Summer 2016

EPIC CAPITAL

Where Experienced Advice Meets Actionable Ideas INSIGHTS

Ways You Can Make a Difference for Charity

You don't need to be uber wealthy to make an impact and get a win-win.

Do you have to make a multimillion-dollar gift to a charity to receive immediate or future financial benefits? No. If you're not yet a millionaire or simply a "millionaire next door," yet want to give, consider the following options which may bring you immediate or future tax deductions.

Partnership gifts. These gifts are made via long-term arrangements between donors and recipient charities or non-profits, usually with income resulting for the donor and an eventual transfer of the principal to the charity at the donor's death.

For example, a *charitable remainder trust* (CRT) also allows you to pay yourself a dependable income (typically either for life or a 20-year term) and then distribute the remaining trust principal to charity. Income from the CRT can even be directed to another (non-charitable) beneficiary. You could even name a CRT as the beneficiary of your IRA as part of your estate planning strategy. A *charitable lead trust* (CLT) offers you the potential to reduce gift and estate taxes on assets passing to your heirs by making annual charitable gifts; either you or your beneficiaries eventually get the leftover trust assets.[1,2]

If you don't have enough funds to start one of these, you might opt to invest some of your assets in a *pooled income fund* offered by a university or charity. Your gifted assets go into a "pool" of assets invested by a fund manager; you get a *pro rata* share of the income of the fund for life, and when your last income beneficiary passes away, the principal of your gift goes to the school or charity.

If you like the idea of a family foundation but don't quite have the money and don't want the bureaucracy, you could consider setting up a *donor-advised fund.* You make an irrevocable contribution to a third-party fund, realizing an immediate tax deduction; the fund invests the money in an account you create. You advise the fund where the money goes and how it grows, but the fund makes the actual grants to nonprofits.

Inside this Issue

FEATURES

Lifetime gifts. These are charitable gifts in which the donor retains no powers or other controls over the gift once it is made (the gift is irrevocable). A lifetime gift of this sort is not included in what the IRS calls your Gross Estate (but taxable gifts are used in calculation of estate tax).[3]

Lifetime gifts also include *outright gifts* of cash or appreciated assets such as stocks or real estate. A gift of appreciated stock could bring you an immediate tax deduction for the full market value of the shares, and help you avoid the capital gains tax that would result from their sale.[4]

Through a partial or whole gift of *appreciated property,* you can transfer a real estate deed to a school or charity and get around capital gains taxes that may result from a property's sale (and lifelong income streams may also be arranged for a donor). If you have held the appreciated property for at least a year, the gift is deductible up to 30% of adjusted gross income with no capital gains tax on the appreciation. You could even arrange a *retained life estate,* in which you deed your home to a charity or non-profit while retaining the right to live in it as your primary residence for the rest of your life.[5,6]

Estate gifts. These are deferred gifts you make after your lifetime, without impact on your current lifestyle. A gift of life insurance to a university or charity can give you an immediate income tax deduction for the cash surrender value of a paid-up policy, and possible future deductions. You can also make an IRA gift or retirement plan gift effective upon your death; if the charity is named as the beneficiary of the account, the full value of the account will transfer to the charity without being subject to estate or income taxes.[7,8]

The caveats. As your income increases, you may face limits on the amount of charitable gifts you can deduct. If you are retired, an increase in income can also cause more of your Social Security benefits to be taxed. Your charitable deductions for any federal tax year cannot be more than more than 50% of your adjusted gross income (possibly 30% or 20% depending on the specifics of your gifts). But if you exceed such limits, the IRS lets you carry forward excess contributions for up to five years.[9,10]

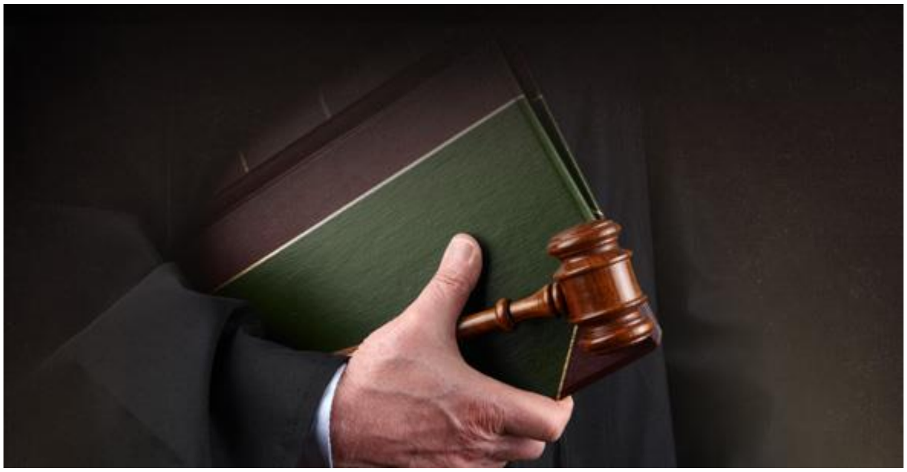
> *"You can transfer a real estate deed to a school or charity and get around capital gains taxes that may result from a property's sale."*

Would you like to learn more? Now is as good a time as any to do so. Your charitable gifting can have real impact even if you don't have a fortune. Keep in mind that your unique circumstances need to be weighed before making any decision. As with all tax and estate planning, please consult your financial advisor, attorney or tax advisor to affirm that you are in a position to fully benefit from charitable deductions.

Will You Avoid These Estate Planning Mistakes?

Too many wealthy households commit these common blunders.

Many people plan their estates diligently, with input from legal, tax, and financial professionals. Others plan earnestly, but make mistakes that can potentially affect both the transfer and destiny of family wealth. Here are some common and not-so-common errors to avoid.



Doing it all yourself. While you could write your own will or create a will or trust from a template, it can be risky to do so. Sometimes simplicity has a price. Look at the example of Warren Burger. The former Chief Justice of the United States wrote his own will, and it was just 176 words long. It proved flawed – after he died in 1995, his heirs wound up paying over $450,000 in estate taxes and other fees, costs that likely could have been avoided with a lengthier and less informal will containing appropriate language.[1]

Failing to update your will or trust after a life event. Relatively few estate plans are reviewed over time. Any life event should prompt you to review your will, trust, or other estate planning documents. So should a life event affecting one of your beneficiaries.

Appointing a co-trustee. Trust administration is not for everyone. Some people lack the interest, the time, or the understanding it requires, and others balk at the responsibility and potential liability involved. A co-trustee also introduces the potential for conflict.

"Your heirs should have an understanding of the purpose and intentions at the heart of your estate planning."

Being too vague with your heirs about your estate plan. While you may not want to explicitly reveal who will get what prior to your passing, your heirs should have an understanding of the purpose and intentions at the heart of your estate planning. If you want to distribute more of your wealth to one child than another, write a letter to be presented after your death that explains your reasoning. Make a list of which heirs will receive particular collectibles or heirlooms. If your family has some issues, this may go a long way toward reducing squabbles and the possibility of legal costs eating up some of this or that heir's inheritance.

Failing to consider what will happen if you & your partner are unmarried. The "marriage penalty" affecting joint filers aside, married couples receive distinct federal tax breaks in this country – estate tax breaks among them. This year, the lifetime gift and estate tax exclusion amount is $5.45 million for an individual, but $10.9 million for a married couple.[1,2]

If you live together and you are not married, it is worth considering how your unmarried status might affect your estate planning with regard to federal and state taxes. As *Forbes* mentioned last year, federal and state taxes claimed more than more than $15 million of the $35 million estate of Oscar-winning actor Phillip Seymour Hoffman. He left 100% of his estate to his longtime partner, and since they had never married, she could not qualify for the marriage exemption on inherited assets. While the individual lifetime gift and estate tax exclusion protected a relatively small portion of Hoffman's estate from death taxes, the much larger remainder was taxed at rates of up to 40% rather than being passed tax-free. Hoffman also lived in New York, a state which levies a 16% estate tax for non-spouses once estates exceed $1 million.[1]

Leaving a trust unfunded (or underfunded). Through a simple, one-sentence title change, a married couple can fund a revocable trust with their primary residence. As an example, if a couple retitles their home from "Heather and Michael Smith, Joint Tenants with Rights of Survivorship" to "Heather and Michael Smith, Trustees of the Smith Revocable Trust dated (month)(day), (year)". They are free to retitle myriad other assets in the trust's name.[1]

Ignoring a caregiver with ulterior motives. Very few people consider this possibility when creating a will or trust, but it does happen. A caregiver harboring a hidden agenda may exploit a loved one to the point where he or she revises estate planning documents for the caregiver's financial benefit.

The best estate plans are clear in their language, clear in their intentions, and updated as life events demand. They are overseen through the years with care and scrutiny, reflecting the magnitude of the transfer of significant wealth.

Tell Your Beneficiaries about Your Accounts and Policies

Let them know how they will receive retirement assets and insurance benefits.

Will your heirs receive a fair share of your wealth? Will your invested assets go where you want them to when you die?

If you have a proper will or estate plan in place, you will likely answer "yes" to both of those questions. The beneficiary forms you filled out years ago for your Individual Retirement Account (IRA), your workplace retirement plan, and your life insurance policy may give you even more confidence about the eventual transfer of your wealth.

One concern still remains, though. You have to tell your heirs that these documents exist.

That does not mean sharing all the details. If you have decided that some of your heirs will one day get more of your wealth than others, you can keep quiet about that decision as long as you live. You *do* want to tell your heirs the essential details; they should know that you have a will and/or an estate plan, and they should understand that you have named beneficiaries for your retirement accounts, your investment accounts, and your insurance policies.

"Major insurers had withheld more than $7.5 billion in life insurance death proceeds from beneficiaries. The beneficiaries had never stepped forward to file claims."

Over time, you must review your beneficiary decisions. In fact, you may want to revisit them. As an example, say you opened an IRA in 1997. Your life has probably changed quite a bit since 1997. Were you single then, and are you married now? Were you married then, and are you single now? Have you become a parent since then? If you can answer "yes" to any of those three questions, then you need to look at that IRA beneficiary form now. Your choices may need to change.

Here is a quick look at how beneficiary decisions play out for a few of the most popular retirement accounts.

Employer-sponsored retirement plans. These are governed by the Employee Retirement Income Security Act (ERISA), which rules that if the late accountholder was married, the surviving spouse is entitled to at least 50% of the account assets. That applies even if another person has been designated as the primary beneficiary. In such a case, the spouse and the primary beneficiary may split the assets 50/50. (The spouse can actually waive his or her right to that 50% of the invested assets through a Spousal Waiver form. A spouse usually has to be older than 35 for this to be allowed.) These rules also apply for other types of ERISA-governed retirement assets, such as pension plan accounts and corporate-owned life insurance.[1,2]

The Supreme Court has decided that these rules take priority over state laws *(Egelhoff v. Egelhoff, 2001; Hillman v. Maretta, 2013)* and divorce agreements *(Kennedy Estate v. Plan Administrator for the DuPont Saving and Investment Plan, 2008).*[3,4]

If a participant in one of these retirement accounts remarries, the new husband or wife is entitled to 50% of those assets at death. While a plan participant may name a child as the beneficiary of a retirement account after a divorce, remarriage will leave only 50% of those assets with that child when the accountholder dies, rather than 100%, unless the new spouse waives his or her right to receiving 50% of the assets. The new spouse will be in line to receive that 50% of the account even if unnamed on the beneficiary form.[1]

IRAs. Unlike an employer-sponsored retirement plan, a spouse does not have automatic beneficiary rights with an IRA. That is because IRAs are governed under state laws rather than ERISA. One interesting estate planning aspect of an IRA rollover is that the owner of the new IRA has the freedom to name anyone as the primary beneficiary.[1]

Life insurance policies. The death proceeds go to the named beneficiary; occasionally, a beneficiary may not know a policy exists.

Recently, *60 Minutes* did an expose on the insurance industry. Major insurers had withheld more than $7.5 billion in life insurance death proceeds from beneficiaries. They had a contractual reason for doing so: the beneficiaries had never stepped forward to file claims.[5]

While many of the policies involved were valued at $10,000 or less, others were worth over $1 million. The deceased policyholders had either failed to tell their heirs about the policies or misplaced the copies and the paperwork. Their heirs did not know (or know how) to claim the money. As a result, the insurance proceeds lay unclaimed for years, and the insurers only now feel pressure to pay out the benefits.[5]

Update your beneficiaries; let your heirs know how vital these forms are. Make sure that your beneficiary decisions on retirement, brokerage and bank accounts, college savings plans, and life insurance policies suit your wealth transfer objectives.

Estate Planning After a Second Marriage

Special considerations for a complex solution.

Marrying again makes estate planning more involved. How do you provide for everyone you love? Should you provide for everyone you love? How do you arrange to transfer wealth in a way that won't hurt the feelings of certain heirs?

If you have not planned your estate yet, take inventory. Spend a half-hour and jot down the assets you own, major and minor. Who should own these assets after you die? Your spouse should do this, too – and you should talk about your preferences. It may not turn out to be the easiest conversation, but agreement now may preclude family squabbles and legal challenges down the line. (If you have a prenuptial agreement in place, you may have already discussed some of these matters.) You should also consider two scenarios – what happens if you die first, and what happens if your spouse dies before you do.

If you and/or your spouse have children from prior marriages, there may be some dilemmas for each of you. If you die, there is a real possibility that your current husband or wife will not elect to provide for your children from past marriages. So what might you do to prepare for that possibility? You might make a child the primary beneficiary of a life insurance policy, or set up a trust for your kid(s), or place certain real property under joint ownership with a child.

> *"Parents create irrevocable trusts to direct assets to particular children."*

If you have already written a will, it will probably need revisions. They could be considerable. You want to be extremely specific about which heir gets what; you need to state bequests convincingly, because the more convincing your bequest, the less ambiguity.

How up-to-date are your beneficiary designations? Out-of-date beneficiary decisions are an Achilles heel of estate planning. Be sure to review them; you may want to revise beneficiary forms for retirement plans, investment accounts, and insurance policies.

As you consider these revisions, pay particular attention if you have been divorced. Divorce may actually preclude you from changing beneficiaries in certain cases. Turn to a lawyer and show the lawyer a copy of your divorcee decree; ask if revising your beneficiary designations will violate it. Should you be unable to make beneficiary changes to your life insurance policy, you may want to buy another one in consideration of your new spouse.[1]

Take a look at irrevocable trusts. They can be used to provide for your spouse as well as your kids. Some people establish a separate property trust to provide for their spouse after their death while directing most or all of their real property to their children.[2,3]

Alternately, parents create irrevocable trusts to direct assets to particular children. They are attractive estate planning vehicles for a number of reasons. A trust agreement is a private mechanism for wealth transfer, while a will is a public document (and some parents who have remarried would rather their wills not be made public). Assets within irrevocable trusts are shielded from creditors, and also from inheritance claims of spouses of the adult children named as heirs. An irrevocable trust represents a "finalized" estate planning decision, one that ensures that particular assets transfer to a parent's biological children. Irrevocable trusts are also rarely undone. It typically takes permission from beneficiaries (and a judge) to reverse them.[4]

Those aforementioned pre-nups can play an estate planning role as well. They allow you to designate personal assets (such as assets within a college savings account) for existing rather than future children. Post-nuptial agreements (similar to pre-nups, but drafted after a marriage) can also accomplish this. Some states do not view pre-nup and post-nup agreements as legally valid, however – and sometimes carrying out the terms and conditions of these agreements is up to a judge.

Be sure to consult legal & financial professionals. When estates become this complex, collaboration with professionals having a thorough understanding of estate planning and tax issues is essential.

If you would like to further discuss any of the topics written about in this newsletter, or inquire about any of our other services, please feel free to contact us

Citations:

Ways You Can Make a Difference for Charity

1 - fidelity.com/viewpoints/personal-finance/charitable-giving-that-gives-back [7/2/15]
2 - blogs.wsj.com/totalreturn/2015/06/11/another-death-triggered-tax-event-to-worry-about/ [6/11/15]
3 - irs.gov/Businesses/Small-Businesses-&-Self-Employed/Frequently-Asked-Questions-on-Estate-Taxes [8/19/15]
4 - philanthropy.com/article/Donors-Often-Overlook-Benefits/148561/ [8/29/14]
5 - planyourlegacy.berkeley.edu/gift-types/ages-65-plus/real-estate [10/21/15]
6 - planyourlegacy.berkeley.edu/gift-types/ages-65-plus/retained-life-estate [10/21/15]
7 - redcrosslegacy.org/GIFTinsurance.php [10/21/15]
8 - tallahassee.com/story/money/2015/10/10/giving-university-goes-beyond-writing-check/73604516/ [10/10/15]
9 - smartasset.com/retirement/is-social-security-income-taxable [5/1/15]
10 - bankrate.com/finance/taxes/get-a-tax-deduction-for-charitable-giving-1.aspx [12/14/14]

Will You Avoid These Estate Planning Mistakes?

1 - raymondjames.com/pointofview/seven_estate_planning_mistakes_to_avoid [10/16/15]
2 - fool.com/retirement/general/2015/12/11/estate-planning-in-2016-heres-what-you-need-to-kno.aspx [12/11/15]

Tell Your Beneficiaries About Your Accounts and Policies

1 - 401khelpcenter.com/401k_education/connor_beneficiary_designations.html [4/21/16]
2 - nolo.com/legal-encyclopedia/claim-payable-on-death-assets-32436.html [4/21/16]
3 - marketwatch.com/story/check-your-beneficiary-designations-now-2013-09-17/ [9/17/13]
4 - forbes.com/sites/deborahljacobs/2013/06/03/supreme-court-favors-ex-wife-over-widow-in-battle-for-life-insurance-proceeds/ [6/3/13]
5 - cbsnews.com/news/60-minutes-life-insurance-investigation-lesley-stahl/ [4/17/16]

Estate Planning After a Second Marriage

1 - elderlawanswers.com/redo-your-estate-plan-when-you-remarry-5477 [12/29/14]
2 - nolo.com/legal-encyclopedia/estate-planning-blended-family-29665.html [8/7/15]
3 - tinyurl.com/ohqsvro [8/14/15]
4 - blogs.wsj.com/totalreturn/2015/03/18/for-blended-families-consider-prenups-and-trusts/ [3/18/15]

EPIC CAPITAL

Where Experienced Advice Meets Actionable Ideas INSIGHTS

Questions, comments, and inquiries are welcome: info@EpicCapital.com

Visit us on the web at www.EpicCapital.com

EPIC CAPITAL
WEALTH MANAGEMENT
6135 Park South Drive – Suite 130
Charlotte, NC 28210