



The Risks of Not Having an Estate Plan

By - Rick Mayes

You're probably aware of the **good news about the federal estate tax** - the amount that's exempt from the tax is going up, the estate tax rate is going down, and it's scheduled to be eliminated entirely in 2010. That's a big advantage for anyone who wishes to pass on assets to the next generation while also minimizing Uncle Sam's take. But there is a downside:

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- The current estate tax relief has a "sunset" provision, which means that without further congressional action, the tax will be back in full force in 2011 for an estate over \$1 million.
- Federal estate tax isn't the only consideration. Nineteen states also have inheritance taxes, and heirs may face a significant tax bite from federal capital gains taxes and federal and state income taxes.

The fact is, establishing an effective plan for transferring your assets to your heirs is as important as ever. Asset transfer planning should be part of your overall financial plan to secure your family's financial future. An effective estate plan helps you ensure that your family will be well provided for and that your wishes will be carried out the way you want them to be.

The risks associated with failing to establish an estate plan fall into three categories - financial, legal, and emotional.

Financial Risks

The biggest danger of inadequate planning is the potential for taxes and fees to severely erode your wealth. But there are other considerations that can be equally important.

An effective estate plan can also help you lower the probate and administrative fees, as well as state and federal income taxes that your heirs might owe. California in particular has expensive statutory fees for the probate process. Another consideration is the short window of time that heirs have to pay estate taxes - just nine months. If they don't have adequate cash on hand to pay the taxes when they're due, they might have to liquidate other family assets.

Legal Risks

The primary way to protect against legal risks associated with transferring your assets is by having a legal and updated will and/or revocable living trust. Without one, your state laws would govern the disposition of your assets rather than you. Different states have different rules that they apply to this situation, known as dying intestate.

You may want to think about transferring as much of your assets as possible outside probate. The probate process can delay distribution to heirs by months or even years, and assets in probate are open to public scrutiny.

Another important reason to plan in advance is to avoid the difficulties that your family would face if you became incapacitated. With the proper legal documents in place, power of attorney and health care proxy can be given to trusted relatives or fiduciaries to take care of your affairs and health decisions in your time of need.

Finally, a sound estate plan can help avoid the possibility of legal challenges among family members if you failed to give clear direction on distributing your assets.

Emotional Risks

The emotional strain of not having your affairs in order can be significant. After years of hard work to build up your assets, it's disconcerting to think that a large portion could be eaten up in taxes and fees, or that you wouldn't be in control of how they were divided among your heirs.

The emotional strain extends to the survivors as well. It can be draining on families to decide how a deceased loved one wanted assets passed on to a spouse, children, grandchildren, or charitable causes. The biggest emotional burden can fall on the shoulders of the surviving spouse. The spouse will have to try to determine how you would have wanted to distribute your assets - without you being there.

Take Action Now!

The best time to begin planning to avoid the financial, legal, and emotional risks of improper estate planning is now. We can provide some considerations for your estate plan, and referrals to estate planning attorneys who can implement the best plan to meet your goals. Don't wait to develop this important part of your financial plan!