A Word from the Editor

by Kit-Victoria (Weil) Wells – Culture & Communications Officer

Planning your financial world for the "you-can't-take-it-with-you" phase of life is understandably not something many people are keen to do. Not only is the topic occasionally morose, it is nebulous as well. Dying, by nature, is generally unpredictable. Add to that the fact that emotions can run high on issues surrounding finances ***and*** death, and you've got the ingredients for a potentially unpleasant project. On top of all of that, the frequently changing estate planning laws compound the complexity of this challenge.

Despite these obstacles, a clear-eyed, deep-dive analysis of what-goes-to-whom-and-when is critically important to the wellbeing of those you love, and those who you wish to benefit from the fruits of your labor. At CWC, we're here to make this task run more smoothly. We can walk you through every aspect of your estate plan; from working with an estate attorney as your plan is designed, to periodic reviews. For those seeking a trusted, experienced estate fiduciary, CWC offers successor trustee services. For more information about CWC's financial advisory, estate planning and trust services, please contact any member of our Advisory Team.

In this mid-quarter issue, CWC advisor, Jonathan Strauss, gets the estate planning conversation going, addressing some of the common mistakes made by people in the management of their estate plans.

Common Estate Planning Mistakes

by Jonathan Strauss – CWC Financial Advisor

Simply stated, estate planning is the process of making pre-mortem decisions about who will handle, as well as who will get, your "stuff" post-mortem (or if you become incapacitated). By the way, the definition of "your stuff" includes your kids (i.e. who will take care of raising them should something happen to you while they are still minors). Given how important estate planning is to a sound financial plan, it's surprising how many gaps exist in the typical family's estate plan. Given our years of experience with many different families, here are the top five mistakes we recommend you watch for:

#1) Not having an estate plan

If you have not yet considered the financial implications of your own demise, you are not alone. In fact, more than half of Americans have not taken the steps to create a comprehensive estate plan. The bad news is that if you were to die before putting your intentions into writing in either a will or a living trust (known as "dying intestate"), the state laws where you live determine who inherits your property and in what amounts. If you have minor children, the courts will end up deciding who will raise them, guided by state law. It is safe to say that state guidelines may or may not align with your wishes.

#2) Choosing the wrong estate planning vehicle

The planning vehicle you choose also requires careful consideration. Should you draft a will or establish a living trust? Depending on the size of your estate as well as your state of residence, a will may be sufficient to ensure that your wishes are honored after death. The drawback of a will is that generally it must be administered by a probate court upon death of the grantor. In most states, probate court can be expensive and time consuming, and most client families seek to avoid probate if possible. An additional consideration is that a will only governs on death. It does not apply if you become incapacitated. For that, you must assign a Power of Attorney, or your family will need to establish a conservatorship for you through the courts. An alternative is to create a living trust. While initially costlier to establish when compared to the cost of drafting a will, living trusts avoid probate (and corresponding probate fees), are more difficult to challenge in court and provide the additional benefit of empowering your successor trustee to step in and handle your affairs should you become incapacitated during your lifetime.

#3) Not properly titling your accounts

While your choice of estate planning vehicle is important, ensuring that your accounts/assets are titled properly is just as crucial. For example, drafting a family trust is only the first step of the process. Once your trust document is signed, you must then also retitle your assets into the name of the trust. This ensures that the terms of your trust will be applied to your assets automatically. You need to make sure that your assets maintain the trust registration over time. Clients are often surprised when they discover that the title on their home changed from their trust to their individual names when they refinanced their mortgage. Check your property tax bill to verify the current title for your home.

Another example is failing (or forgetting) to re-title accounts when you get married. Many couples open joint brokerage accounts (Joint Tenants with Rights of Survivorship or JTWROS) prior to marriage, not recognizing the unintended consequences. In an account titled this way, the assets avoid the probate process and transfer to the other joint tenant by operation of law upon the first joint tenant's death (which is a good thing). But under this title, the decedent's half of the property is the only one that gets a "step-up in basis," while the surviving joint tenant's half of the account does not. (A step-up in basis wipes out any capital gains or losses up to that point, resetting basis as of the date of death; frequently a benefit when assets are later sold.)

In California, married couples may benefit from titling their accounts to Community Property with Rights of Survivorship (CPWROS) instead of JTWROS. In this arrangement, both halves of the assets step-up in cost basis at the first joint tenant's death. Receiving a full step-up in basis on all the portfolio's assets (so that the liquid ones can be sold without triggering capital gains taxes) enables your investment manager to manage your spouse's (or other heirs') investment portfolios and cash needs with considerably more flexibility.

#4) Neglecting to review your estate plan as laws change

Estate law has changed dramatically over the past decade. Because of the changes in laws, it's common to see estate plans that are structured in overly complicated ways that don't apply to current circumstances. For example, in 1997, the estate tax exemption amount (aka the Applicable Exclusion Amount – "AEA") was $600,000 for an individual (meaning any dollars in an individual's estate over $600,000 would be subject to the estate tax). Many living trusts drafted during this period contained provisions which established sub-trusts upon death to reduce estate tax exposure. As of 2019, the AEA is $11.4 million per individual. So, older trust documents may call for the creation of sub-trusts which are no longer practical or necessary given the increased limits. We recommend you review your estate plan with your attorney at least every five years to ensure that your wishes are in line with the current laws. (The laws described above are set to "sunset" after 2025, and will likely change again.)

#5) Neglecting to ensure beneficiary designations are up-to-date

Many families assume that the terms of their will or trust will dictate what happens to all their assets upon passing. This is not the case for assets that transfer automatically by beneficiary election (examples: life insurance, retirement plans). These assets will transfer specifically to the named beneficiaries only. A classic financial planning error is the one where the owner of a retirement account gets divorced and then remarries, and the retirement plan owner neglects to update the beneficiary designation on their retirement account, when the intention is for the new spouse to be the beneficiary of all assets. When the owner of the IRA passes away years later, the beneficiary election on the retirement account still lists the ex-spouse. Even when this is an obvious oversight, the beneficiary designation is a contract, and cannot be violated. As one could imagine, this creates some serious problems for the surviving spouse. We recommend you review your beneficiary designations periodically to ensure that the beneficiaries of all your accounts and policies are aligned with your current estate plan.

While some beneficiary accounts can be owned jointly (often by spouses), a 529 college savings account can only be owned by one person. Because of this, it is very important that when you establish this type of account, you designate a successor *owner*. If you are the owner of a 529 account and you pass away without naming a successor owner, the account will be subject to probate, even if you are married.

At CWC we are prone to whimsically say that "any one of us can step in front of a passing bus at any given time." Should that happen, prudent planning can help ensure that your wishes are honored and that the transition of your estate is accomplished as smoothly and efficiently as possible.