough, a reasonable increase in the premium now provides Client #1 with the assurance he/she will have the coverage he/she needs.
- Client #2 was told by his insurance agent that he needed to pay $70,000 per year in premiums. Through an independent life insurance review, our independent experts showed us that $40,000 would be sufficient and they had an illustration from the carrier to prove it. We were able to save Client #2 $30,000 a year!

We realize that life brings changes such as health, wealth, divorce, and changes in the tax laws. As a result, we encourage you to have a periodic review of your life insurance to ensure it's consistent with your estate plan. A periodic review of your life insurance policy ensures that your life insurance:

- Provides peace of mind and financial security
- Minimizes or eliminates estate taxes
- Provides asset protection
- Ensures that assets are going to be distributed to the proper heirs or charities upon death and in the proper format

If an irrevocable trust owns the life insurance policy to keep the proceeds out of your estate, there are additional factors that need to be considered. Even if you do not feel you need as much life insurance, the trustee cannot simply surrender the policy for its cash value without carefully considering what is best for the trust and the beneficiaries. Remember that the trust owns the policy and the trust provisions control what happens to the proceeds. Since an irrevocable trust may be separate tax entity, the income tax consequences of any changes also need to be carefully considered. As a fiduciary, the trustee has a legal obligation to make informed decisions. In a recent study released by Trusts and Estates Magazine, 83.5% of trustees have no policies or protocols in place for the review of existing policies. Having independent and objective advice in this situation is critically important.

If you need an independent review of your life insurance, give us a call. We can work with you and your agent if to navigate you through the process of deciding how much life insurance you should have, reviewing the competitiveness of your policy, adjusting the premium levels so you don't pay too much or too little, and thinking through the legal and tax consequences of any changes.

Estate Planning for Young Families

In the estate planning world, we often work with older people. 'Older' - is a relative term, it is intended to be. We have implemented estate plans for 18 year old clients. But, relatively speaking, not many. When we do, it is often a result of a young person being faced with his or her own mortality at a far too early age. It is more common that a client seeks out an estate plan when they get married, or have their first child, as this seems to be the point when people realize they have substantial responsibilities, to themselves and others. But far too often, young families see estate planning as an esoteric practice for old, wealthy people with lots of money. There is a certain level of truth to that. Old people with lots of money are, generally, much more aware of the need for estate planning, and the planning can get pretty sophisticated.

But the typical young parent needs a plan too, even if he or she does not know it. We often hear the young person's excuse, "I don't have a lot of assets, so I don't need a plan now." The fact is that the less you have, the more important it is to make sure that everything that you do have goes to the right people, in the most efficient way possible.

So how do you get started?

First, if you have young children you should make sure you have term life insurance. This should be task number one. A young parent's death is always tragic. But it is made more so when the surviving family is left penniless.

Once you have the life insurance straightened out, focus on the estate planning basics: Start by discussing a Last Will, a Health Care Proxy, and a Power of Attorney with your estate planner. This will get you moving in the right direction. These documents serve to formally declare how you want your assets disbursed upon your death and will also name the people that you want to be 'in charge' in the event of your incapacity or death. Specifically, in the Will, you will name your spouse, and/or children as beneficiaries of your estate (a well drafted Will might say everything goes to your spouse, but it should also say what happens alternatively, if you and your spouse both pass away). You will also state who you want to have physical and legal custody over the children while the children are under the age of 18. The "Personal Representative" acts as the decision maker for the estate, and has the responsibility of making sure the assets of the estate go where they are supposed to go.

In addition, the Health Care Proxy names the people that you would want to make medical decisions for you if you were 'incapacitated' (i.e. no longer able to make decisions for yourself). Similarly, the Power of Attorney names someone to write checks in your name and make other financial decisions for you if you were not able to make them for yourself.

Typically, once a client takes the first step, the questions begin to arise: What happens to my life insurance, and my 401(K) or retirement plan at work? Will my family have to pay taxes at my death? What is probate and why should I try to avoid it? What about trusts? How can I protect my children? What about long term nursing home costs?

Those are exactly the questions that we are here to answer to help you wade through the issues. The job of your estate planner is to educate you on the relevant issues in a way that enables you to make the right decisions, without being overwhelmed. We want to get a plan in place that works for you and we want to make the process of doing so as convenient for you as we can. So our first task is to educate you so that you can make informed decisions about your priorities and objectives. The next step is to provide you with options so that you can choose the plan that works for you. Typically, the whole process requires just 2 meetings with us: 1 meeting for the initial discussion, and 1 meeting to sign the documents. Everything else can be accomplished remotely and we will make sure that we provide you with specific direction regarding all the questions that you have.

So for all of the young families out there, please take the time to schedule a meeting with us. Or, if you are a new grandparent, encourage your children to schedule a meeting with us to discuss their estate plans sooner rather than later.

Important Estate Planning Issues to Address in the Event of a Divorce

Estate plans are often one of the last things on the minds of couples contemplating divorce. Overwhelmed by issues such as support, custody and equitable distributions, estate plans usually are put on the back burner. That said, most people would agree that their soon to be ex-spouse is the last person they want to inherit their assets when they die—or to have that person make life and death decisions for them. But that is exactly what can happen – and often does – when these documents are not updated.

Beneficiary Designations

Assets that have beneficiary designations (e.g., life insurance policies, employer retirement plans, IRAs, annuities, health savings accounts, investment accounts and some bank accounts) are not controlled by a will or trust. Instead they will be paid directly to the person listed as beneficiary (unless that person is deceased, is a minor, or is incapacitated when the insured dies). Not surprisingly, most married people name their spouse as beneficiary. While the Massachusetts Uniform Probate Code (the "MUPC") automatically revokes beneficiary designations made in favor of your ex-spouse upon divorce, if you should pass away while the divorce is pending the designation in favor of your soon to be ex-spouse remains in effect. Therefore, we recommend that beneficiary designations be changed right away.

Naming the right beneficiary is critical. This is especially true for tax-deferred plans because of possible estate and income tax issues and the potential for long-term tax-deferred growth. Please also be aware of limits when it comes to changes to beneficiary designations on 401(k)'s, pensions and similar qualified benefit retirement plans through employers that are covered by ERISA; these changes cannot be made without spousal approval or court order.

If you have Children

If you name children as beneficiaries and they are minors when you die, in most cases a court guardianship must be established for them until they become age 18—at which time they will receive the entire inheritance. Until then, your ex-spouse would likely be named by the court to manage the funds. Like most divorced parents, you may find it unthinkable that your ex-spouse will have discretion over how your assets are spent and may have reason to fear your children will not enjoy the full benefit of your legacy as you planned. Naming another individual, such as your parent or sibling, as beneficiary with the understanding they will use the money to care for your children until they are older is also risky. You have no guarantee they will follow your instructions, they may be tempted to use the money for their own needs, and the money would be exposed to their creditors.

Naming a trust as the beneficiary instead and selecting your own trustee (which may still be your parent or sibling) is a much better choice. A trustee can be held liable if he/she misuses the trust assets and you can dictate in the trust for what purposes the funds may be used (e.g. health, education, etc.). An ex-spouse can be prevented from having access to the money, and you can control when your children will inherit. Money that stays in the trust is protected from irresponsible spending, creditors, and even spouses. For all these reasons, a trust is an excellent choice as beneficiary instead of an individual, regardless of his/her age.

Your Will and/or Living Trust

If you do not update your will or trust and pass away before your divorce is final, your soon to be ex-spouse may inherit your assets. And if he/she remarries, the new spouse and his/her children could inherit your assets, leaving your children and family with nothing. If you provide support to your parents or others, be sure to modify your will as soon as divorce is contemplated to include them in your estate plan.

High net worth individuals may have additional concerns when examining an estate plan after a divorce. These include (i) the loss or reduced ability to gift assets in conformity with a pre-existing estate plan or lifetime gifting scheme; (ii) the reduction or loss of the deferral of federal and state estate taxes generally achieved by an estate plan created for a married couple; and (iii) the effects of the divorce on federal estate and gift tax exclusion amounts (in 2014, a married couple can transfer $10,680,000; and an individual can transfer $5,340,000 during life or at death without incurring federal estate or gift tax).

If you have minor children, you need to name a guardian for them in your will. Even if you have a living trust, a basic will is required to name a guardian and to direct any forgotten assets into your trust. In most cases, your ex-spouse will get custody of your children in the event of your death, if he or she isn't already the custodial parent. In rare cases, the surviving parent may not be suitable or able to assume full-time guardianship of your children, and in that case the court would have to appoint a guardian and would appreciate knowing your choice.

Powers of Attorney

Most married couples give each other the power to make health care decisions, including those regarding life and death. Financial powers are also usually given to each other so that one can manage the other's financial affairs without interruption. These are often quite broad, including the ability to buy and sell real estate, open and close financial accounts, change beneficiary designations, collect government benefits, etc. You should revoke the power in favor of your soon to be ex-spouse and name an alternate party such as a parent, sibling, close friend or adult child to have these powers and act for you when you cannot. Notice of the revocation of the powers should be sent to your soon to be ex-spouse and any other individual or entity that received a copy of the documents appointing the spouse as agent to put them on notice of the revocation. Copies of the new powers should be sent to financial institutions, banks, doctors, etc. Please note that under the MUPC fiduciary appointments, including power of attorneys, of a former spouse are automatically revoked upon divorce.

You Need Professional Guidance and Assistance.

Understandably, after getting through a divorce you may feel fear of working with attorneys and legal documents. However, immediately following a divorce is one of the most important times to update an estate plan – or create one if you had no plan previously. Don't procrastinate on this. Make sure you protect yourself, your children and others who depend on you.

SCHLOSSBERG, LLC – ESTATE AND TRUST TEAM

For further information on any of these topics or to review your estate plan, please contact an Estate and Trust Team Member.

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