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## ESTATE PLANNING LIBRARY

Number Fifteen

### Non Tax Reasons To Estate Plan

#### 1. Are estate taxes the primary reason to plan your estate?

Surprisingly, many, perhaps most small to moderate estates, are motivated more by personal, inter-family reasons than tax reasons. Even if the original interest of the client is saving their children the costs of estate taxes, the engagement can frequently turn into a design based on non-tax motivations. We believe that planning should always have as its focal point, doing what is right for the family. First the client and then loved ones, and not just tax avoidance.

#### 2. What are the typical non-tax reasons for estate planning?

Protecting the clients' heirs. There are many reasons that heirs need to have their inheritance received in a form that protects the inheritance and attempts to ensure that the inheritance benefits the intended heir and not someone else.

#### 3. What are the typical forms of risk that an inheritance needs protection from?

In the order of frequency, the typical risks are:

**Divorcing Spouses:** A child's marriage ending in divorce is the most frequent client concern that our firm is asked to plan for. Even if the state is not a community property state, many states have what is termed an "equitable distribution" rule. The equitable distribution rule means the divorce court has the authority to divide the property of the spouses in a manner that the court deems fair. Divorce is of particular concern to parents when there is a family business involved, since most clients don't want to be in business with an ex-daughter-in-law or ex-son-in-law. If it is important to keep your child's inheritance in the family, we can help you create a Legacy Trust that will provide valuable protection for your children.

- **Financial Irresponsibility:** An heir's inability to manage money runs a close second to a poor marriage choice. By financial irresponsibility, it is not meant that the child is a wanton wastrel, it simply means that the child, whether due to an overly developed sense of trust or concern for the welfare of others, would not wisely use the inheritance the child's parents worked so hard to accumulate.
- **Medical Concerns:** In some families there is a hereditary disease that may strike members of the descendants of either parents. This is an extremely important area in which the inheritance intended to benefit the children must be protected from the ravages of medical costs or the potential loss of need based government benefits for failing to plan for special needs. My experience is that parents want Medicaid to provide the basic care for the child and their bequest be used to make the child's lifestyle more comfortable than if the inheritance had been consumed by medical costs prior to Medicaid eligibility.
- **Income Tax Liens:** We are increasingly encountering clients who have children, whether due to irresponsibility, business downturns or simply bad luck, who are subject to IRS liens for unpaid income taxes. Planning for a child who could be subject to an income tax lien requires a careful design of the estate plan to avoid having the child's inheritance used to pay the IRS rather than benefit the child.

#### 4. What is the typical design of the protected inheritance?

Actually, there are several components which are present in all of the above scenarios, they are:

- **Legacy Trust:** The child's inheritance is left to an irrevocable trust that will never terminate during the child's life. At the child's death, the property will pass to grandchildren unless you wish to provide them the same protection for the reasons discussed above.
- **Independent Trustee:** The trustee of the children's Legacy Trust may be the child. We recommend a co-trustee for all our clients' children. While the co-trustee could be a responsible family member, having an older brother or sister hold the purse string can put a tremendous strain on family relations. We frequently recommend a professional trustee as a co-trustee although that is not always necessary.
- **Totally Discretionary Distributions:** In general, a creditor (e.g. a divorcing spouse, the IRS or other creditors) can have the same rights to the property of the irrevocable children's trust as does the child. However, if the trust is properly designed and administered this result can be avoided. In that case the beneficiary's inheritance will be protected from virtually all the bad financial events that can befall anyone.

**While protecting the inheritance of a child can be accomplished, it requires a properly designed estate plan by an experienced estate planning attorney.**