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Begin estate planning early to have greatest number of options

by David Kubicek

Most of us spend our working years accumulating things of value to pass on to our children. Estate planning helps to ensure that you'll get maximum enjoyment from your assets during your lifetime and minimize the taxes your heirs will pay.

A will can be used to make provisions for minor children, but as the children grow up, estate planning may center around continuance of a business or passing the estate to the children without having it taxed away.

"I liken estate taxes to a low tunnel and the estate to an 18-wheeler that must pass through," said J. Abels, president of Family Estate Planning of Papillion. "Throughout your lifetime you pile all your goods on the 18-wheeler, and when you die you are taxed on value greater than \$650,000, beginning at 37 percent and rapidly increasing to 55 percent.



Abels

"A tax planner's job is to show you how to put the goods on other vehicles so they can pass through the tunnels. Begin early, because as time goes on you'll have less flexibility in the use of some of these estate planning tools."

The unified credit this year is \$650,000. That's how much you can pass on free of estate taxes to anyone, either during your lifetime or after death.

"To get the greatest benefit from the unified credit you need to pass on something to your heirs that will appreciate significantly so the value increases in the next generation, not in your estate," Abels said.

The annual exclusion, which Abels refers to as "little dump trucks" in his 18-wheeler analogy, allows you to give anyone a maximum of \$10,000 tax-free. For example, a father with four children can give each of them \$10,000.

A trust is a contract in which the trust maker tells the trustee what to do with his or her property at various stages throughout his or her life. A trust is used to avoid the probate process, to minimize federal estate taxes, for second marriage planning or to protect the assets of children and grandchildren.

An irrevocable life insurance trust can either acquire a life



Blazek

insurance policy or transfer one into the trust in order to exclude it from the estate.

To qualify, the policy must have certain withdrawal rights for the beneficiary. The policy will provide liquidity after death for the payment of taxes and will increase the value of the estate.

For example, if a couple has an estate valued at more than \$3.5 million and an insurance policy of \$500,000 or more, up to half of the policy can be excluded from estate taxes. The policy could then be used to pay taxes or other obligations of the estate.

"In a revocable living trust, the trust maker is also the trustee," said Omaha attorney James T. Blazek, a principal in Emery & Blazek. "You're telling yourself how to handle your

property. You have the power to alter or amend the trust at any time as long as you are mentally capable of making decisions."

Many documents may go into a revocable living trust, but Blazek recommends that it contain at least five:

- The revocable living trust document.
- The pour-over will, which distributes any property that is left out of the trust or that is acquired after the trust is established. "Basically this document instructs that the property be given to the trust," Blazek said. "If you have small children, you'll need a guardian clause."
- Funding power of attorney, which gives your agent the authority to put any of your assets into the trust if you are disabled.
- Property power of attorney, which gives your agent authority to manage assets not in the trust if you are disabled.
- Health care power of attorney and a living will, giving your agent the authority to make health care decisions for you if you are unable to do so.

"Often there are many more documents, but those are the bare bones minimum," Blazek said. "To set up a revocable living trust, talk to an estate planning attorney. One difficulty is that people need to be educated about their options so they can make proper decisions. An initial consultation usually lasts one and a half to two hours."

Blazek, a member of the National Network of Estate Planning Attorneys, was a contributing author to the book "Generations — Planning Your Legacy," which gives a basic introduction to estate planning tools.

Charitable trusts are a little more complicated.

A couple could transfer highly appreciable assets such as real estate or stock in a public or closed corporation into the trust. The charity would sell the assets, and the couple would receive interest of 8 or 9 percent on the funds for the rest of their lives. When they die, the principal would be distributed to the charities they selected in the trust agreement.

"By doing it in a trust, they can avoid capital gains tax," said Joe Vitek, an attorney and principal of Ellsworth Vitek & Associates of Omaha. "The charitable lead trust is the reverse — the charities receive the interest, and when the

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grantors die, the money goes to their heirs. It's called the charitable lead trust because the charities receive the funds first, rather than waiting until the grantors' death.

"Trusts are an effective use of charitable giving because of the charitable deduction as well as the deduction on charitable assets that are sold."

Family limited partnerships and limited liability companies are different entities but are similarly treated at tax time. Both are useful for estate planning, but neither is right for every situation.

An FLP allows you to maintain control of the assets you place into it. It's also a way of passing the value to future generations where it can build.

"A couple with rental or farmland real estate or a business could transfer it to the family limited partnership and gift away some of the interests to children over their lifetime," Vitek said. "That would remove some of the real estate from their estate. When they die, the children could either continue the business or liquidate it and distribute the money among themselves."

An LLC is used in a similar way. As a company increases in value, the value also grows in the original founder's estate.

The main difference between the two forms is that an LLC can continue after the first generation owner's death, but an FLP typically must be terminated when the founder dies.

"LLCs are more popular in this state than FLPs, probably because they may allow for longer life of the company," Abels said. "They are fairly new, having been allowed for Nebraskans since 1993."

Abels said one of the main reasons for using an LLC or an FLP is for the discount on shares, which is typically 35 percent. That means almost \$15,000 worth of value can be passed on without going over the \$10,000 annual exclusion.

"The founder can maintain control of the business and at the same time allow the next generation to benefit from the increase in value without its share being taxed at the father's death," Abels said.

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