JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

Suggestions to Simplify and Strengthen Your Existing Estate Plan

If you have been keeping up on the reading of our newsletters, blog posts, and other mailers, you might have noticed that we have been urging our clients to review their current estate planning documents with their estate planning attorney. Undoubtedly, it is very likely that if your estate plan has not been updated prior to 2009, that updates to your existing plan are warranted. Either changes in the laws governing your estate planning documents or changes in your life or the lives of your beneficiaries are the catalyst for these necessary updates.

Many clients are surprised to learn that their current trust may be unnecessarily complex given some not-so-recent changes to the federal estate tax laws. Since 2011, a feature of the new estate tax laws is the concept of "portability" of the federal estate tax exemption between married couples. In simple terms, portability of the federal estate tax exemption between married couples means that if the first spouse dies and the value of the estate does not require the use of all of the deceased spouse's federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption plus his or her own exemption when the surviving spouse later dies. Even more simply stated, portability provides relief from the complex A-B trusts that were commonly drafted prior to 2011. Relief from the complex A-B trust structure means that your spouse will not be subject to onerous and unnecessary complexity that involves significant time and expense upon your death, but requires an update to your existing trust if it still contains the A-B trust provisions.

In 2009, laws at the state level were overhauled in the areas affecting your general durable power of attorney and health care power of attorney. Failure to update these documents may potentially cause unnecessary delay, during what can already be a very difficult time, while you are incapacitated.

It has been our experience in reviewing existing estate plans with our clients that certain life events have caused their plans to become ineffective or inconsistent with their present intents and desires. It is important that you take an inventory of your assets while checking title on these assets. If you have sold or refinanced your home or opened new financial accounts, then you may want to verify that title is held by your trust. It would also be prudent to verify the beneficiary designations on assets like life insurance policies and IRAs or other qualified accounts. The underlying purpose of these suggestions is to ensure that your estate does not become subject to probate upon your death.

In addition to a change in a client's asset inventory, certain life events such as the death of a loved one, children reaching adulthood or the birth of grandchildren may cause you to reevaluate your existing estate plan and consider other updates. Lastly, there are a number of other important considerations that may cause you to strongly consider updating your existing plan. The following is a short list of such considerations:

♦ ***Trusteeship*** – Many clients with outdated plans have other family members or corporate trustees appointed to serve as a Successor Trustee of their current trusts which might have been the chosen route when the children were still minors. Upon review, many clients discover that the person currently nominated as trustee in the trust is not needed to serve in this capacity because the children have now reached a point of maturity that they can now be trusted to serve in this capacity. In the alternative, you may want to consider

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the appointment of a professional trustee to avoid argument and contention amongst your children.

◆ ***Divorce Protection*** – It is an unfortunate reality that a child's marriage may end in divorce. What may be more unfortunate is that the inheritance that you may have provided for that child might become subject to the divorce settlement if not protected ahead of time. While you may not be able to accurately predict whether a child's marriage will end in divorce, by updating your trust with "divorce protection provisions" you can have added peace of mind that regardless of the success of a child's marriage the inheritance left to him or her will be protected.

◆ ***Asset Protection for You*** – Do you have concerns about your estate being eroded away due to potential frivolous lawsuits or other unforeseen liabilities? Nevada is recognized as the leading jurisdiction in the legal area of asset protection. Please be aware that to achieve asset protection through the use of a trust may require the creation of an additional trust that is commonly referred to as a Nevada Asset Protection Trust.

◆ ***Asset Protection for Your Heirs*** – Do you have concerns that the inheritance you will be leaving behind to your heirs may become subject to the claims of their creditors? Your trust can be updated to incorporate provisions that would be designed to provide substantial asset protection for the benefit of your heirs. Unlike providing asset protection for you, you may be able to update your existing trust to provide these protections.

If it has been years since you have had your estate plan reviewed by your estate planning attorney, or you have concerns that your existing plan may not be designed to meet your present intents and desires, we strongly encourage you to call our office to schedule a consultation for a review. JB

IRREVOCABLE
Life Insurance Trusts

An often overlooked yet highly regarded estate planning tool is a device known as the Irrevocable Life Insurance Trust ("ILIT"). Establishing an ILIT allows proceeds from a life insurance policy to escape estate taxes upon the death of the insured.

Income and Estate Taxes

Under the current income tax laws, proceeds from a life insurance policy are paid to the beneficiaries of the insurance policy entirely income tax free. For estate tax purposes, however, if you are the owner of a life insurance policy, the proceeds from that policy are included in your taxable estate on your death, and therefore become subject to the estate tax. For example, if you are single with estate assets (other than life insurance) valued at $5,000,000, and if the proceeds of a life insurance policy payable on your death amount to $2 million, the estate tax due is approximately $628,000.

With an ILIT, on the other hand, the $2 million policy is removed from your taxable estate because the policy is owned by the trust. Thus, in the above example, placing the policy in a properly drafted ILIT would completely eliminate any estate tax on your death, while freeing up the entire $2 million for your heirs. In combination with the favorable income tax laws, an ILIT can ensure that the proceeds from a life insurance policy escape both income and estate taxes.

Establishing an ILIT

To achieve these desirable tax objectives, an ILIT is created with someone other than yourself as the trustee. Once the ILIT is established, either an existing life insurance policy is transferred into the trust, or money is contributed by you into the trust to enable the trustee to take out a new policy on your life. If you are the owner of an existing policy, you must live for at least three years following the transfer in order to exclude the proceeds of the insurance policy from your estate. This limitation does not apply, however, where the policy is purchased by the trustee.

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Administering the ILIT

Payment of Premiums

Following either a transfer of an existing policy or the purchase of a new policy by the trustee, you will then continue to make periodic contributions to the trust to allow the trustee to pay future premiums. It is important that the monetary contributions you make to the ILIT in order to pay the insurance policy premiums be made from your separate property in order to ensure that all proceeds payable under the policy on your death are excluded from both your and your spouse's estates. With proper documentation, it is a relatively simple process for your spouse to give his or her community property interest in the money to you, thereby converting the money to separate property. Funds earmarked for premium payments should be deposited into a separate property account, maintained in your name and declared to be your separate property. Premium payments are then made by check out of this account, preferably to the trustee of the ILIT.

Withdrawal Rights

When a life insurance policy is placed into an ILIT, there are no gift tax or other tax consequences for the initial or subsequent contributions of money to the trust. This is so because the trust beneficiaries are given limited powers to withdraw contributions made to the trust. These withdrawal rights are necessary under current law in order to qualify the gifts made into the trust for the annual gift tax exclusion. (The annual exclusion allows a person to make yearly gifts of up to $14,000 to each of an unlimited number of persons without having to pay a gift tax or even file a gift tax return.) Otherwise, such gifts would fail to qualify for the annual exclusion and would have to be reported on a gift tax return each year.

Certain administrative requirements will attach to the beneficiaries' withdrawal rights. When any contribution into the ILIT is made, the trustee is required to give notice to each beneficiary of his or her right to withdraw. The beneficiary then has a prescribed period of time within which the withdrawal right must be exercised. It is hoped, of course, that all beneficiaries will consent to leave any amount subject to withdrawal in trust.

Distribution of Proceeds

When the proceeds from the insurance policy are ultimately paid into the ILIT, you will direct, through the terms of the trust agreement, how the proceeds will be disbursed. Usually, the trust provisions regarding disbursement will coincide with your will or living trust. For example, the trust agreement can provide that your spouse and children receive the proceeds immediately and outright, or, alternatively, that the proceeds be retained in the trust for their benefit over a certain time period or under conditions set forth by you in the trust agreement.

Another attractive feature of the ILIT arises where the beneficiaries include minors. In the absence of an insurance trust, policy proceeds payable by reason of your death would be distributed outright to any minor beneficiary at age eighteen. With an ILIT, however, you may choose to hold the proceeds in trust, delaying distribution until the minor beneficiary reaches a more mature age.

Candidates for ILITs

If you are single and your estate exceeds $5.43 million, you should consider establishing an ILIT. Married couples with estates in excess of $10.86 million should likewise consider such an arrangement.

Conclusion

As you can see, an ILIT can be a valuable estate planning tool for maximizing the wealth that you pass on to your heirs. At JEFFREY BURR, we can help you decide whether such a trust is right for you.

FREE SEMINAR

Our firm provides FREE educational seminars as well as continuing education for professionals. If you would like to be added to our invite list, or would like one of our attorneys to speak to your group, please contact Sandy Simpson at (702) 433-4455.

The JEFFREY BURR Team

As a staff of dedicated attorneys, paralegals and other support staff, the entire team at JEFFREY BURR is ready to help in every way possible. From answering questions about your plan or our services, to full reviews and edits to your estate or business planning documents, we are fully capable of servicing you and your family. TRUST the entire team at JEFFREY BURR.

Firm Announcements

Rebecca J. Haines

New Associate at JEFFREY BURR

The Law Firm of JEFFREY BURR is pleased to welcome Rebecca J. Haines to the firm as associate attorney. She focuses her practice in the area of estate planning.

Haines graduated from Brigham Young University in 2010 with a Bachelor of Science degree in Business Administration. She then went on to pursue her Juris Doctorate from California Western School of Law, cum laude, while simultaneously earning a Master of Business Administration from San Diego State University.

During her time at California Western School of Law, she received Academic Achievement Awards for writing and business planning, and maintained a position on the Dean's Honor list. She also served as President of the J. Reuben Clark Law Society.

A. Collins Hunsaker

Managing Attorney at JEFFREY BURR
Las Vegas office

For more than 30 years, the attorneys at JEFFREY BURR have been providing thorough and high-quality estate planning for Southern Nevada from our two office locations in Henderson and Las Vegas, NV.

We are pleased to announce A. Collins Hunsaker as the Managing Attorney of our Las Vegas office. Collins is a highly experienced attorney who focuses his practice on estate planning, asset protection and taxation. Call us today at 702.254.4455 to schedule an appointment with Collins, or any one of our other highly qualified attorneys.

contact us

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