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Estate planning protects your investments after you're gone

by Ken Wall

If you don't plan how your estate is settled after you die, you can be sure Uncle Sam will do it for you.

So go ahead, don't write a will and don't worry about life insurance or making sure your business partner won't have to sell the company. Unless, of course, you care about what happens to everything you worked so hard for and whether the people you leave behind are taken care of.

Abels

Bonnett

McFarland

The bull market of the late '90s was evidence enough that an increasing number of Americans are committed to building their financial portfolios, but estate planning professionals say one of the biggest mistakes people make when formulating their investment strategies is not confronting their own mortality.

Granted, death isn't the most appealing topic, especially when it is your death you're talking about, but if you want the things you worked your whole life to build to be passed on to your family and partners, it's time to face the music.

"The objectives of estate planning are getting what you want to whom you want when you want and doing it as inexpensively as possible," said J. Abels, president of Family Estate Planning Inc. in Papillion, "but people have a problem recognizing, accepting and even talking about their mortality.

"It's a difficult subject to address, and it's an extremely emotional subject to talk about. As estate planning professionals, we have to very carefully and gently introduce clients to their situations and give them the knowledge and criteria on which to base their decisions."

The first rule in estate planning is that whether your estate is worth $1 or $100 million, it's still an estate and if you don't want the government to determine how it is divided, then you need to do it.

The second rule is that no two estates are the same and therefore no two estate planning strategies should be the same.

One of the keys to determining what plan is right for you is ownership. Ownership determines net worth, which in turn determines tax liability. From there you can begin to delve into the business of deciding who gets what once you are gone.

For all practical purposes there are about three categories of estate planning needs based on total net worth — basic, intermediate and complex. Depending on which category you fall under and how you want your property divided, tools are available to help you give as much as possible to the people and charities you choose and as little as possible to the tax man.

An important note on calculating net worth, Abels said, is remembering to factor in the value of life insurance policies. Once you have subtracted your liabilities from your assets you must add any life insurance you have to get an accurate figure on your total net worth.

Currently, the first $1 million of your net worth is automatically exempt from estate tax.

Patrick Bonnett, district manager at Waddell & Reed in Bellevue, said that amount isn't static, so you need to visit with your estate planning consultant on a regular basis to make sure your plan keeps up with the changing rules.

"In 2004 and 2005 it goes up to $1.5 million, then in 2006 through 2008 it's at $2 million," Bonnett said. "By 2009 the exemption will be $3.5 million. The estate tax is suspended altogether in 2010, but it reverts to the $1 million amount the following year. It's called the sunset provision.

"The probability of eliminating the estate tax entirely is pretty slim. The thing to remember is that you just can't plan too far ahead. The laws may change, so you should have your plan reviewed at least annually."

Among the many tools used to efficiently transfer your estate to your heirs are a will, a durable power of attorney, a medical power of attorney, trusts (both revocable and irrevocable), a buy-sell agreement for businesses, gifting strategies and limited liability corporations.

Within these tools are the ability to describe how you want your property divided, who should have control of your estate and financial affairs should you become incapacitated, what to do if sustaining your life became dependent on extraordinary measures, and methods to reduce the amount of your net worth that is subject to estate tax.

One of the most important, and often overlooked, tools is the buy-sell agreement. If you own shares in a business the buy-sell agreement is what protects your partner(s) and your family. Without it, there is no prescription for how your shares are to be transferred when you die. Your 12-year-old son could become chairman of the board unless you specify that your shares should be sold to your partner(s).

Another essential tool in estate tax planning is life insurance. Estate planning professionals recommend that those who haven't built a nest egg capable of providing for their spouse and children should consider investing in a life insurance policy.

"Most people haven't amassed an estate by the time they get started planning, so they need to create one," said Byron McFarland, managing director of the McFarland Group of Northwestern Mutual Financial Network. "That's where life insurance is used.

"If I am married and we've recently had our first child, I want to plan so that I

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can continue to provide my wife and child the quality of life they are accustomed to should I die.

"As a population, people arguably need to be saving more. If they aren't saving, then a lot of them need to spend a disproportionate amount on life insurance to make up for it."

As your net worth increases, Abels said, your need for life insurance policies may change. Early on, your policy serves as a major part of your estate. As your net worth grows, it will likely serve the purpose of protecting your estate.

For a detailed explanation of how the many estate planning tools can be used to protect your estate you may consult your financial adviser. Most estate planning professionals will tell you that if your net worth puts you in contention well beyond the bracket for paying estate tax, it is probably best that you seek the advice of someone who specializes in complex estate tax planning. Understanding the many intricacies of estate tax law can be the difference between selling half of what you own to cover the tax and not paying any tax at all.

Case in point — Mike Williams and Keith Deras, partners at Williams-Deras & Associates in Omaha, have a client in South Dakota who owns a considerable amount of property and has a net worth in the realm of $7 million. Though that client's net worth is well over the $1 million exemption, Deras said, his family will pay virtually no estate tax because he has been carefully planning his estate since 1965.

On the opposite end of the spectrum, that client's neighbor owned a large ranch in South Dakota and an even larger one in Texas. The neighbor's family isn't so lucky.

"He passed away several months ago, and it's a huge mess," Deras said. "My client told me that the gentleman was worth far more than he is, so that would put him well within the 55-percent tax bracket. They will probably have to sell a lot of the property, because pretty much half of the estate has to be paid off in taxes."