Planning Perspective

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The past year was exciting. We had a chance to learn about adjusting to changes in the world of tax laws and government benefits for long-term care. While so much remains unsettled, time and time again we see the value of good planning and working with qualified financial and legal professionals.

Estate Tax Relief You Can Live With

Following over 10 years of uncertainty and frustration, Congress finally completed comprehensive and permanent federal estate tax reform. Under the American Taxpayer Relief Act of 2012, fewer people will live in fear of paying estate taxes or gift taxes.

The heart of the new estate tax law is a larger tax exemption that allows any estate of less than $5 million to pass tax-free at death. Married couples still get two exemptions, meaning that a husband and wife can pass $10 million to their children tax free. This effectively eliminates the estate tax burden for many families.

Estate taxes and gift taxes have always been linked in the law. As a result, the new law also eliminates gift taxes for estates under $5 million. While rules regarding reporting gifts of more than $13,000 in a calendar year remain in place, the risk that those gifts would trigger a tax is greatly reduced.

Overall, fewer families need to worry about the estate and gift taxes. Fewer estate plans need to be set up specifically to avoid or reduce those taxes. Without the looming threat of estate and gift taxes, estate planning can be simpler and easier.

Changing of the Guard: What You Fear Most Now

For the past 10 years, estate taxes have topped the list of "most feared financial risks" for many families. Just when Congress reformed estate taxes earlier this year, Medicaid emerged as a new financial risk to take over at the top of the list.

For years, I could reassure clients that the Medicaid rules were much fairer than they believed. However, the recent changes to Wisconsin law strip a lot of the "family friendly" aspects out of the system. We are left with a system that is closer to people's worst fears than ever before. That means new challenges, new considerations for long-term planning, and new options to consider and evaluate.

New Medicaid Law: Your Estate Plan in the Crosshairs

Wisconsin's 2013 budget bill ("Act 20") passed in July and effective in October, included provisions that radically change financial and estate planning. The new law makes two changes to the rules regarding government benefits for nursing home care and assisted living care:

- Families will have fewer options when planning to qualify for government benefits when a family member needs long-term care.
- Once a family member qualifies for government benefits, the State becomes the primary beneficiary of the estate – including gifts made after benefits start and any transfers at death by non probate transfers such as joint ownership, payable on death, trusts and life estates.

Under these new rules, people will need to start planning for long-term care issues far earlier than they do now – more than five years before there is a need for long-term care. Families will also need to consider using more complicated strategies. More than ever, planning under the new rules will involve balancing short-term costs and inconvenience against the potential future benefits if they ultimately need long-term care.

The biggest change is to the "estate recovery" rules, which allow the State to come back after death to recover the amount of benefits received by the deceased. In the past, once a married person qualified for Medicaid to pay nursing home bills, the spouse living at home could write a Will or Revocable Trust and transfer any remaining assets to their children at death. The new rules give the State priority over the children, prohibit any lifetime gifts and prevent transfers at death until the State is repaid. The State can even void transactions like selling a house, a car, or a family business to one of the children.

This is a whole new way of seeing the world. One of the greatest challenges will be to think differently about estate planning. It is no longer a "given" that the children will receive an inheritance. Many families will face intrusions by the State after death and need to manage potential legal battles. Even more families will find unexpected and unhappy surprises unless they adjust to the new reality.

Planning Alert: Life Estates and Irrevocable Trusts

Wisconsin's new Medicaid laws target transfers at death, giving the State new power to recover assets after a Medicaid recipient dies. The law does not include a "grandfather" provision that would exempt transactions that were put in place under the old law. As a result, planning that was perfectly acceptable last year just became dangerous.

Under the old law, life estates in a house and irrevocable trusts were common strategies to protect assets. The new law is particularly harsh when applied to these two strategies. They either do not work the way they were supposed to or they do not work at all.

Planning for long-term care benefits always involved a warning that the rules can change at any time. When it comes to life estates and irrevocable trusts, it is now time to take another look at the planning, evaluate how the new law will apply, and perhaps make some changes. We will be putting together a series of seminars and client-only forums to review the changes to the Medicaid law. If your planning involves a life estate or irrevocable trust, you should keep an eye out for those announcements and make an effort to attend one of those sessions. You may also want to make an appointment to review the planning one-on-one.

Estate Planning for the Young: POA-Teen™

For the past few years, we have been focusing on making estate planning available for our clients' children and grandchildren who are 18, 19 and 20. The Wall Street Journal's Anne Tergesen recently wrote a great article entitled "Why Young Adults Need Estate Plans." In the article, she explains the importance of this type of planning.

When young people turn 18 and become adults, they need to have Financial Powers of Attorney, Health Care Powers of Attorney, HIPAA Waivers, and other important documents just like their parents. The need may actually be greater because these young people and their parents often rely on the belief that parents would be able to get involved as when the children where minors. POA-Teen™ is what we call our quick and simple process to put together the necessary documents for young adults.

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Question of the Year

In the past year, we seem to have answered one question more than any other. Clients with Revocable Trusts for their estate plan have asked "Should I re-title my home and other assets so that the Revocable Trust shows up as the owner?" There is a long and detailed answer, but we will try to give a brief explanation suitable for this newsletter.

Igor Dimovski/iStock/Thinkstock

Single people, widows, and widowers absolutely need to re-title their assets. For single people, a Revocable Trust will not avoid probate unless the trust is the owner of record for their investments, bank accounts, and real estate. As always, there are exceptions, but this is a good rule to start with.

Married people should find a Marital Property Agreement along with their Revocable Trust in their estate planning documents. The Marital Property Agreement will automatically put assets into the Revocable Trust at death, provided the assets are located in Wisconsin. Thus, for a Wisconsin house, Wisconsin bank accounts, and investments with a Wisconsin investment advisor, changing ownership to the Revocable Trust is not required to avoid probate. Again, there are exceptions in some cases, but this is a good place to start.