LEGAL UPDATES

Wealth, Legacy and the Next Generation: Getting Started and Other Considerations

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Legacies and estate planning are often considered to be something later in life. Yet the truth is none of us have any idea when we might become incapacitated or pass away and consequently, understanding the various scenarios and making decisions we are comfortable with before a crisis hits is ever more important for everyone over the age of 18. There are also new planning opportunities available to pass more wealth to the next generation (and reduce an estate that may be subject to estate tax at the same time) utilizing the recently implemented Secure Act and other often overlooked options. Without further ado, here are several important cross-generational planning necessities and opportunities to consider.

Planning for Incapacity

An important consideration for anyone over 18 years of age is who will make your financial and medical decisions when you no longer are able to do so. State law provides for the hierarchy of who may be appointed, as well as reporting requirements, but certainly it is often preferable to make those choices yourself. It is important to select someone for financial decisions and for healthcare decisions; there is no requirement they be the same person. In fact, it is often preferable when choosing a non-spouse agent to have different parties as the skill sets for each position differ. An agent appointed under a financial power of attorney will handle bill paying, investments, taxes, insurance, and all other financial responsibilities when you are unable to do so, whereas a healthcare agent is responsible for making your medical decisions when you are no longer able to do so.

For individuals that do not have powers of attorney in place that later become incapacitated, every state in America has a process for guardianships and conservatorships that will oversee an incapacitated person's healthcare and finances. It is important to note that a guardianship and/or conservatorship are both set up through the court system, and require findings of incapacity, as well as annual reports. The ability to choose our agents before a crisis of incapacity occurs provides for privacy and seamless care that is invaluable.

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Wills and Trusts

When creating an estate plan, one of the first items you will need to consider is whether a will-based plan or a revocable trust-based plan is a better fit for your situation and goals. You can think of a will or a revocable trust as a wrapper to your estate plan. The contents of your plan will likely be similar no matter which plan you choose, but the administration or the path to achieve your desired outcome will be different. It is helpful to break down the decision of choosing either will-based plan or revocable trust-based plan in a pros and cons list because there is not one clear path to take; it really depends on what is the best fit for you. The diagram below is a starting point as you begin to determine what kind of plan will best fit your needs. Whatever plan you proceed with, it is ever more important to consult with a licensed attorney to be sure your choices are properly reflected in your documents.

Wills vs. Revocable Trusts: Pros and Cons

Items to Consider	Wills	Revocable Trusts
Incapacity		Advantage
Estate taxes	Neutral	Neutral
Lifetime costs	Advantage	
After death costs and administration		Advantage
Privacy		Advantage
Multiple states		Advantage

Gifting

After your estate plan is set up, you may be in a position to do lifetime gifting to reduce exposure to estate taxes, or perhaps, you are on the receiving end of annual gifts. There are several ways to effectively include annual gifts to family members, including Education Savings Accounts, Irrevocable Trusts and/or cash gifts. In 2023, gifts of $17,000 or less in aggregate do not require a gift tax return. This is typically referred to as the annual exclusion from gift tax. Gifting to an Educational Savings Account such as a 529 effectively moves money from a taxable estate and allows the gifted assets to be invested for growth. A new planning opportunity involves utilizing unused 529 funds to fund a Roth IRA, if certain rules are followed. If you are in the position of being the beneficiary of an over-funded and unused 529, reach out to an estate planning attorney or your financial advisor to take advantage of this new opportunity. Irrevocable Trust contributions also effectively move money from a taxable estate and allow gifted assets to be invested for growth. Annual notifications and acknowledgements are generally required. Of course, cash gifts direct to an individual

effectively move money from a taxable estate and while not positioned for growth as an irrevocable trust or 529 may be, it is still a wonderful option for generational gifting. It is important to note that all gifts to a single person are aggregated annually and anything in excess of the annual exclusion in place for that year will require a gift tax return.

Considerations for cross-generational planning

Coordination among generations can be helpful, especially if a family member has special needs and is receiving needs-based benefits or are expected to in the future. Ensuring that your family member with special needs is cared for and maintains their benefits that often include health care often includes setting up third party special needs or supplemental needs trust. This type of trust is funded with assets belonging to a person other than the beneficiary, and is where cross-generational coordination can be especially helpful, because if you establish a supplemental needs trust as a part of your plan and your parents (or other relatives) would like to leave something to your family member with special needs, they can name the supplemental needs trust that you established as a beneficiary of an account or in their plan, or vice versa if your parents have already done that type of planning for your family member.

You also may have been granted a power of appointment in your parents' or other family members estate plans. A power of appointment means that a beneficiary has an opportunity to say in their own estate plan where they want the remainder of their assets to go when they pass. It is important to read any estate planning documents you are named in carefully to ensure you are properly exercising options available to you, for tax and other reasons. Discussing power of appointments that are available to you with your estate planning attorney is instrumental in ensuring your estate plan is set up to meet your intentions.

Overall, communication is key for effective cross-generational planning, both for ensuring our family members have the documents in place in the event of incapacity but also in coordination for future generations. With any luck, this short article has given you the confidence to get started on your own plan if you have not already done so, and to ultimately discuss your planning with your family to encourage continuity across generations. That is where a legacy is truly built.

If you have any questions about this topic or would like to discuss this further, please reach out to Christi Pribula or any of our Private Client Services attorneys.