

Your circumstances can complicate estate planning

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Estate planning is complicated enough in second marriages, but toss in a wrinkle or two, and you could be setting up loved ones for heartache.

Marrying a noncitizen, someone with significant health issues or someone much different in age can have serious implications for your estate.

Yet many baby boomers and those from the earlier generation, at least the wealthy ones surveyed last month by U.S. Trust, seem uninterested in controlling their money from the grave.

Fewer than half of people with \$3 million or more in investments are interested in leaving an inheritance, according to the survey of 457 wealthy individuals.

"I was a little surprised that a decent percentage of people with this level of wealth have no comprehensive estate plan," said Mitchell Drossman, national director of wealth-planning strategies for U.S. Trust, Bank of America Private Wealth Management.

With the estate tax coming back this year and the exemption amount going to \$5 million for 2011 and 2012, a lot of people might be thinking they are going to spend down their retirement funds and they won't have an estate tax problem. (Keep in mind, some states levy estate taxes of their own at lower thresholds).

Even if you don't have estate taxes to worry about, you could have plenty of estate issues to deal with, Drossman said.

And while your own circumstances might not warrant the expense of legal documents, you might want to consider them, particularly if you see yourself in one of these situations:

Noncitizen spouse

You've married someone who isn't a U.S. citizen but also have children from a previous marriage to whom you want to bequeath assets.

Beyond the traditional hurdles regarding estate tax, the children might worry the noncitizen spouse will leave the country, which can complicate a plan in which the remainder of the estate goes to the kids after the spouse's death, said Melissa Kampmann, an attorney with Ruder Ware in Wausau, Wis., who has several international clients.

She urges such clients to name an independent trustee to have the final say in overseeing the assets. In fact, a qualified domestic trust is required to have at least one trustee who is a U.S. citizen or corporation.

"You can also set up the ability for your children to get a (periodic) accounting of the trust," she said. "It's important to sit down with your kids and explain how it was set up," and that the trustee is truly independent, she said.

Much younger spouse

Another type of trust often used in second-marriage situations, called a qualified terminable interest property, allows a spouse to receive income and distributions from the trust. But at the spouse's death, the remainder goes to other heirs.

"If there's a significant age difference, that can be a really long time" for other heirs to wait, said Gregory Herman-Giddens, an estate-planning and tax attorney in Chapel Hill, N.C.

In those situations, clients often use life insurance trusts, with children as beneficiaries, he said.

One potential pitfall to assigning assets to individuals instead of lumping everything into one trust is that, as time goes by, the asset values can change.

So even though you can name beneficiaries on your retirement accounts, consider including those accounts in a trust and then dividing the estate from there, Kampmann said. Just be sure this is done correctly, so your heirs can still stretch out distributions based on their life expectancy.

Health issues

Finally, you might have situations for which you simply want to exercise more control.

One client wanted to leave money for her husband's health care needs. But if his income increased and he could cover those costs himself, she wanted the money to pass to her children from a previous marriage, Kampmann recalled.

"You can really put any kind of restrictions on the money that you want," she said. Those restrictions can be used to rein in a spendthrift or protect a spouse who is showing signs of dementia, she said.

You might be shooting to spend your last dollar on your last day of life. If there's a chance there will be something meaningful left over, it might be a final act of love to make sure the money helps, not hurts, the people you love.

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