Fall 2017

EPICCAPITAL

Everyone Has A Story. Let Your Legacy Tell Yours INSIGHTS

Minimizing Probate When Setting Up Your Estate

What can you do to lessen its impact for your heirs?

Probate subtly reduces the value of may estates. It can take more than a year in some cases, and attorney's fees, appraiser's fees, and court costs may eat up as much as 5% of a decedent's accumulated assets.[1]

What do those fees pay for? In many cases, routine clerical work. Few estates require more than that. Heirs of small, five-figure estates may be allowed to claim property through affidavit, but this convenience isn't extended for larger estates.

So, how you can exempt more of your assets from probate and its costs? Here are some ideas.

Joint accounts. Married couples may hold property as a joint tenancy. Jointly titled property includes a right of survivorship and is not subject to probate. It simply goes to the surviving spouse when one spouse passes. Some states allow a variation called tenancy by the entirety, in which married spouses each own an undivided interest in property with the right of survivorship (they need consent from the other spouse to transfer their ownership interest in the property). A few states allow community property with right of survivorship; assets titled in this way also skip the probate process.[2,3]

Joint accounts can still face legal challenges. A potential heir to assets in a jointly held bank account may claim that it is not a "true" joint account, but a "convenience account" where a second accountholder was added just for financial expediency (an adult child able to make deposits and pay bills for a mom or dad with dementia, for example). Also, a joint account with right of survivorship may be found inconsistent with language in a will.[4]

POD & TOD accounts. Payable-on-death and transfer-on-death forms are used to permit easy transfer of bank accounts and securities (and even motor vehicles, in a few states). As long as the original owner lives, the named

Inside this Issue

FEATURES

beneficiary has no rights to claim the account funds or the security. When the original owner passes away, all the named beneficiary has to do is bring his or her I.D. and valid proof of the original owner's death to claim the assets or securities.[5]

Gifts. For 2017, the I.R.S. allows you to give up to $14,000 each to as many different people as you like, tax free. By doing so, you reduce the size of your taxable estate. Gifts over $14,000 may be subject to federal gift tax (which tops out at 40%) and count against the lifetime gift tax exclusion. The lifetime gift tax exclusion is currently set at $5.49 million per individual (and correspondingly, $10.98 million per married couple).[6]

Revocable living trusts. In a sense, these estate planning vehicles allow people to do much of their own probate while living. The grantor – the person who establishes the trust – funds it while alive with up to 100% of his or her assets, designating the beneficiaries of those assets at his or her death. (A pour-over will can be used to add subsequently accumulated assets to the trust at your death; yet, those assets "poured into" the trust at that time will still be probated.)[7]

"When the grantor dies, the trust lives on – it becomes irrevocable, and its assets should be distributed by a successor trustee without having to be probated."

The trust owns assets that the grantor once did, yet the grantor can invest, spend, and manage these assets while living. When the grantor dies, the trust lives on – it becomes irrevocable, and its assets should be able to be distributed by a successor trustee without having to be probated. The distribution is private (as opposed to the completely public process of probate) and it can save heirs court costs and time.[7]

Are there assets probate doesn't touch? Yes, there are all kinds of non-probate assets. The common denominator of a non-probate asset is a beneficiary designation. By law, these assets must pass either to a designated beneficiary or a joint tenant, regardless of what a will states. Examples: jointly titled real property, jointly held bank accounts with right of survivorship, POD and "in trust for" accounts, life insurance policies, and IRA, 401(k), and 403(b) accounts.[8]

Make sure to list/update retirement account beneficiaries. When you open a retirement savings account (such as an IRA), you are asked to designate eventual beneficiaries of that account on a form. This beneficiary form stipulates where these assets will go when you die. A beneficiary form commonly takes precedence over a will.[9]

Your beneficiary designations need to be reviewed, and they may need to be updated. You don't want your IRA assets, for example, going to someone you no longer trust or love.

If you are married and have a workplace retirement plan account, your spouse is the default beneficiary of the account under federal law, unless he or she declines to be in writing. Your spouse is automatically entitled to receive 50% of the account assets should you die, even if you designate another person as the account's primary beneficiary. In contrast, a married IRA owner may name anyone as a primary or secondary beneficiary, without spousal consent.[10]

To learn more about strategies to avoid probate, consult an attorney or a financial professional with solid knowledge of estate planning.

Should You Look at Insurance as an Investment?

The arguments for and against that point of view.

Is a permanent life insurance policy an investment? One financial professional might answer that question with a “no,” while another might say “in a sense, yes.” Just as some people see a home as an investment, while others do not. Opinions differ.

Everybody can agree on the core purpose of a permanent life insurance policy. It offers a death benefit (read: liquidity), which can help a household out in an economically trying time and potentially help heirs pay estate taxes. That death benefit may also be used to provide an inheritance. In a business context, it may help a company weather the loss of a key employee or fulfill a buy/sell agreement.

You can draw some parallels between a permanent life policy and a Roth IRA. Permanent life insurance is usually paid for with after-tax dollars, and after-tax dollars go into Roth IRAs. Both a Roth IRA and a permanent (“cash value”) life insurance policy permit tax-advantaged growth. Some whole life policies pay policyholders tax-free dividends, and tax-free income streams can be derived from Roth IRAs. When comparing only these features, a whole or universal life policy may seem akin to a Roth IRA for the risk averse.[1,2]

The comparison only goes so far, however. If you stop contributing to an IRA, you still have an IRA – an asset you own. If you stop paying premiums on a life insurance policy, that policy will lapse and you will forfeit what you have contributed to it. Also, while you determine how much you want to contribute to an IRA each year, the insurer determines how much you will pay in policy premiums per year.[3]

> *“Those who regularly max out their 401(k)s or IRAs, may find these policies very useful for purposes of diversification, risk management, and estate planning.”*

Those premiums could potentially rise. Low interest rates have recently meant lower profits for major insurers, and that is why some universal life policyholders have been hit with double-digit premium increases in the last two years.[4]

Yes, you may borrow tax-free against the cash value of a permanent life policy to pay for everything from eldercare to home improvement projects to college educations – but such loans can be expensive. Interest of 7-8% is common. If you fail to pay the loan off, the policy’s death benefit could be reduced.[3]

Some simply regard permanent life insurance as a risk management tool. You can find many financial professionals who see life insurance policies as poor retirement savings vehicles. What should you contribute to first: a workplace retirement plan that may offer you matching dollars, an IRA you own, or a life insurance policy that could have higher annual fees and lower annual returns than both?

Still, wealthier households may want to explore permanent life insurance options. The typical middle-class couple may not be able to afford the premiums for such policies, especially in retirement – and they may find they have better wealth-building options earlier in life. Executives and other high earners who regularly max out their 401(k)s or IRAs, however, may find these policies very useful for purposes of diversification, risk management, and estate planning. They may see permanent life insurance as a worthwhile choice – and as an investment.

An Estate Plan or a Wealth Transfer Strategy?

Are they worthwhile alternatives to traditional LTC policies?

There are three degrees of estate planning: advanced, basic, and none at all. Basic is better than none, but elementary estate planning can still leave something to be desired. While appropriate documents may be in place, they may not be able to fully convey what you really want to do with your estate.

Have you communicated your wishes to your heirs, in writing? Cut-and-dried, boilerplate legal forms will hardly do this for you.

In a wealth transfer strategy (as opposed to a basic, generic estate plan), you share your values and goals in addition to your assets. You hand down your wealth with purpose, noting to your beneficiaries and heirs what should be done with it. You also let them know how long the transfer of assets may take. This way, expectations are set, and you reduce the risk of your beneficiaries and heirs being unpleasantly surprised.

Are your heirs prepared to inherit your wealth? Prepare them as best you can during your lifetime. Introduce them to the financial, tax, and insurance professionals who have helped you through the years; they should know how to contact these professionals, and they should value their wisdom.

Explain the "why" of your estate planning decisions. For example, if you intend to transfer assets to heirs or charity through a living trust, a charitable remainder trust, or a qualified charitable distribution from an IRA, share the logic behind the move.

Also, let your heirs know that your wealth transfer strategy is dynamic. It can change. Five or ten years from now, you may have more or less wealth than you currently do, and life events may come along and prompt changes to your estate planning documents. Speaking of communication, this leads to a third, important aspect of a wealth transfer strategy.

Have you double-checked things? Look at your beneficiary forms and other estate planning documents. Are they up to date?

When a beneficiary form is out of date, it can invite problems – because legally, the instructions on a beneficiary form can overrule a will bequest. What if the named beneficiary is dead, and the contingent beneficiary is dead as well? What if your named beneficiary is estranged or divorced from you? In such instances, the asset may not transfer to whom you wish after you pass away. Looking at the wealth transfer process from another angle, you also want to make sure you have an executor who is of sound mind and who has the potential to remain lucid and reasonably healthy for years to come.[1]

A basic estate plan is better than procrastination. A *bona fide* wealth transfer strategy is even better. Involving your heirs in its creation, refinement, and implementation may help you guide your wealth into the future in accordance with your goals.

Are Financial Advisory Fees Tax-Deductible?

In some cases, they may be. Read on.

Do you itemize your tax deductions? Then you might have a chance to partly or fully deduct the cost of the advisory fees you pay for the investment, legal, and tax advice you receive.

Under federal tax law, you may deduct "investment fees, custodial fees, trust administration fees, and other expenses you paid for managing your investments that produce taxable income." In addition, you can "usually deduct legal expenses that you incur in attempting to produce or collect taxable income or that you pay in connection with the determination, collection, or refund of any tax." (These passages come from Internal Revenue Service Publication 529.)[1]

The big takeaway here? If you are in a fee-based investment program, you have an opportunity to deduct fees charged to you by investment professionals if such advice helped you generate taxable income. (Additionally, you can also possibly deduct the cost of hiring an accountant to help you prepare your federal tax return.)[2]

Before you claim these miscellaneous deductions on your Schedule A, know this. You can only begin to deduct miscellaneous items if the total of your miscellaneous deductions surpasses 2% of your adjusted gross income (AGI). Once your miscellaneous deductions are above that 2% AGI floor, you can deduct anything over that 2% threshold.[2]

In addition, some or all of your miscellaneous deductions may not be permitted if you find yourself subject to the Alternative Minimum Tax (AMT).[3]

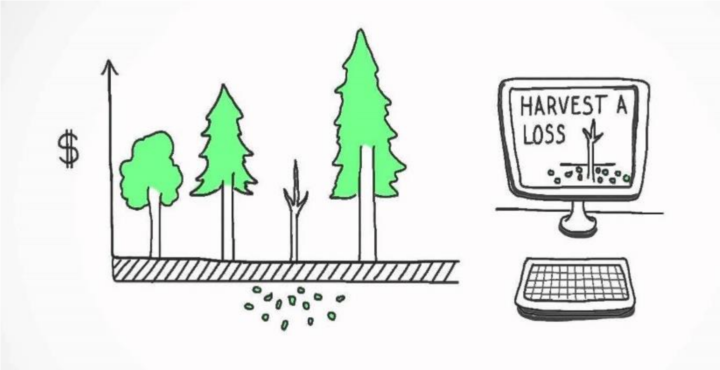
"If you are in a fee-based investment program, you have an opportunity to deduct fees charged to you by investment professionals if such advice helped you generate taxable income."

Claiming a miscellaneous deduction for investment fees could be advantageous. So often, these fees are paid with assets held inside of a taxable investment account or tax-deferred retirement plan. When these fees are paid with money coming from within the plan or account, they are not always tax deductible (as can be the case with IRAs). Paying these fees with dollars from outside the investment account or retirement plan leaves more assets in the account or plan to potentially compound.[3]

Consult your tax professional to see if you can legitimately claim such deductions. If you are in a position to do so and have a large investment portfolio under management, the potential deduction could be sizable.

Tax-Loss Harvesting

A useful year-end move to counteract capital gains.



It looks like 2017 will end up being a very good year for the stock market. Consequently, you may realize short-term capital gains. What will you do about them? You could do what many savvy investors do – you could "cash in your losses" and practice "tax-loss harvesting."

Selling losers to offset winners. Tax-loss harvesting means taking capital losses (selling securities worth less than what you first paid for them) to offset the short-term capital gains you have amassed.

While this doesn't get rid of your losses, it can mean immediate tax savings. It can also help you diversify your portfolio. It may even help you to position yourself for better long-term, after-tax returns.

The tax-saving potential. Sure, you can use this technique to put your net gains at $0, but that's just a start. Up to $3,000 of capital losses in excess of capital gains can be deducted annually, and any remaining capital losses above that can be carried forward to offset capital gains next year.[1]

So, by taking a bunch of losses this year, and carrying over the excess losses into 2017, you can potentially shelter some (or maybe all) of your long-term and short-term capital gains next year. This gives you a chance to shelter winners you've held (even for less than a year) from being taxed at up to 39.6%.[2]

The strategy in action. It is really quite simple. Step A is to pick out the losers in your portfolio. Step B is deciding which losers to sell. Step C is giving the green light to those transactions.

You must watch out for the IRS "wash-sale" rule, however. You can't claim a loss on a security if you buy the same or "substantially identical" security within 30 days before or after the sale. (The window is actually 61 days wide in some instances.) In other words, you can't just sell a security to rack up a capital loss and then quickly replace it.[3]

"Up to $3,000 of capital losses in excess of capital gains can be deducted annually …"

But you may be able to avoid the wash-sale rule by using an ETF to make a tax swap: an ETF for a stock or mutual fund, or perhaps an ETF for another ETF, as long as the ETFs are linked to different indices. Although these tax swaps are widely done, this is still something of a gray area, so consult a qualified tax professional first.[1]

Watch the fine print on wash sales. The wash-sale rule applies to your entire taxable portfolio, not just one taxable account within it. So, as an example, if you sell individual holdings of stock in a company, you still must wait for the wash-sale window to close before you can purchase shares of that same firm for your IRA. Also, the wash-sale rule applies to multiple taxable accounts – worth remembering if you and your spouse file your taxes jointly. If you sell a loser and your spouse or a corporation you control purchases the same investment within the time frame, you could violate the rule.[3,4]

The (minor) drawbacks. You may not wish to alter a carefully chosen portfolio to the degree that you must for tax-loss harvesting, especially if it has been built for the long term. Also, you could end up missing a rally in which an investment you have sold might take off.

You can only practice tax-loss harvesting in taxable accounts; tax-advantaged accounts are ineligible for this strategy. Transaction costs do add up, so think about those costs versus the potential savings before you begin – or alternately, harvest losses within a fee-based account.[5]

Not just a year-end tactic, but also a year-round strategy. Some investors harvest losses throughout the year, not just in December. You may want to ask the financial professional you know and trust how you can harvest losses this holiday season and beyond.

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:

Minimizing Probate When Setting Up Your Estate.
1 - nolo.com/legal-encyclopedia/why-avoid-probate-29861.html [9/26/17]
2 - info.legalzoom.com/difference-between-community-property-rights-survivorship-vs-joint-tenancy-21133.html [9/26/17]
3 - law.cornell.edu/wex/tenancy_by_the_entirety [9/26/17]
4 - jpfirm.com/news-resources/survivorship-rights-in-joint-bank-accounts/ [1/15]
5 - nolo.com/legal-encyclopedia/avoid-probate-transfer-on-death-accounts-29544.html [9/26/17]
6 - tinyurl.com/y7rf2ayh [9/6/17]
7 - thebalance.com/how-does-a-revocable-living-trust-avoid-probate-3505224 [11/14/16]
8 - thebalance.com/what-are-non-probate-assets-3505237 [6/21/17]
9 - marketwatch.com/story/make-this-estate-planning-move-right-now-check-your-beneficiary-designations-2017-06-29/ [6/29/17]
10 - connorsandsullivan.com/Articles/Beneficiary-Designations-Getting-the-Right-Assets-to-the-Right-People.shtml [9/27/17]

Should You Look at Insurance as an Investment?
1 - ameriprise.com/research-market-insights/tax-center/tax-planning/taxation-of-life-insurance/ [8/24/17]
2 - thebalance.com/is-life-insurance-a-good-investment-357230 [6/28/16]
3 - kiplinger.com/article/investing/T034-C032-S014-careful-buying-life-insurance-for-your-retirement.html [5/17]
4 - forbes.com/sites/nextavenue/2017/04/21/a-problem-with-life-insurance-thats-universal/ [4/21/17]

An Estate Plan or a Wealth Transfer Strategy?
1 - thebalance.com/why-beneficiary-designations-override-your-will-2388824 [8/28/17]

Are Financial Advisory Fees Tax Deductible?
1 - irs.gov/publications/p529/ar02.html [TY 2016]
2 - marketwatch.com/story/what-qualifies-as-a-miscellaneous-itemized-deduction-2015-03-24 [4/14/17]
3 - edelmanfinancial.com/education-center/articles/a/are-asset-management-fees-taxdeductible [1/13/17]

Tax-Loss Harvesting
1 - smartasset.com/taxes/all-about-tax-loss-harvesting [4/15/17]
2 - marketwatch.com/story/how-to-pay-less-in-taxes-on-your-investments-2017-05-31/ [5/31/16]
3 - thebalance.com/wash-sale-rule-3192972 [5/31/17]
4 - cnbc.com/2016/12/08/what-to-know-before-you-harvest-your-2016-tax-losses.html [12/8/16]
5 - doughroller.net/reviews/schwab-intelligent-portfolios/ [7/11/17]

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