

SIMPLIFY

By Blake W. Kirkpatrick

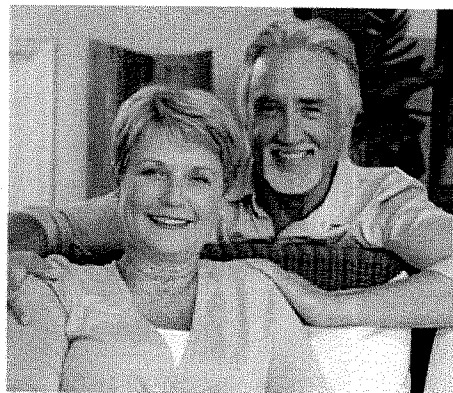
In the last 20 to 30 years, as tax laws became more and more complicated many people's estate plans also became more and more complex as a result. For many, estate planning required sitting down with their estate planning attorney to construct a plan to deal with the applicable estate and gift tax considerations with the goal of minimizing or eliminating the possibility of paying estate and/or gift tax as a result of the transfer of wealth to the next generation. Now that the federal estate and gift tax exemptions have dramatically increased over the course of the last couple of years and as a result of favorable portability laws (see below), the goal of simplification is within reach. This article will address a few items to consider in simplifying your estate plan.

REVISIT

If you have not recently updated your estate plan, it is definitely time to revisit your Will and/or Trust to take advantage of the changes in the tax laws that previously may have been a focal point of your prior estate plan. Looking back only 10 years, even those with modest wealth of less than \$1,000,000, may have been affected by the federal estate tax. Therefore, many plans were drafted to take into consideration each spouse's lifetime exemption from federal estate tax and contained complex trust provisions to minimize the exposure to federal estate tax at each spouse's death. Often, this meant that married couples would need to take title to assets in a way that was less convenient than had they taken titled jointly as husband and wife. While for a small percentage of people, this form of complex tax planning is still valid and/or necessary, the vast majority of people do not necessarily need complex planning. Since most estate plans are completely "revo-cable" or "modifiable" it is easy for one to revisit and, in fact, modify or change the estate plan with the goal of simplification.

KEEP ALL OPTIONS OPEN

The current estate tax exemption for each individual is \$5,430,000. In addition, estate tax exemption portability is available in certain circumstances whereby a surviving spouse can utilize the unused estate tax exemption of the most recently predeceased spouse. For married couples, this means a



combined estate tax exemption of up to \$10,860,000 is available. The effect is that over 99% of persons' estates are really out of the realm of an estate tax problem. For those spouses with aligned estate planning goals (and assets likely titled in joint name anyway), a simpler estate plan might be to leave everything outright to the surviving spouse at the first death, whether by beneficiary designation, joint ownership or through a Will or Trust, followed by simple distributions at the second death too.

Nevertheless, despite the ability to simplify, it is important to keep your options open, with respect to your estate plan. Flexibility is still very important and maintaining control over the ability to make changes in the future still makes sense. Presumably, the estate tax exemption could drop back down to the old levels if new legislation is passed, albeit with the current make-up of Congress, this is less likely in the near future. Accordingly, although having a very simple estate plan in place may be desired, keeping a few contingencies in the estate planning documents to address tax issues may still be advisable. In other words, you can simplify, but have a back-up plan!

CHANGE IN FOCUS

As alluded to above, simplification can be achieved with respect to a person's estate plan, especially at the first death. That being said, now that the focus is less on taxation it may be time to direct attention to other issues that are often overlooked or inadequately addressed. For some, it may

still be important to plan for how one's estate will pass to their heirs (i.e., outright or in trust). Statements such as "I do not care how my child spends his or her inheritance, but whatever you do don't allow anything to go to my child's spouse," are inconsistent and identify areas that may need to be addressed through some careful planning. Another thing that has changed is that more and more children face creditor issues and/or divorce. As such establishing trusts for your children or other heirs at the second death might become the primary focus. All in life is not that simple after all.

On the other hand, for those who may have included trusts for beneficiaries as a part of their estate plans and it is foreseeable that the trusts will be minimally funded or there are a number of beneficiaries dividing a declining estate, it may be time to revisit those plans as well. Small trusts with only a few hundred thousand or less are not cost effective to administer and it might be a good time to revisit or simplify that as well (especially when a corporate trustee is nominated as they are turning down more and more of these appointments).

Last, estate planning extends beyond the Will and/or Trust and it may be a good time to review how your traditionally non-probate assets such as life insurance or retirement accounts will pass at death. Unfortunately, inadequate or incomplete beneficiary designations can often cause these types of "non-probate" assets to pass through a probate administration at death of the insured/principal. That will lead to anything but simplicity!

In conclusion, now that your spring cleaning is over and you have simplified your life in other areas (such as cleaning out the garage), it is as good a time as ever to revisit and maybe simplify your estate plan.

This Article does not constitute legal advice and may not be relied upon as such. Each individual's facts and circumstances are different. If you have any questions regarding your particular situation, please consult with legal counsel.



Blake W. Kirkpatrick

Blake W. Kirkpatrick is a Florida Bar Board Certified Wills, Trust & Estates attorney with the law firm of Salvatori, Wood, Buckel, Carmichael and Lottes. Blake's practice is concentrated in the areas of estate and tax planning, charitable planning, business succession planning, and estate and trust administration.

Salvatori, Wood, Buckel, Carmichael & Lottes
239.552.4100 | www.swbcl.com