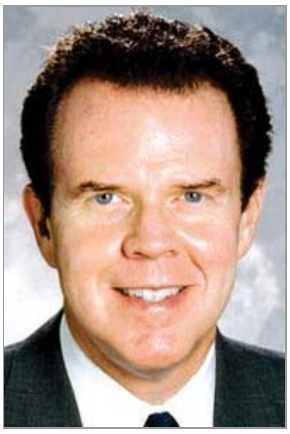
Idaho Business Review **http://idahobusinessreview.com**

Don’t procrastinate on wills and estate planning

by Andrew Leckey

Published: September 21st, 2010



Andrew Leckey

Do your will and estate plan still make sense? Do you even have a will and an estate plan? Many Americans can’t provide solid answers in 2010.

With so much angst about their personal finances in recent years, the question of what will happen after they’re gone is the last thing on their minds. They might also be putting off reexamining the reduced values of their investments and homes.

“You must first get over the fear that once you do this you will die,” said Linda Kanter, president of Kanter Tax & Trust Consulting Inc., Naperville, Ill. “Then you must gather all the financial documents you’ll need so you can make a will and a trust.”

It appears unlikely Congress will pass estate tax changes this year, which means there is no estate tax in 2010 and the estate tax for 2011 has yet to be determined. A retroactive estate tax to include 2010 isn’t out of the question, even though it would likely prompt angry lawsuits.

Temporary tax murkiness due to congressional inaction is, however, no reason to overlook the primary reason for wills and estate planning: Without estate documents, the state will determine who receives your assets.

“Rather than taxes or investments, deciding who should get whatever you have when you die should be the starting point,” advised Thomas Haeuser, attorney and Accredited Estate Planner (AEP), Sonoma, Calif. “Estate planning is such a ‘head-in-the-sand’ thing for many that they won’t talk about it to a lawyer or other knowledgeable person.”

A will spells out beneficiaries of your assets, any specific gifts, what should be done with remaining assets, a guardian for minor children and nomination of an executor. While there are self-help books or software for a basic will, an attorney will be necessary as your property and accounts become more complex. Done right, it saves headaches for heirs.

“You need to revisit your estate planning every five years regardless of what’s going on in the stock market or economy,” said Rita Brown, CPA and AEP, Montgomery, Ala. “Make sure that there hasn’t been a family change you haven’t taken into consideration.”

It is important to update the beneficiary designations in individual retirement accounts, 401(k) plans, life insurance policies and annuities. Individuals often fill out account beneficiary information on a company form when beginning a job. If they don’t update it with each new child’s arrival, their eldest may one day wind up with everything.

“Having the wrong IRA beneficiary after a divorce is also a big mistake,” added Brown. “It doesn’t matter if you name your current spouse in your will because, if you forgot to make a change on the IRA document, the money goes to your ex-spouse.”

It is preferable to have individuals, rather than your estate, named as beneficiaries on an IRA or 401(k), said Brown. Naming a person provides the tax advantage of spreading out the tax deferral for a longer period of time. Having no person named will mean the retirement account must be cashed out.

Sometimes people forget which of their accounts are jointly held. That’s significant because money in a jointly held account goes directly to the survivor.

The value of your estate, which includes all of your assets, is the fair market value of your property after your debts have been deducted. Reexamine the value of your holdings to see what proportions must be revised.

A living trust, created while you are alive, lets you control how your estate is distributed and helps heirs avoid probate court and its fees. Though it makes the most sense for larger estates due to the cost of setting it up, a living trust does eliminate complications for your heirs.

“A will can sometimes be broken, but it’s harder to deviate from the terms of a trust,” noted Kanter.

You transfer ownership of your property and assets into the trust. You can serve as trustee or select a person or institution to be the trustee. If you are the trustee, however, you must name a successor trustee to distribute assets at your death. Terms of the living trust need not be made public. A living trust doesn’t remove the need for a will, since you generally still need a will to cover assets not transferred to the trust.

“Just remember that you can have this beautiful document, but if you don’t change the title of your assets to match your trust it’s not going to be complete,” said Kanter.

The Federal Trade Commission recommends that you seek the advice of an estate planning attorney or financial advisor about your need for a living trust. State law often requires that an attorney draft the trust. If transfers aren’t handled correctly, the trust could be invalid.

As far as the estate tax is concerned, it is scheduled to return next year at the rates that applied 10 years earlier. The amount exempt from taxes would therefore be $1 million and the tax on the rest 55 percent. Some estate experts, however, expect Congress to pass a retroactive restoration of the 2009 estate base with a $3.5 million exemption and 45 percent rate.

In the meantime, don’t let congressional inactivity render all your planning inactive as well.

Andrew Leckey answers questions only through the column. Address inquiries to Andrew Leckey, 555 N. Central Ave., Suite 302, Phoenix, Ariz. 85004-1248, or by e-mail at andrewinv@aol.com.

Complete URL: **http://idahobusinessreview.com/2010/09/21/dont-procrastinate-on-wills-and-estate-planning/**