

Do Your Loved Ones a Favor: Take a 10-Minute Self-Examination of Your Estate Planning

“Is it time for me to review my estate planning?” That is a question that many people face from time to time. The goal of this little memo is to turn that broad question into a series of more specific questions that may help you more effectively identify some relevant issues that may need attention. Recognizing that good estate planning “merely” concerns all of your assets and all of the people you love most may provide the incentive for you to spend 10 minutes taking this self-examination. We hope it proves helpful to you.

1. Do my closest family members know where the executed originals of my will and other important estate planning documents are kept?
2. My current will was done in _____ (year) and I last reviewed it thoroughly in _____ (year). Given changes that have occurred since I worked on my will, including changes in asset values, would it be a good idea for me to have my overall plan and documents reviewed and possibly updated?
3. The tax exemptions that are so important in estate planning were recently increased substantially. The exemption for each of the transfer taxes – i.e., gift taxes, estate taxes, and generation-skipping taxes – for an unmarried individual is now more than \$11 million (and indexed for inflation) or more than \$22 million for a married couple. Does my planning now in place work properly in this new era of higher exemptions?

(Note: Until 2011, we had to make sure that assets were allocated in a certain way between spouses in order to take full advantage of these exemptions. This allocation issue became less important as a result of a 2011 “portability” statute that allows gift and estate tax exemptions that are unused by the spouse who dies first to be used by the surviving spouse if certain procedures are followed.)

4. Do I remember whom I have left in charge of my estate? Do I still have the best possible lineup of original and successor Executors and Trustees to carry out my intentions?



“ Good estate planning “merely” concerns all of your assets and all of the people you love most. ”

Question for those who have named family members as Executors: How will my family actually get my estate administered? (Don't underestimate the complexity of this assignment!)

5. Questions for those who have named a bank as an Executor or Trustee:
 - a. Do I (and my family) understand how banks operate when they are given these responsibilities?
 - b. What do banks charge?
 - c. Would it help for me to meet with the bank representatives to discuss these issues?
6. Do I have any assets (such as a valuable second home, certain business assets, certain heirlooms, etc.) that need special attention not addressed in my existing documents?
7. I am aware that who will receive some of my most important assets at my death will be determined not by my will but by beneficiary designation forms filed with third parties (such as IRA holders or life insurance companies), and I also realize that “contingent beneficiaries” will be entitled to these assets if my “primary beneficiary” does not survive me. Should I review the beneficiary designation documents I have signed for my life insurance policies, IRAs, and 401(k) accounts to make sure I know who will be entitled to these assets (as primary beneficiary or as contingent beneficiaries) at my death? Do I understand who will pay the estate taxes on these assets? (**Comment:** *This is another tricky issue that most people do not fully understand and that may call for explanation by counsel.*)
8. Are there aspects of my planning that may lead to squabbles or chafing within the family that I ought to give special attention to? **Examples:** *Potential problem areas between the children and a stepmother, leaving a valuable asset to the children jointly, the possibility that some, but not all, children may seek executor's fees, etc.*
9. Are there any asset disposition possibilities that would simply make me feel better about my will?
 - a. Should I give more assets to the children (and/or grandchildren) at my death without making them wait for my spouse to die?
 - b. Should I provide any bequests to faithful employees or to someone dear who really needs help?
 - c. Should I include more protection for parents or other special relatives?
 - d. Should I give more to a charity in honor of _____ or to promote _____ ?

10. My basic plan is that eventually my (or our) assets will pass to or for the benefit of the children. Have I provided the proper ages for my children to receive their inheritance outright? Under my/our current wills, are my children likely to be over 60 when they get most of their inheritance? Should I rethink the timing of when to give the assets to the children or grandchildren?

Question for those with long-term trusts for their children: Do I understand how much in after-tax assets may go to the children outright by a certain age and how much will remain in trust during their lifetimes? Is this balance between "outright" and "long-term trust" assets best for the children?

11. Do I have sufficient life insurance in place to keep my family in its accustomed lifestyle if something happens to me or my spouse?
12. Do I know the range of what my ultimate estate-tax bill is likely to be? How will cash be raised to pay not only the tax bill but also debts and expenses of administration?

Given the tremendous increase in the federal estate-tax exemption, it is unlikely that most couples whose combined net worth is less than \$22 million or so have to worry about estate taxes if they jump through the proper hoops. (The threshold for a single individual without a deceased spouse is around \$11 million.) Just remember that proper wills are not just about estate taxes. As suggested above, there are still dozens of non-tax reasons for making sure your will is up-to-date and that it addresses both dispositional and problem-avoidance issues as effectively as possible.

13. I feel okay about my will, but have I sufficiently considered those strategies that could reduce my family's ultimate estate tax bill?
- a. Do I have an effective annual giving program in place for my children and grandchildren? What can I afford to give them and what form should I use for making gifts?
 - b. Knowing that it generally takes time for most tax-savings strategies to produce the best results, is it now time for me to explore family limited partnerships, GRATs, charitable trusts, sweetheart loans to the children, etc.?
14. If I get very sick or am in a terrible accident and cannot manage my affairs, I want to have both financial and health care powers of attorney in place that will allow the people I trust most to make decisions on my behalf. I last signed powers of attorney in _____ (year). Is my lineup of agents named then still okay or should it be revised?
15. Should I prepare a memo to my family discussing certain assets that may need special attention, my wishes concerning my funeral, the advisers or business associates I trust (or don't fully trust), my feelings about certain sensitive issues, or other items that might prove helpful to family members (or others) if they have to deal with these matters in my absence?
16. Do I have other "knotty" issues affecting my planning that need the input of counsel?

Good luck as you work on developing estate plans that are as thoughtful and tax-effective as possible! If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Wealth Planning Lawyers



Robert G. Edge
Senior Counsel
404.881.7470
robert.edge@alston.com



Jacob L. Kaplan
Associate
404.881.4296
jake.kaplan@alston.com



Margaret Ward Scott
Partner
404.881.7962
margaret.scott@alston.com



Benjamin T. White
Partner
404.881.7488
ben.white@alston.com



R. Mark Williamson
Partner
404.881.7993
mark.williamson@alston.com