

LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE



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*EXECUTORS OF 2010 ESTATES HAVE UNTIL JANUARY TO MAKE ESTATE TAX DECISIONS

Everyone will remember the “wonderful boon” that was the 2010 estate tax repeal, which (in theory) allowed decedents to pass on their assets free of any estate taxes. But if you had a loved one who passed away in 2010 then you know that the situation was complicated in December of 2010 when Congress decided to retroactively extend the tax, giving estate executors the following choice:

- Choose not to pay estate taxes, but subject the assets of the estate to carryover basis rules (meaning heirs will pay capital gains taxes based on the price of an asset when it was initially acquired by the decedent); or
- Pay estate taxes under the 2011 rules, with a \$5 million per-person exemption and a 35 percent top rate, but with a stepped-up income tax basis (meaning heirs will pay capital gains taxes on the price of an asset when it was inherited.)

Executors have had almost a year to consider their options, but now it is just about time to make the decision, because the Internal Revenue Service is giving executors of large estates from 2010

decedents until January 17, 2012 to opt out of the estate tax.

Many financial planners and estate planning attorneys have already done their research, and they’ve found that opting not to pay estate taxes may end up costing you more in the long term. One of the main pluses about estate tax is that it is paired with a stepped-up income tax basis. You should not be paying both estate tax and income tax on the same assets. If opting out of the estate tax regime means opting out of stepped-up basis (for income tax purposes) then many executors will want to seriously consider going with the estate tax.

Of course, each estate will be different depending on a number of factors, including the size of the estate, the nature of the assets, the preferences of the beneficiaries, and any previous planning the decedent may have done. Executors should consider their options carefully, and consult with an experienced estate planning attorney before deciding whether opting out of the estate tax is really in their best interest.

** In the State of Michigan, an executor is referred to as a personal representative.*

SHOULD A BENEFICIARY SERVE AS A PERSONAL REPRESENTATIVE/TRUSTEE?



When someone creates a will or a trust of course they want to choose a dependable and trustworthy person as personal representative or trustee. For most people this means someone close to them—a family member or friend, or often the most responsible of their adult children. However, this often means that the person they’ve chosen as personal representative or trustee is also a beneficiary.

The question that occurs is this: ***Is it a conflict of interest to be both personal representative/trustee and beneficiary?***



As personal representative or trustee a person has a legal duty to manage the property in the decedent’s estate for the benefit of the trust or estate beneficiaries. This means that while the personal representative/trustee should be compassionate, he or she must act in an equal and unemotional manner toward ALL the beneficiaries.

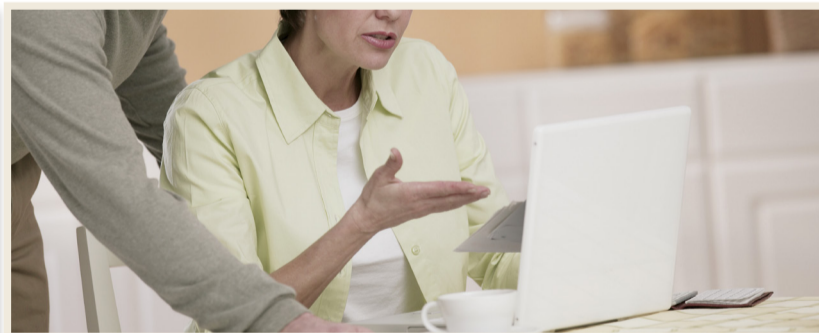
A beneficiary, on the other hand, is often by definition emotional. Even those beneficiaries who are not concerned with the monetary aspect of their inheritance (and let’s be honest, many heirs are more concerned with the dollar amount than they might let on) will likely be emotionally invested in the heirlooms of the estate. Many family feuds are sparked when siblings can’t agree on who gets the family silver or great grandma’s engagement ring. And the potential for conflict only increases when real estate is involved.

If you are creating your will or trust, the best way to avoid this conflict is to be as specific as possible in your instructions to your executor and beneficiaries. Spelling out in no uncertain terms who gets the family silver will decrease the chances that the personal representative will be tempted to take advantage of his or her position. You may also want to consider naming a disinterested party as a trust advisor or co-personal representative to provide checks and balances throughout the administration process.

If you are a beneficiary who is also serving as personal representative/trustee there are a few things you can do to ensure you keep your personal representative and beneficiary roles separate:

- You may want to consider contacting a probate or estate planning attorney to mediate or oversee the process.
- Rely on random but fair methods (such as flipping a coin, drawing straws, or organizing a round robin) to distribute unassigned personal property with emotional value.
- Be sure to involve an impartial appraiser if real property is involved.
- If all else fails, an personal representative or trustee is always permitted to step down and hand the role over to a qualified and disinterested party.

THE ESTATE PLANNING POST EVERY WOMAN SHOULD READ



Although couples usually come into our office together to discuss their estate plans, quite often it’s the women who lead the discussion about planning for the guardianship of children, and the men who lead the discussion about financial planning. But it is just as important for women to be involved in every aspect of estate planning—even the financial aspects.

Estate planning is a subject which has a significant impact on women—in fact, if statistics about life expectancy are any indication, estate planning may actually affect women even more than men. According to recent studies of Americans 65 and older, 42% of women (but only 14% of men) are widowed. This longer life expectancy, combined with the tendency for women to marry older spouses, and their (generally) lower lifetime earnings means women are far more likely to see their living standards compromised in retirement if proper estate planning isn’t done.

How can women ensure that this doesn’t happen to them? The best answer is for women to be involved in the estate planning process—not just the issue of guardianship, but financial issues as well. Talk to your partner about what happens if (as is likely) your spouse passes away first leaving you a widow. Talk to your spouse and your family about how the remainder of your estate should be distributed upon your death. And don’t discuss the topic in vague

terms, bring your estate planner or financial planner into the conversation and talk about cold, hard numbers.

Our firm understands that this is not the easiest conversation to begin. Talking about money in our culture has generally been considered a “dirty topic,” not to mention that nobody likes considering their own (or their spouse’s) mortality, but the consequences of avoiding the discussion can be disastrous.

If you’d like to start a conversation about estate planning with your family but aren’t quite sure how, you may want to consider starting with current events or an anecdote about other people. You could mention a movie you saw, a book you read, or a news report about a celebrity. If you’re trying to bring up the subject with your parents as opposed to your spouse you may want to consider using yourself as an example. Telling them “I just did my own estate plan, don’t you think you should update yours?” can be a great way to open the conversation.

Alternatively, you may simply want to bring this very newsletter to your spouse/parent/children and read it together. Getting the conversation started is the hardest part, but it’s also the most important. If you can get the ball rolling, our firm can help with everything else.



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