INSIGHT ON ESTATE PLANNING

Now's the time to review your estate plan

Qualified charitable distributions
Use QCDs to transfer IRA funds to charity

Is a split annuity strategy right for you?

ESTATE PLANNING PITFALL
You sell real estate for $1

OCTOBER / NOVEMBER 2022

LEGACY PROTECTION LAWYERS, LLP

100 - 2nd Avenue South, Suite 900 • St. Petersburg, Florida 33701
T: 727.471.5868 F: 727.498.5696

www.LegacyProtectionLawyers.com

Now's the time to review your estate plan

When you first dipped your toes into estate planning, you were probably told to start with a legally valid will, above everything else. Check. Next, you may have been advised to create an estate plan that incorporates your will and other legal documents. Check. Now you think you can rest easy.

Not so fast. That estate plan you created years ago — and perhaps stuck in a drawer or a file cabinet — should be dusted off and carefully reviewed. You may find it to be out of date or in need of minor tweaking. In any event, it's likely that some changes are required.

The end of the year is an optimal time to act. Get a fresh start on the upcoming year by taking time now to review and revise your estate plan as needed. Here are several questions to consider.

Any changes due to life events?

Certain life events should trigger a review of your estate plan regardless of the time of year. This often includes events like marriage, divorce or remarriage; birth or adoption of a child, grandchild or great-grandchild; death of a spouse or another family member; or an illness or disability affecting you, your spouse or another family member.

Other events that should trigger a review of your plan are the sale of assets or changing financial circumstances. Typically, your finances can change drastically if you sell a business interest, sell your house or incur an extraordinary debt. This may affect the disposition of assets in your will or upend other plans.

Also, tax laws are constantly evolving. Currently, your estate can benefit from the current inflation-indexed $12.06 million federal gift and estate tax exemption, but this is scheduled to revert to $5 million in 2026. Your estate plan should account for changes of this magnitude.

Who's your executor?

Review your choice of executor of your will. This person is entrusted with significant duties, including collecting, protecting and taking

A matter of trust

If your estate plan doesn't include a trust, it might be time to take the plunge. This can achieve a variety of objectives such as credit protection, guarding against spending sprees by young adults and tax benefits.

Essentially, the trust holds assets on behalf of beneficiaries. Assets are generally managed by the trustee you appoint based on the terms of the trust. (Typically, you must pay fees for the trust creation and management.)

If you already have a trust in place, review it with other aspects of your estate plan. Then make any changes you deem to be necessary.

inventory of the estate's assets; filing the estate's tax returns and paying any taxes due; handling creditor claims and the estate's claims against others; making investment decisions; distributing property to beneficiaries; and liquidating assets, if necessary.

It's not an easy job, so be sure you've chosen the right person. Depending on your situation, you may delegate the duties to a family member, such as a spouse or adult child, or to an estate planning professional. At the very least, it's recommended that you rely on a pro to be part of your estate planning team. Remember to name a contingent executor in case your top choice can't fulfill the responsibilities.

Along the same lines, examine your choices for powers of attorney should you become incapacitated. Frequently, you might hold one person responsible for financial affairs and another for health care decisions. As part of your review, confirm that you have the best people lined up for the jobs.

Who's getting what?

Your will governs the disposition of most of your possessions such as securities, real estate, jewelry and collectibles. Make sure that the division of assets among the named beneficiaries still meets your intentions. You may want to revise designations due to one or more of the life events previously discussed.

Also, other assets like retirement accounts and life insurance policies pass to beneficiaries outside your will, based on the applicable documents. For instance, if one of your two children is designated as the sole beneficiary of your 401(k) plan, that child will pocket the entire amount, even if the residuary clause in your will provides a 50-50 split between the children.

For this reason, check the beneficiaries of these accounts to determine if they still meet your objectives. Plus, you don't want any conflicts to lead to legal challenges down the road.

If you own a home, make sure it's titled to ensure ownership passes to the person, or people, you want to inherit it. Check into the applicable state laws. In addition, weigh other considerations for titling a home, including protection from creditors and potential tax benefits.

Get the ball rolling

Bear in mind that this is just an overview of what an estate plan review should entail. Of course, every situation is different. What's most important is that you recognize the need for this approach and don't procrastinate any longer. Your estate planning advisor can help you determine if any revisions to your estate plan are needed. •

Qualified charitable distributions

Use QCDs to transfer IRA funds to charity

After your retirement, or if you're retiring soon, you may be more inclined to make donations to charity. However, you may receive little or no tax benefit from your contribution, depending on whether you itemize deductions. As a result, you might rely on a tax code provision to achieve your charitable intentions. With this technique, you arrange to transfer qualified charitable distributions (QCDs) directly from an IRA to a qualified charitable organization.

IRA distributions

In the normal course of events, distributions from a traditional IRA are taxed at federal income tax rates topping out at 37%. The distributions can also cause net investment income tax (NIIT) complications. Therefore, retirees may decide to postpone IRA distributions as long as federal law allows.

Of course, if you take distributions from an IRA and contribute the money to a charity, you may claim a deduction for the monetary contribution if you itemize deductions. In effect, at best the contribution can offset the taxable income. But recent tax legislation has increased the standard deduction, potentially eliminating the tax benefit of charitable contributions for some taxpayers.

If you didn't itemize deductions in 2021, you were allowed a limited charitable deduction of up to $300 ($600 for joint filers). This tax break hasn't been extended for 2022. Current tax law creates an opportunity for certain older individuals to include QCDs in their estate plans.

QCDs in action

By using QCDs, you avoid the "middleman" for a transfer of IRA funds to charity. In other words, the money goes directly from your IRA to the organization. It never touches your hands. You must make the necessary arrangements with your IRA custodian.

The payoff: If certain requirements are met, the transfer isn't treated as a taxable distribution subject to federal income tax. Conversely, you can't deduct the contribution either, even if you itemize. Essentially, it's a "wash" for federal income tax purposes.

To qualify for this tax treatment, you must be at least 70½ years old at the time of the transfer. In addition, the maximum annual QCD allowed under law is $100,000 per taxpayer. A married couple can double this amount to $200,000 if each spouse qualifies and contributes the full amount.

Be aware that certain charities — including donor-advised funds, private foundations and supporting organizations — aren't eligible to receive QCDs. While Roth IRAs may be used for QCDs, there's generally no tax advantage to doing so. In fact, if you want to use the assets in your Roth IRA to fund a charitable contribution, in most instances it would, from a tax perspective, be better *not* to make a QCD from the Roth IRA. Rather, take the withdrawal and then make the contribution directly to the charity.

How QCDs affect RMDs

Notably, a QCD satisfies the rules for required minimum distributions (RMDs) from traditional IRAs. This is often cited as a main reason for arranging QCDs — if not the sole reason.

With a traditional IRA, you must begin taking RMDs by April 1 of the year following the year in which you turn age 72. Then you must continue to take RMDs in each succeeding year. The RMDs are based on life expectancy tables from the IRS and the value of the account on December 31 of the prior year.

RMD rules also apply to beneficiaries who've inherited traditional IRAs. But mandatory lifetime distributions aren't required for participants in Roth IRAs. (Roth IRA beneficiaries must empty out their accounts under special rules.)

Other tax-related considerations

Be aware that a QCD reduces your adjusted gross income for various other tax purposes. This can have a domino effect on the rest of your tax return, including deductions and credits you may claim, alternative minimum tax liability and imposition of the NIIT.

Also, if you're receiving Social Security benefits, the benefits are subject to tax under a complex formula. A QCD enables you to effectively lower your income for this calculation, thereby potentially reducing your tax liability.

Is a QCD the right move for you? Turn to your estate planning advisor for the answers. •

Is a split annuity strategy right for you?

The average length of retirement is 18 years, according to the U.S. Census Bureau. And with today's medical technology, it could last significantly longer. Thus, a major challenge is balancing the need to maintain your standard of living while preserving as much of your wealth as possible for your family to enjoy after your death. A split annuity may be one strategy to consider. It creates a current income stream while preserving wealth for the future. Let's take a closer look at how it works.

ABCs of annuities

An annuity is a tax-advantaged investment contract, usually with an insurance company or other financial services provider. You pay either a lump sum or annual premiums, and, in exchange, the provider makes periodic payments to you for a term of years or for life.

For purposes of the split annuity strategy, we'll focus on "fixed" annuities, which generally provide a guaranteed minimum rate of return. Other types of annuities include "variable" and "equity-indexed," which may offer greater upside potential but also involve greater risk.

An annuity is a tax-advantaged investment contract, usually with an insurance company or other financial services provider.

Annuities can be immediate or deferred. As the names suggest, with an immediate annuity, payouts begin right away, while a deferred annuity is designed to begin payouts at a specified future date.

From a tax perspective, annuity earnings are tax-deferred — that is, they grow tax-free until they're paid out or withdrawn. With a "nonqualified" annuity, a portion of each payment is subject to ordinary income taxes, and a portion is treated as a tax-free return of principal (premiums). Note, however, that once the principal has been fully repaid, subsequent payments are taxable in full. (Qualified annuities are those that are purchased as part of a retirement account, and, with rare exception, the payments are fully taxable.) The ability to accumulate earnings on a tax-deferred basis allows deferred annuities to grow more quickly than comparable taxable accounts, which helps make up for their usually modest interest rates.

Annuities offer some flexibility to withdraw or reallocate the funds should your circumstances change. But keep in mind that — depending on how much you withdraw and when — you may be subject to surrender or early withdrawal charges. Most annuities provide some exceptions to these charges under certain circumstances, such as withdrawals attributable to disability, loss of employment or death of the annuity owner. Withdrawals before age 59½ may also be subject to 10% tax penalties.

Split annuity strategy in action

A split annuity may sound like a single product, but in fact it simply refers to two (or more) annuities, usually funded with a single investment. In a typical split annuity strategy, you use a portion of the funds to purchase an immediate annuity that makes fixed payments to you for a specified term (10 years, for example) and apply the remaining funds to a deferred annuity that begins paying out at the end of the initial annuity period.

Ideally, at the end of the immediate annuity term, the deferred annuity will have accumulated enough earnings so that its value is equal to your original investment. In other words, if the split annuity is designed properly you'll enjoy a fixed income stream for a term of years while preserving your principal.

At the end of the term, you can reevaluate your options. For example, you might start receiving payments from the deferred annuity, withdraw some or all its cash value, or reinvest the funds in another split annuity or another investment vehicle. Deferred annuities often allow you to withdraw some of their cash value penalty-free, but depending on how much you withdraw or reinvest, you may be subject to early withdrawal penalties or surrender charges.

Providing peace of mind

Here's the bottom line regarding split annuities: while they don't offer superior rates of return, they can offer the peace of mind of a fixed income stream while preserving as much wealth as possible for future generations. Contact your estate planning advisor with questions regarding a split annuity. •

ESTATE PLANNING PITFALL

You sell real estate for $1

Someone may have told you a story along these lines: Years ago, my grandfather bought land along the shore in (fill in a desirable resort area) for $1,000. He built a vacation home on the property for $50,000 and his family enjoyed weekends and summers there.

When my grandfather retired, the home and adjoining property were worth $2 million. Then he sold it all to my parents for just $1. So, my parents paid virtually nothing for this $2 million property that was removed from my grandfather's taxable estate. A genius move, right?

Likely, no. Despite what the storyteller says, there are potentially dire tax consequences to this technique under current federal tax laws. First, the IRS could, and probably will, deem the transfer to be a gift because the parents received it for far less than its fair market value. So, it's subject to gift tax.

Second, and more significantly, the family forfeits the usual step-up in basis on inherited property. Instead, the property's basis is what

the grandfather paid for it — $1,000 — plus $50,000 in improvements, for an adjusted basis of $51,000. This means the parents are sitting on a whopping taxable gain of $1,949,000 if they sell the property.

Better approach: Don't be swayed by mythic tales. The tax benefits of a $1 real estate sale are illusory. Presuming that the objective is to keep the property in your family, and that estate tax liability isn't a factor, from a tax planning perspective it's generally better for the next generation to inherit the property, thereby taking advantage of the step-up in basis.

Knowledgeable, Responsive, Reliable, Diligent and Compassionate.

Our boutique law firm consists of five practicing estate and trust, litigation, tax and business attorneys. Our philosophy is to provide the highest levels of legal counsel, expertise and service to our clients.

Knowledgeable, **Responsive**, **Reliable**, **Diligent** and **Compassionate** are the words most often heard from our clients when they describe our firm. ***Knowledgeable*** because our team is intelligent and well-informed and has an understanding of this area of the law that comes with experience or education. ***Responsive*** because we are always quick to react to and answer our client's questions. ***Reliable*** because we are consistently good in our quality of work or performance and thus able to be trusted. ***Diligent*** because we work hard and are attentive and persistent in doing our job. ***Compassionate*** because we have a strong desire to help our clients.

Approximately half of our attorneys practice in the areas of tax, estate and trust planning and administration, asset protection and business exit planning. The rest of our attorneys focus on trust, estate, and guardianship litigation. By limiting our law practice to these areas, we actually can provide our clients with more value. Our combination of expertise means we can plan and protect our client's family and business wealth so that they can prosper.

We do things differently. We make the complex simple, initiate the uncomfortable but necessary conversations and our entrepreneurial spirit drives us to deliver superior results. Fascinated by innovation, we strive to redefine the way we practice law every day.

We invite you to explore our website at **www.LegacyProtectionLawyers.com** or **contact us directly** at (727) 471-5868 to learn more about our firm and how we can help you.