



Ten Reasons Why You Should Have An Estate Plan

By: Joy V. Riddell, Chair, Estate Planning Practice Group

1. To Preserve Wealth and Maximize Its Transmission to Descendants

With the uncertainty of the federal estate tax and some states now imposing a separate *state* estate tax where couples may own a second home, it is very important to have an estate plan that minimizes income, gift and estate taxes. It is also equally important to utilize wealth transfer planning opportunities while they still exist, particularly where the federal gift and estate exemption amounts are \$5,120,000 until the end of this year.

2. To Insure Your Estate Passes in Accordance with Your Wishes

Many married couples are surprised to learn that without a will or trust a deceased spouse's estate may not all pass to the surviving spouse, unless everything is in joint ownership, the surviving spouse is the designated beneficiary, or the total value of the probate estate is under a specific amount. In second marriages, it is even more important to have well-coordinated estate plans so property passes as directed and is not altered by estate taxes, expenses or creditors.

3. Asset Protection

For professionals and business owners who have liability exposure, an estate plan often will include planning techniques to insulate personal assets against such exposure. A simple planning technique is to title all of the personal assets in the name of the non-business owner spouse. A more complex technique is to hold a whole life insurance policy in an irrevocable trust to protect the policy's cash value and still provide liquidity or cash flow in the event of an untimely death. New Hampshire's relatively new asset protection trust (which rivals the Alaska and Delaware asset protection trusts) may be appropriate for clients who can contribute at least \$1 million in assets and justify the cost of administering such a trust.

4. Long-Term Care Planning

A comprehensive estate plan should also incorporate long-term care planning, particularly in second marriages. There is nothing like extended nursing home care to derail a couple's carefully designed estate plan. Purchasing long-term care insurance under New

Hampshire's partnership program may guarantee funds to cover such costs and protect the integrity of the couple's estate plan.

5. **Privacy**

A revocable or irrevocable trust, rather than a will, will keep dispositive provisions of one's estate plan and assets out of court and away from public scrutiny. Individuals concerned that third parties or creditors will have unfettered access to the content of a decedent's will and knowledge about the decedent's probate assets should consider an estate plan that incorporates creating and funding a trust during lifetime.

6. **Avoiding Guardianship**

Statistically, an individual is more likely to be permanently or temporarily *incapacitated* at some time during life, than to *die* young. Without a financial power of attorney or assets held in trust, family members (including a spouse) may find themselves having to obtain guardianship over an incapacitated person's estate to manage that person's affairs or qualify him or her for Medicaid. Guardianship can be very expensive and time-consuming. A financial power of attorney or trust is far less costly and keeps affairs private.

7. **Protective Trusts for Spendthrifts, Divorcing Children or Drug-Dependent Individuals**

Parents or grandparents who are concerned about giving an outright inheritance to a family member who has spendthrift tendencies or creditors, who is in an unstable marriage, or who is drug or alcohol dependent may instead create a trust for the benefit of that family member, protecting his or her inheritance to ensure it will be available for the family member at a trustee's discretion.

8. **Special Needs Trust for Impaired Child or Grandchild**

An outright inheritance can be very disruptive financially and emotionally to a child or grandchild who has special needs and is receiving public benefits. Though a well-intentional gift, an outright inheritance could force the child to switch health care providers and/or possibly lose public housing. If the inheritance is not sufficient to provide for the child during his or her lifetime, the child may find himself or herself on a long wait-list for public housing once his or her inheritance runs out. A special needs trust or pooled income trust can prevent disruption and preserve the public benefits while still providing a mechanism to help support the special needs child or grandchild.

9. **End-of-Life Care Decisions**

An important component of an estate plan is choosing one's decisions regarding end-of-life care and communicating them to loved ones. Also, in New Hampshire's advance health care directive, a person can authorize treatment against his or her objection when he or she is

incapacitated so as to avoid guardianship in those instances, resulting in another cost savings to the family.

10. **Having A Plan**

Loved ones are often comforted knowing a decedent or an incapacitated person has a plan in place and has communicated their plan to others. It is reassurance to the loved ones that they are carrying out those wishes, and it provides some sense of direction during a difficult time.