POST MORDEM ESTATE PLANNING

EQUALS EXCESSIVE TIME, DOLLARS AND GRIEF

Life's grand finale is death. Yet our financial affairs go on in the form of the assets we accumulate during our lifetime. The problem is the dramatic conflict (if we fail to plan properly) between tax, estate, and probate laws and how we wish to pass along these assets at death. The business owner is particularly vulnerable.

At death, a snapshot of your assets and their methods of transfer is taken by probate court and the various federal and state tax agencies. This snapshot becomes frozen in time. If with proper planning, time, dollars and grief can be minimized. If not, as is usually the case, wasted time, excessive costs and the mental grief of your loved ones can be maximized. The key failure regarding estate planning is that it normally occurs after death (post-mortem). All the "skeletons" come out of the closet without your having the ability to defend your assets or your family.
All third parties involved, probate court, tax agents, accountants, and attorneys are at liberty to take advantage. Why? Because dead men and women do not get mad.

They also do not vote, which is why congress is so strongly pursuing "revenue enhancement" in the estate tax area. You will never see your estate's Federal Estate Tax Return (Form 706). But, it may become a devastating document. Its dollar requirements (with marginal brackets up to 40%) may force liquidation of valued assets such as your business, real estate, collectibles, etc. The following are problems that we see quite frequently in working with closely held businesses and professional practices.

1. Lack of liquidity to pay estate taxes, forcing the unplanned and forced sale of assets.
2. Improper life insurance plan design, making life insurance a liability – not an asset – by:
3. Allowing life insurance to increase the value of the estate and, therefore, estate taxes through "incidence of ownership" and, in corporate tax environments, non-operating asset rules.
    a) Failure to abide by transfer for value rules, making death proceeds income taxable.
    b) Improperly income tax "deducting" premiums while living, making death proceeds income taxable.
    c) Exposure of "corporate" insurance proceeds to the "Alternative Minimum Tax".
4. Lack of proper trust and will design
    a) Incorrect wording
    b) Non-coordination of asset titling
    c) Improper use of the unified credit and unlimited marital deduction tools
    d) Not using the vast array of other available design tools
    e) Lack of proper business continuation clauses
5. Improper business buy-out agreements
    a) "Family-attribution" pitfalls
    b) Failure to peg business value for estate tax purposes (made difficult by IRC 2703)
    c) Improper wording and failure to update on a timely basis
    d) Lack of proper disability buy-out wording
    e) Not allowing "surviving" business owners a stepped-up cost basis (increases capital gain tax regarding a future sale
    f) Having no buy-out arrangement at all
6. Allowing asset growth to distort the value the IRS places on estate assets (business, real estate, etc.)
    a) Failure to peg values of assets
    b) Failure to freeze values of assets
    c) Failure to shift assets to others
7. Allowing assets to move through the non-tax cost areas of probate
    a) Allowing others to control your assets, your business and, therefore, the financial affairs of your loved ones
    b) Tangling up the running of your business in court
    c) Providing public access to your financial affairs (probate court dockets)

In summary, reacting to "death" after death is an expensive proposition. Taxes, inflation and probate can devour huge chunks of what you spent your lifetime building. Human nature dictates that we don't think

about death, let alone plan for it. However, proper planning through trained, experienced and dedicated advisors can provide you with what I call "psychic income" or peace of mind – the psychic payback of knowing that the goals and objectives you worked so hard for will continue after you are gone.
The choice is yours; positive, intelligent action now or excessive amounts of time, dollars, and grief later!

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PERSONAL ASSETS
Will/Trust

STOCKS & BONDS
Titling

REAL ESTATE
Titling

INSURANCE
Beneficiary
Ownership

BUSINESS
Business
Agreement / Will

I.R.C.
Chapter 14

PROBATE

2031-2(f)
1. Peg
2. Freeze
3. Shift

Federal Tax
Return 706

YOUR DEATH

F.E.T 37-55%
State Tax

3-10%
Non-tax Tax

TIME
DOLLARS
GRIEF

PROBATE

SPOUSE'S DEATH

37-55%F.E.T.
State Tax

3-10%
Non-tax Tax

FAMILY

Coordination of:

- **Trust and Will Design**
- **Titling**
- **Gifting**
- **Estate Size**
- **Unified F.E.T. Credit**
- **Collateral Assignment**
- **Liquidity**
- **Marital Deduction**

Supervised Neglect

Business Continuation Clause

Skeletons in the Closet

Over Insurance