Estate planning for executives

Peace of mind and control are benefits from preparation and planning. **Interviewed by Leslie Stevens-Huffman**

Dealing with the death or disability of a loved one is difficult for families under any circumstances. However, without adequate preparation and by not clearly communicating your wishes in advance, you could inadvertently make difficult times even more trying for those left behind.

Probate proceedings, estate taxes, business succession planning, and decisions regarding the care and education of minor children are just a few of the issues that family members might have to deal with, devoid of your input, should you die or become disabled without an estate plan.

Setting aside the time to discuss the subject with your family and then drafting a written plan can provide peace of mind for everyone involved.

Individuals with a total net worth of $100,000 or more should have an estate plan, says Eric Lodge, partner and head of the Trusts, Estates and Probate Practice Group with Procopio, Cory, Hargreaves & Savitch LLP. Life insurance and equity are two great causes for advance planning.

"Without estate planning documents such as wills and trusts, executives lose control over the situation, as does their family, because the legal system will step in and presume what might have been intended," says Lodge.

Smart Business spoke with Lodge about what executives should know about estate planning and the steps they should take to put their affairs in order.

What is estate planning?

Estate planning is the process of working with clients to make choices about how their estate and personal affairs will be administered in the event of their death or disability. An estate planning attorney will incorporate tax savings techniques and help executives specify how they want their assets distributed and even how they would like their remains handled.

What are the essential elements of a coherent estate plan?

Usually, the centerpiece of the estate plan is the living trust document. It directs who will manage the estate and how the assets are to be utilized. Within the document, you can provide for a spouse and include specialized provisions for dealing with the financial needs of those caring for your minor children. Also, an estate planning attorney usually prepares a will that provides for the disposition of any assets that are outside of the trust and nominates guardians for minor children. The process itself has value because couples can decide their children's guardians and they can discuss the responsibility with prospective guardians in advance of the need.

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Powers of attorney over both financial matters and directives for medical wishes will allow a representative that you name to act on your wishes if you are unable to do that for yourself.

In the event that there might be significant estate tax issues, an estate planner can employ more sophisticated techniques such as irrevocable life insurance trusts, qualified real property trusts and charitable giving.

What are the most frequently overlooked items when developing an estate plan?

Retirement plans, including IRAs and ERISA-regulated pension plans, and life insurance are not automatically governed by the trust document. They have their own beneficiaries, so it's important to update them to be consistent with the overall estate plan. Also, estate planners cannot effectively do their job in a vacuum, so it's important to present the total picture of your wealth when planning. We like to send out a questionnaire in advance so the clients can come to the initial estate planning session prepared with all of their information.

Business owners frequently overlook the need for succession planning. This is an important part of the estate plan, which includes dealing with the continuance of the business after your death or disability and providing the necessary funds to replace you or to make other siblings 'whole' if the business is left to just one child.

What is the status of estate tax law reform?

The law provides that the first $2 million is exempt from estate tax and an unlimited amount can be left to a surviving spouse. In 2009 the threshold on non-spousal inheritance increases to $3.5 million. In 2010 the estate tax is repealed altogether, and then in 2011 it returns with a $1 million tax-free limit.

Most experts are fairly confident that before 2010 the repeal will be eliminated, which means that estate taxes are probably here to stay. My advice is to stay in touch with your estate planning attorney because the current federal estate tax rate is 45 percent, and minimizing this tax consequence might require revising the language and provisions in your trust document, depending upon what happens.

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