

## ABOUT THE AUTHOR



Terry LaBant leads our Wealth Strategies team.

Terry has 20 years of experience consulting with clients in six core

areas that influence the creation, preservation and protection of family wealth. They include: tax planning, business planning, succession planning, estate planning, retirement planning and asset protection.

## Is Your Estate Plan Overdue for a Checkup?

If you have an estate plan, you already took an important step toward getting your affairs in order. At that time, your attorney and you met to discuss your family and your financial situations. You also discussed your dispositive goals and perhaps how to achieve them tax efficiently.

Now a couple of years . . . or many, many years have passed. It's common to think that your estate plan was complete once you had signed it. However, changes to your family, to your financial situation or to a variety of laws may unintentionally and adversely impact your original plan.

We had a client pass away recently who had created an estate plan but never updated any of his asset titles or beneficiary designations. He also had moved to another state with laws that negatively differed from his prior state laws. Because he never took those final but important steps to implement his original estate plan, everything passed outside of the plan to different beneficiaries and in different amounts than he intended. His tax bill also was higher than it would have been under his intended estate plan.

We work with clients regularly who face these challenges, and we have observed many common themes when reviewing their prior planning efforts. Our review provides our clients with a fresh perspective and important checkup to measure their prior plans against their current needs and objectives. Here are some common areas that affect our clients' estate plans and may affect yours as well:

### Beneficiary Designations

Our clients often have estate plans that include trusts for tax planning purposes, and they also own life insurance individually. After reviewing their beneficiary designations, they often take steps to designate their trust as the beneficiary of their life insurance. This helps them to fund their trust and to take advantage of the tax planning opportunities it creates.

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Our clients also benefit from reviewing and then updating the beneficiary of their retirement accounts. Most married couples name their spouse as the primary beneficiary of all retirement accounts to take advantage of income tax planning options available when passing retirement assets from one spouse to another.

## *“Is your estate plan complete? Or have changes unintentionally and adversely impacted it?”*

They then often consider whether their trusts can or should be the contingent beneficiary of their retirement accounts otherwise. Some trusts are suitable to serve as beneficiary of retirement accounts and others are not. The beneficiary designation of your retirement accounts could affect their available payout options and subject them to income tax much earlier than necessary. Our clients often benefit from a review of these important beneficiary designations.

### **Asset Titles**

We often find that our clients still own assets jointly with a spouse or another family member. In these cases, any tax planning anticipated by a trust plan could be ignored and defeated entirely.

Or, we find that our clients acquired new assets after funding their trusts originally and then inadvertently reverted back to joint ownership of new assets for convenience. Or, we find that clients intentionally titled property jointly to create a specific gift of a particular property to a favored family member.

Any of these situations can lead to a discrepancy between who receives certain assets and how they receive them (in trust or

outright, for example). Other times, this also could even lead to a discrepancy between who bears the tax burden for these assets (the trust or the individual, for example).

Many trusts provide that it fund all tax payments regardless of whether the assets are a part of it or not. In these cases, the trust assets can be depleted to pay the taxes related to assets that pass outside of the trust. This result may not be fair in many family situations.

In addition to these tax concerns, some clients purchase property in another state but never title it in the name of their trust. This could lead to an unexpected guardianship or probate in another state if the client becomes disabled or dies. These additional legal and court costs could be avoided simply by titling out of state property into the trust.

### **Outdated Documents**

Some clients believe that they only need to complete an estate plan once. Others simply have forgotten how long ago they prepared their plan and have lost track of its details. Or, they understandably believe that their plan was written in a way that would self-adjust as certain tax laws and family situations change over time.

Changes to federal and state tax laws over the past few years have highlighted problems with prior estate plans more than ever. The changes to the federal estate tax laws (and increased exemption amounts) cause trust assets to be allocated differently than before. The corresponding changes to many state estate tax laws (in response to newer federal laws) have caused other problems with unanticipated results as well. In worse cases, state estate taxes are being assessed earlier and at higher rates than before.

Or, clients simply move from one state to another when they retire and forget to update their plans to conform with the different laws of that new state.

### Family Changes

Many family situations have changed significantly since clients completed their estate plans. Their children may have grown and they probably have accumulated more wealth than they had years before. They also may have moved or their relationships with friends or advisors may have been replaced by others.

A quick review of that prior plan may lead to additional tax planning. Or, the review may prompt the appointment of new successor executors or trustees. This may be true especially for clients who named a bank that no longer exists to fill that role or which has changed names due to mergers and buyouts along the way.

This review also may prompt new trust structures for children. They may become subject to different distribution standards, expanded or contracted powers over trust assets or even changes to provide

long-term creditor protection. With more wealth to inherit, many parents are rethinking how it may affect their children and make changes that are unrelated to tax planning. Many parents now consider capping an inheritance or retaining assets in trusts designed to protect their children from themselves or sometimes more importantly from others.

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