

Estate Planning – Does It Still Make Sense?

by Cameron L. Hess, Esq., CPA

Congress voted last December to increase the unified gift, estate and generation skipping transfer tax exemption to \$5 million. Given this change, does estate planning still make sense?

It does. Estate planning is not just about taxes. It involves the disposition of your assets during your lifetime and upon your death. Without a written estate plan, your estate will pass under intestate succession where state law will determine to whom your assets will pass. These rules are complex and in most cases will differ from where you want your assets to go.

In addition, your written estate plan, even for estates under \$5 million, may require more than just a personal will in order to avoid a probate proceeding.

A personal will can help you to appoint an executor who is to distribute your assets in accordance with your will upon your death. The executor may be required to act under a formal probate proceeding in the event that there is more than \$100,000 of non-exempted assets. Where there is substantial real property, such as a home and investment property that will pass to one's children, a probate proceeding will be required if there is just a personal will. This proceeding can become quite costly both with respect to the fees charged by the executor and legal counsel, both who are entitled to receive a statutory fee based on the size of your estate.

As a result, where an estate is more significant, a revocable living trust may be considered. The benefit of a trust is not just the avoidance of the probate process, but the opportunity to provide for someone to act more quickly to take over the management of your affairs and the administration of your estate. A trust can also allow someone other than yourself to step in as trustee to help during your lifetime if you are unable to manage your estate for yourself. Your estate plan can also include other important documents to help you during your lifetime, including a Health Care Declaration and a Durable Power of Attorney for Asset Management.

Your estate plan can also be much more. Everyone's personal situation is different. An estate plan for your charitable bequests, whether at your lifetime or upon your death. It can help with advising on use of life insurance and on business succession planning. In addition, as to estate taxes, while the \$5 million exemption, set to expire after 2012, is expected to be extended, your estate plan can try to anticipate some of the possible uncertainties in the law and try to provide for some of the possible changes. Indeed, where you expect your estate to grow, your estate plan can help minimize estate taxes should it ultimately exceed \$5 million.

Wagner Kirkman Blaine Klomprens & Youmans LLP has extensive experience in estate planning. We have represented clients for over thirty years in estate planning from the simplest to the most complex situations.