

Protect Your Family with an Estate Plan

According to Consumers Union, approximately 70% of adult Americans don't have even a simple will.

The standard explanation that many people give for not planning is procrastination. It's easy to understand—coming face to face with one's mortality isn't a pleasant subject. Sometimes, too, people feel that a simple will drafted at the outset of their marriage, or when they bought their first home, still serves them in good stead today.

Recent changes in the federal estate tax rules have reduced rates and even “abolished” the tax itself as of a future date. True enough. But it's a mistake to be lulled into a false sense of security. As of early 2008, the estate tax has been repealed for only one year (2010), with rates thereafter returning to where they were prior to the passage of the 2001 tax law—as high as 55%. (The estate and gift tax exemption will be \$1 million.) There have been all sorts of proposals in Congress either to abolish the tax permanently, or to lower rates and increase exemptions, but as of now, it's anyone's guess as to what will happen.

To put it simply, there is absolutely no good reason to put off developing and implementing an estate and trust plan that will offer your heirs the most protection at the least tax cost.

A Tax-Saving Trust Technique

So let's talk a bit about taxes. As you probably are aware, a “marital deduction” can eliminate any tax on transfers between spouses. But a surviving spouse doesn't have a marital deduction to fall back on, only the estate and gift tax exemption.

In other words, the marital deduction may turn out only to delay tax, not eliminate it. That’s why, if your estate is substantial, you will want to consider harnessing the combined power of the marital deduction and exemption with a marital and “bypass” trust plan in your will. Consider this strategy:

You create a bypass trust that will receive an amount that does not exceed the exemption available at your death. You instruct that the income from the trust be paid to your spouse for life. Then, when he or she dies, the trust’s assets pass to the beneficiaries that you name in the trust agreement. (This strategy works especially well if you want to provide for both your current spouse and any children from a prior marriage.) At the same time, you establish a marital trust that will receive the assets not transferred to the bypass trust.

With this plan in place, there is no tax at all on your estate. As for your spouse’s estate? The assets in the bypass trust are not includable as part of his or her estate and so won’t be taxed. The balance of his or her estate may be taxed, but the exemption may shelter all or a good portion of these assets from taxation. Here are some examples:

Estate Tax Savings With Bypass Trusts

Estate value	Tax with simple wills	Tax with bypass trusts	Savings
\$ 2,500,000	\$ 225,000	\$ 0	\$225,000
3,000,000	450,000	0	450,000
3,500,000	675,000	0	675,000
4,000,000	900,000	0	900,000
5,000,000	1,350,000	450,000	900,000
10,000,000	3,600,000	2,700,000	900,000

Assumption: 1. First spouse dying in 2008 and the second spouse in 2011 when, under current law, the exemption amount drops to \$1 million, and the top rate reverts to 55%. There are no separate assets or appreciation of assets in the survivor's estate.

Note: Are you married to someone who is not a U.S. citizen? If so, special restrictions on the marital deduction may apply. We recommend that you seek professional guidance now. You may be able to craft a trust plan that will keep your marital deduction options open.

Start Your Planning Now

The need to arrange for the orderly and tax-efficient transfer of your family's assets should loom large on your planning horizon. We offer the same advice even if you have a plan in place but haven't reviewed it recently.

Come speak with us. We'll inform you of the many wealth preservation strategies and techniques, both basic and sophisticated, that are available to you and your family.

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Any developments occurring after January 1, 2008, are not reflected in this article.