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# Three Top Reasons to Update Your Estate Plan in 2014

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Make this your top New Year's resolution — update your estate plan this year. If you didn't update your estate plan last year when the federal tax laws changed, 2014 is the year to make some important changes in it. Alterations to tax laws can definitely impact your estate, plus addressing two other key issues can help you be confident you have everything in place for yourself and your heirs. Here are the three main reasons to review and update your estate plan as soon as you can this year.

## Estate Taxes Are Now Stable

The federal estate and gift tax exemption is now an inflation-adjusted (from 2010) $5,000,000 per individual. Plus, there is no longer a built-in "sunset" for this exemption to automatically revert to $1,000,000. For a married couple, their estate can be worth more than ten million dollars before they have to worry about estate taxes. In the past, when the exemption was or was scheduled to be much lower, a large number of estate plans were set up using A/B trust provisions. With that structure, when a spouse dies, the deceased spouse's assets do not go to the surviving spouse but rather are put in an estate tax avoidance/asset protection trust to the extent possible without causing the estate to be taxable. That trust would be a separate taxpayer and file its own income tax return each year. There are also ongoing management and administrative costs. Offset against those disadvantages are the asset protection advantages that an irrevocable trust can provide and the possible opportunity to preserve the deceased spouse's assets for heirs if the survivor has to go into a nursing home or remarries.

For the majority of people, there is no longer a current tax need for complex A/B provisions and so estate plans can be designed in a much more straightforward manner to meet non-tax goals. Your estate will be administered as directed by the plan in place when you die, so, with these major tax law changes, now is the time to come in and work with our firm to review your plan and your situation to determine if your plan should be updated and/or simplified.

## But Other Taxes Are Higher

Although estate taxes are less of an issue these days, income and capital gains taxes have increased with the passage of the American Taxpayer Relief Act of 2012 ("ATRA"). Given the increased tax burdens imposed by ATRA, specifically the increase in the capital gains tax rate to 20% and the new 3.8% healthcare surtax imposed on incomes exceeding certain thresholds, we have been on the lookout for estate planning techniques that will provide some tax relief.

One such strategy we have come across is designed to reduce capital gains tax for married couples. This strategy is not well-known and is underutilized by many estate planning lawyers and CPAs. Briefly, surviving spouses in Virginia (and the other 39 "separate property" states) do not receive the same favorable capital gains treatment as do surviving spouses living in the ten "community property" states when it comes to the tax treatment of jointly owned property passed on to the surviving spouse by virtue of survivorship.

Fortunately one of the community property states, Alaska, specifically allows non-Alaska residents who meet certain criteria to "borrow" the features of Alaska Community Property law and totally eliminate capital gains on their appreciated assets at the death of the first spouse. Thus, it is now possible for you to transfer your appreciated property to a special revocable trust drafted to take advantage of Alaska Community Property law. This type of trust is a called a ***Revocable Alaska Community Property Trust***. For many of our client families this technique will provide significant tax savings and other benefits.

**Provide Divorce and Lawsuit Protection**

No parent likes to think of their children in dire straits or that their heirs might have personal or business difficulties in the years ahead. But life does have a tendency to get in the way of the best laid plans. You want to protect your heirs and provide some financial security, yet most estate plans do not provide the heirs an adequate level of asset protection from the risks of loss of inheritance through getting divorced or sued. There are three issues that could negatively impact an inheritance:

1) Immaturity or mismanagement of assets could cause an inheritance to dissipate long before you intended.
2) Even if funds are managed well, an heir could be involved in a failed business venture or an accident. The resulting lawsuit could result in their inheritance being taken by a judgment creditor.
3) With a divorce, all assets not proved to be inherited or gifts are subject to division, which does not have to be evenly. If the inheritance you provided ends up untraceable, like in a joint account, it could all be lost.

Once an inheritance is lost, there is no way to recover it. You want the part of your hard-earned assets that you leave to pass on to your heirs to provide them a measure of financial security. That is best done through a "testamentary" trust – one that goes into effect and receives assets upon your death. A testamentary trust can provide divorce and lawsuit protection to your heirs as well as to protect a young or unwise heir from himself.

**Skyrocketing Costs of Long-Term Care**

The issue of needing long-term care as we age is emerging as the greatest single real risk to estates of

middle class Americans. There is now a 70% likelihood that an adult American will need nursing home care and the costs of that care are increasing rapidly. An average monthly cost for a nursing home can range from $5,000 to upwards of $15,000 depending on the location. In some cases, both spouses are in care at the same time, resulting in costs that can range from $10,000 - $30,000 a month. As care needs increase, for example with Alzheimer's patients as their disease advances, monthly care costs can escalate to far, far above the average.

Most Americans worry about how long they may need care and how they will pay for it. Few have the income to cover those costs and so have to consume their assets to pay for care that is not covered by insurance. Medicare provides only limited, temporary nursing home care coverage, and that is only following a hospitalization of at least 3 days. Medicaid requires a person have minimal resources and the inability to pay for the nursing home before providing help. Protecting yourself and your spouse from ruinous long-term care costs requires a different sort of trust plan. Now is the time to review your estate and include some long-term care planning.

One possibility is moving assets into a ***Medicaid Asset Protection Trust***. Assets that have been in a Medicaid Asset Protection Trust for five years are not included in the Medicaid calculation so the sooner the trust is established, the more effectively it works. If you or your spouse is a veteran, you may qualify for a VA "Aid and Attendance" Pension benefit designed to help offset high medical-related costs. We help clients qualify for this pension benefit using a ***Veterans Asset Protection Trust***.

If you do not have long-term care insurance, you should explore getting some. Your health will be a determining factor in whether it is available for you and its cost. There are also a variety of new insurance products that combine a life insurance death benefit with a long-term care benefit. Having a strategy for long-term care in your estate plan will give you, and your heirs, peace of mind.

Your estate plan may also need revision to protect assets for the survivor after the other spouse dies. The federal Medicaid laws have strict requirements for how that can be accomplished.

Early 2014 is the time to think about these three crucial issues and how they may relate to your own estate strategy. Make that New Year's resolution today and call us for an appointment to review and revisit your current plan and goals. We will discuss with you the best possible solutions to meeting your estate plan objectives.