Had Some Changes Recently?
Time to Make Some Estate Planning
New Year's Resolutions!

Welcome to 2023! New Year’s is a time for resolutions and estimates are that one-third of Americans will make a financial resolution. Each year we encourage our clients to include estate-planning resolutions in their financial commitments and as such we want to share these guidelines to help get you started.

Take a look at these planning considerations that are vital to protect your family and finances and help you better achieve your goals. Please do not hesitate to contact us if you have questions, or would like to update your estate plan, or get started on creating one!

Core Estate Planning Documents

If your will, revocable trust, power of attorney, living will, health care proxy and HIPAA release are more than three years old, or if you’ve experienced major life changes (e.g., divorce, marriage, new children, or significant health issues), it’s time to review these documents again. Are the individuals you’ve named in various roles still appropriate? Are there personal concerns not addressed in the documents? Has the reduction in the estate tax exemption by half in 2026 been reflected?

Adult Children

Once a child reaches age 18, a parent may not make medical or financial decisions on their behalf without being appointed agent. Yet most adult children don’t have a durable power of attorney or health proxy (and if your adult child has any significant assets, a will). Resolve to help guide adult children to get critical documents, even simple ones, in place.
If you haven’t communicated anything about your planning or documents to your adult children, start to consider what information is appropriate to communicate and when. Begin the process, even with small steps, as appropriate this year.

UPDATE YOUR BALANCE SHEET

There are numerous benefits to preparing and updating a personal financial statement or balance sheet, and providing a copy to your planning team (CPA, estate planning attorney, financial advisor, etc.):

Disability planning. If you become ill or incapacitated, the individual you appoint under a power of attorney or revocable trust as your agent or successor trustee will have to marshal assets, pay bills, and assist you. An organized list of assets will help them do so.

Asset allocation considerations. Your investment advisor needs to know all the assets that you have so that they can properly evaluate and update (rebalance) your investment allocation. With the economy in constant flux, it’s especially important.

Asset protection. When protecting assets from suits and claims, which everyone should consider, you should evaluate each asset owned and consider how that particular asset might be protected. Analyze each asset as to significant risks it might entail (e.g., a rental property). Having a detailed, current, and accurate balance sheet is a starting point for this analysis.

Property and liability insurance planning. Review your risks and assets to be sure you have adequate property and liability insurance coverage starting with a current balance sheet with some details as to what various assets are and how they’re owned.

REVIEW BENEFICIARIES, DEEDS, TITLES, ETC.

Review beneficiary designation forms, deeds, and other account titles. Many assets (e.g., retirement accounts, life insurance policies and annuities) aren’t transferred by will, but rather are based on a beneficiary designation form. Review the beneficiary designation forms for your various accounts to determine whether they’re consistent with your estate plan. The SECURE Act 2.0 has, for some, dramatically changed the decision as to whom or what trust to name as beneficiary. If you haven’t yet done a complete review of all of this, commit to do so in 2023.

If an asset is titled jointly, on death it passes to the surviving joint tenant. This may not be the result you wish; that is, would you rather the interest in the home pass to a trust for the benefit of the survivor?

Bank accounts and other assets can be listed as “Pay on Death to” or “Transfer on Death to” and in similar ways so the ownership documents govern who inherits the accounts on your death, which may be inconsistent with your plan. For example, if the goal was to pass these assets into flexible and protective trusts, the wrong title may prevent that.

REVIEW INSURANCE PLANNING

Financial forecasts may be essential to evaluating insurance needs. If you engaged in significant estate planning in recent years (e.g., because of the estate tax proposals in 2020 to 2021), your insurance needs (or wants) may have been substantially affected. Explore (1) disability insurance to protect you by replacing some of your lost income if you’re disabled; and (2) long-term care insurance to offset the costs of health care if disabled or as you age, to determine if your coverage is sufficient.

Have your entire insurance plan reviewed to determine if you have sufficient coverage to protect yourself and your loved ones. Life insurance policies should be periodically reviewed to determine if they’re performing reasonably. Don’t assume that a past purchase is just a done deal. Insurance needs to be monitored periodically.

TRUST INCOME TAX PLANNING

Irrevocable complex (nongrantor) trusts' tax brackets are compressed, so they pay the maximum tax rate at a mere $14,000 or so of income. This is significantly lower than an individual's tax brackets (that is, a married couple might not reach the top income tax bracket until $600,000 or so income). You and your professional team should monitor the income tax profile of your trusts. Review the permissible beneficiaries for each trust, analyze their tax profiles, and analyze and determine how and when to make trust distributions to reduce the overall income tax burden of the family.

ADMINISTRATION OF TRUSTS & ENTITIES

If you have any irrevocable trusts (e.g., insurance trusts, spousal lifetime access trusts or asset protection trusts) or business/investment entities (e.g., limited liability companies, family limited partnerships and S corporations), review their governing legal documents, as well as other formalities of proper operation of trusts and entities to determine if you're taking all required and/or recommended actions. If you don't adhere to the formalities and respect the independent reality of each trust and entity, the courts, creditors, and Internal Revenue Service may not respect them either. This could potentially undermine your planning and goals.

If you have any questions on points raised in this newsletter, or other aspects of your existing estate plan with us, please give us a call. Or, if you need to create an estate plan, please contact us for a free consultation.

We look forward to serving you & wish you the best.

We are here to provide you with legal guidance you can trust while placing safety and health as a priority. We are happy to meet in person or to accommodate other needs, including Facetime,

SKYPE and ZOOM for virtual, face-to-face connections. Contact us directly to speak with someone who can help answer your questions.
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The Law & Stein Newsletter is a monthly publication to share useful information with our clients in matters of estate planning, tax planning, inheritance dispute litigation, elder abuse, probate and business litigation, and premises and product liability defense.

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