Top Estate Planning Issues Generation X Needs To Consider

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Generally, when individuals consider planning their estate and organizing their personal affairs, two things come to mind -- death and taxes. Organizing one's affairs for prior generations was simpler, as assets were generally easier to discern, locate, value and distribute. However, for Gen X (those born between the early 1960s and the early 1980s) and future generations, estate plans are no longer limited to traditional assets, such as real estate, stocks and bonds, and personal property. When organizing their affairs, Generation Xers have a vast array of issues to contemplate. Additionally, today's estate planning is not just about death and taxes, but includes protection of one's assets from the potential claims of creditors as well as personal income tax planning. Moreover, advancements in technology and the emergence of digital assets have expanded the planning process.

Here are some of the key planning issues that Gen Xers need to consider:

A virtual afterlife. Social media has significantly changed the way we live and communicate with others. Many people take great care to control their image on social media sites such as Facebook, Twitter, Instagram and LinkedIn. However, deciding who should have access to your social media accounts after death is an increasingly sensitive and significant issue. Social media accounts often contain personal messages, photos and videos and other information of an extremely private nature. Social media websites generally have strict privacy policies and often do not allow access to the accounts of users who have passed away. Facebook, for example, when notified of a user's death, may "memorialize" the user's Facebook page, but may not allow the family access to the account. As more information is stored on the Internet, Gen Xers should contemplate their "virtual afterlife" and have a plan detailing who should have access to what information.

Digital assets. In addition to information stored on a personal computer or "in the cloud," such as pictures, videos or music, "digital assets" include e-mail accounts, domain names, account registrations and bitcoins, to name a few items. In the past, a person had only to check the mail to find the assets in a deceased relative's estate. But as banking and bill payments have moved online (even to our phones) it has become increasingly difficult for executors to determine the extent of a person's assets after he or she dies. Like social media websites, many e-mail services such as Gmail and Yahoo have strict user agreements to protect the privacy of their customers. Gmail, for example, recently created a feature that allows users to designate someone to have access to their e-mail accounts when they die. This must be done through Gmail and is akin to naming a beneficiary on a bank account.

Self-settled trusts. Although testamentary planning is often not a priority for fortysomethings, protecting assets from potential creditors may be. Our society is more litigious than it was only a couple of decades ago. It is commonplace for a high-net-worth individual to protect wealth by transferring assets to a trust for the benefit of family members. In most states, however, if the transferor retains a beneficial interest in the trust, the assets remain exposed to his or her creditors.

A self-settled trust is one that allows the creator of the trust (commonly referred to as the “settlor” or “grantor”) to also be a beneficiary, while also providing some level of protection of the assets from the claims of any future creditors. Such a trust can also be designed to provide estate and gift tax savings. These trusts have been around since the early 1990s, and a number of states have self-settled trust statutes, each with varying levels of protection. Nevada, South Dakota and Delaware tend to be the most popular.

Care must be taken when creating self-settled trusts, however, since there have been few cases testing their strength. It’s uncertain, for instance, how much protection a settlor will enjoy if he creates a self-settled trust in a state other than the one he resides in. One technique to mitigate the risk that creditors will make claims against the trust is to draft it so that the settlor is not an immediate beneficiary, but someone who can be added as one at a later date, whenever events warrant, by an independent person or entity. Additionally, it is recommended that self-settled trusts only make up a portion of one’s asset protection plan and that Gen Xers use other techniques as well, such as family LLCs or high-cash-value life insurance.

Super-charged income tax charitable trusts. High-earning Gen Xers may have a greater sensitivity to income taxes. The top federal income tax rate is 39.6%, and the top capital gains tax rate is 20%. Add the 3.8% tax on net investment income and state and local income taxes for those individuals who live in places such as New York City, and the effective rate can be well in excess of 50%.

One way to reduce one’s income tax liability is to increase income tax deductions. One way to do that is through charitable lead annuity trusts (commonly referred to as “CLATs,”) which allow individuals to take deductions and give proceeds to charity. CLATs can allow a person to take a significant income tax deduction in the year they are created, even though the payments to charity will be spread out over a number of years. Establishing a CLAT can be a valuable technique for those Gen Xers who have a large income tax event they must recognize in a particular year -- because they sold a business, received a onetime bonus or exercised stock options, for example.

Life insurance as an asset class. Earlier generations had two choices when it came to life insurance -- term or whole life -- and life insurance was only considered for the risk of an untimely death or to finance estate taxes. Today, there are multiple variations of term and permanent policies, including variable universal life insurance and indexed universal life insurance. With the risks in the stock market and real estate bubbles, life insurance has become viewed as a relatively safe asset class, and one that generally carries a significant level of creditor protection. For example, Florida law provides that the cash value of a life insurance policy and the death benefit payable to the policy beneficiaries are protected from the covered person’s creditors. Finally, a person’s ability to pull cash out tax-free from certain policies at a later date during the life of the policy has also helped ignite the popularity of life insurance.

While traditional estate planning documents such as wills, powers of attorney, health-care surrogate designations and living wills are still a vital part of any estate plan, technology and the markets have given Gen X more to consider than their parents or grandparents did not too long ago. In the words of Ferris

Bueller, “Life moves pretty fast. If you don't stop and look around once in a while, you could miss it.” The same goes with organizing one’s affairs and protecting one’s family and wealth.