THE ESTATE PLANNER

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Moving to another state?

Revisit your estate plan

If you recently relocated to a new state — or you're planning such a move — it's a good idea to review and update your estate plan. You won't have to throw out your existing plan and start from scratch, but you may need to amend or replace certain documents to ensure that they comply with your new state's laws and continue to meet your estate planning objectives.

Here are some of the things you should consider as you reexamine your estate plan:

Will language and executor choice. So long as your will was properly drafted according to your previous state's requirements, it generally will be accepted as valid in most other states. Nevertheless, it's important to review your will's terms to make sure it continues to reflect your wishes. For example, if you're married and you move from a noncommunity property state to a community property state (or vice versa), your new state's laws may change the way certain property is owned. If, for instance, separately owned property becomes jointly owned, you may need to update your will to ensure that it's distributed in the way you intended.

Some states' laws have provisions designed to protect your surviving spouse or children regardless of the terms of your estate plan. For example, state law may preserve family members' interests in your primary residence, overriding any conflicting provisions in your will or trust. Or it may require a portion of your wealth to be used for "support" of your spouse or children. Be sure to determine whether your new state has such laws and, if so, evaluate their impact on your plan and adjust if appropriate.

Another important consideration is the person you named as executor. If your executor lives in your old state, you'll need to find out whether he or she is qualified to serve in that capacity in your new state. Some states require executors to be residents of the state or to be related to you by blood or marriage. Many states permit out-of-state executors. However, they may impose additional requirements, such as posting a bond or appointing an in-state agent to accept service of legal documents on behalf of your estate.

Even if your existing executor is eligible to

Domicile matters

If you move to a new state but retain some ties to your old state, it's critical to determine where you're domiciled. Your domicile is your permanent home to which you intend to return whenever absent, and you can only have one.

It's significant because the state where you're domiciled can apply its estate tax to all of your worldwide assets. Since domicile is a state of mind, however, it's possible for more than one state to claim you as a domiciliary, which can result in double taxation. If you maintain residences or other ties to your old state, consider taking steps to establish your domicile in the new state, especially if the new state's tax regime is more taxpayer friendly.

Actions you can take in the new state to demonstrate your intent to make it your domicile include:

- Buying a home and spending more than half of the year there,
- Obtaining a driver's license and registering your vehicles,
- Registering to vote,
- Opening bank and brokerage accounts,
- Filing state income tax returns, and
- Establishing relationships with local health care providers.

serve in your new state, for practical reasons it may be desirable to update your will to name a local executor.

Health care powers of attorney and advance directives. Many estate plans include advance medical directives or health care powers of attorney. Advance directives (often referred to as living wills) communicate your wishes regarding medical care (including life-prolonging procedures) in the event you become incapacitated. Health care powers of attorney appoint a trusted agent or proxy to act on your behalf. Often, the two are combined into a single document. Given the stakes involved, it's critical to ensure that these documents will be accepted and followed by health care providers in your new state when the time comes.

Although some states' laws expressly authorize out-of-state advance directives and powers of attorney, others are silent on the issue, creating uncertainty over whether they will be accepted. Regardless of the law in your new state, however, it's a good idea to prepare and execute new ones. Most states have their own forms for these documents, with state-specific provisions and terminology. Health care providers in your new state will be familiar with these forms and may be more likely to accept them than out-of-state forms.

Financial powers of attorney. Like wills, out-of-state financial powers of attorney will be accepted as valid in most states. Still, to avoid questions and delays, it's advisable to execute powers of attorney using your new state's forms, since banks and other financial service providers will be familiar with them.

Trusts. Revocable and other trusts generally are valid in all states, regardless of where you signed them. So, you probably won't need to update them unless your circumstances have changed.

Beneficiary designations. These designations — for example, in life insurance policies, retirement accounts, payable on death accounts or transfer on death accounts — generally aren't affected if you move to another state. But be sure the institution holding the asset has current contact information for you and your beneficiaries.

Review your plan periodically

Even if you're not moving to a new state, you should review your estate plan regularly to ensure that it continues to meet your needs. Your estate planning advisor can help you make any necessary revisions.

Legacy planning

A dynasty trust can benefit heirs for generations

For those who want to arrange for a long-lasting transfer of wealth through multiple generations, consider a dynasty trust. The roots of dynasty trusts can be traced back to the common law principle known as the "rule against perpetuities." This rule prohibited trusts from lasting indefinitely and was incorporated into law in most states. Typically, state law would require a trust to end within 21 years of the death of the last potential beneficiary at the trust's creation.

However, some states, such as California, have adopted a simplified version that limits the trust's duration to 90 years. And even better, more than half the states have lifted restraints on the duration of trusts, paving the way for the increased use of dynasty trusts. And a handful of states — including Delaware, Alaska and Florida — encourage outsiders to set up dynasty trusts in their jurisdictions.

Dynasty trust in a nutshell

A dynasty trust can be established during your lifetime, as an inter vivos trust, or part of your will as a testamentary trust. With an inter vivos transfer, you'll avoid estate tax on any appreciation in value from the time of the transfer until your death. Generally, though, with an inter vivos transfer the assets won't be eligible for a step-up in basis at your death.

When using a dynasty trust, the emphasis should be on protecting appreciated property. Thus, consider funding the trust with assets such as securities, real estate, life insurance policies and business interests.

And while it may seem natural to choose a succession of family members to function as trustee, that may not be your best route. Instead, consider a professional trustee, often referred to as a fiduciary.

Tax implications

Previously, dynasty trusts were primarily used to minimize transfer tax between generations. Without one, if a family patriarch or matriarch leaves assets to adult children, the bequest is subject to federal estate tax at the time of the initial transfer to the second generation. It's then taxed again when the assets pass from the children to the grandchildren, and so on. Although the federal gift and estate tax exemption can shield the bulk of assets from tax for most families, the top federal estate tax rate on the excess is 40% — a hefty amount.

Furthermore, the generation-skipping transfer (GST) tax applies to certain transfers made to grandchildren, thereby discouraging transfers that skip a generation. The GST tax exemption and 40% GST tax rate are the same as they are for regular gift and estate taxes.

A dynasty trust can be established during your lifetime, as an inter vivos trust, or part of your will as a testamentary trust.

With a dynasty trust, assets are taxed just once, when they're initially transferred to the trust. There's no estate or GST tax due on any subsequent appreciation in value.

When the assets are subsequently sold, any gain will be taxable. Note that the basis of the assets will be determined at the time of the initial transfer, although depending on the circumstances, the "step-up in basis" rules may help to reduce the taxable amount.

Nontax benefits

Regardless of the tax implications, there are many nontax reasons to create a dynasty trust. For example, you can designate the trust's beneficiaries spanning multiple generations.

Typically, you might provide for the assets to follow a line of descendants, such as your children, grandchildren, great-grandchildren, and so on. You can also impose certain restrictions, for example, limiting access to funds until a beneficiary graduates from college.

A drawback

One significant drawback to a dynasty trust is that it's irrevocable. This means that the trust generally cannot be revised in the future. If you're going to chart the course for future generations, you must have the courage of your convictions. Talk to your estate planning advisor for additional information. ∎

Handle charitable bequests with care

If you're charitably inclined, you generally have two options for making charitable donations: lifetime gifts or charitable bequests at death. There are pros and cons to each approach.

Lifetime gifts vs. charitable bequests

Lifetime gifts allow you to enjoy the fruits of your philanthropic efforts while you're alive. Charitable bequests, on the other hand, can be a great way to create a legacy. They may also be preferable if you're not comfortable parting with too much of your wealth during your lifetime.

From a tax perspective, charitable bequests may have certain advantages over lifetime gifts.

From a tax perspective, charitable bequests may have certain advantages over lifetime gifts. When you leave money or property to a qualified charity in your will, your estate enjoys an unlimited estate tax charitable deduction.

Lifetime gifts, on the other hand, offer both income tax and estate tax benefits. Not only are you entitled to an immediate income tax deduction (subject to applicable limits), but the value of the money or property (plus any future appreciation) is removed from your taxable estate.

Of course, estate tax liability is an issue only if the value of your estate will exceed the federal gift and estate tax exemption. Currently, the exemption amount is $13.61 million. However, it'll drop to $5 million (adjusted for inflation) in 2026 unless Congress acts.

Preserving the estate tax charitable deduction

If you wish to make charitable bequests in your will, and estate tax liability is a concern, careful planning is needed to avoid pitfalls that can jeopardize the estate tax charitable deduction. Generally, the gifted assets must be:

- Included in your gross estate,
- Transferred by you through your will, and
- Donated to a qualified charity.

If you give your executor or beneficiaries the discretion to distribute assets to charity, those gifts won't qualify for the estate tax charitable deduction. However, beneficiaries may qualify for an income tax deduction.

The charitable bequest must be "ascertainable" at the time of your death, otherwise the estate tax charitable deduction may be denied. Generally, that means a qualified charitable recipient must be specified in your will (although it may be possible to make a bequest to an unnamed charity depending on applicable state law).

The amount of the bequest must also be specified. That means your will must leave a certain dollar amount, a specific asset or a percentage of your estate to a charity. It's also possible to leave the estate's residue — that is, the amount left after all assets have been distributed to heirs and final expenses have been paid — to a charity.

A common pitfall in drafting charitable bequests is the failure to properly identify a qualified charitable recipient. Even if the bequest is correct at the time you draft your will, things can change over time. For example, a charity may change its name, merge with another organization, lose its tax-exempt status or cease to exist. For this reason, it's a good idea to name one or more contingent charitable beneficiaries in the event the primary charitable beneficiary can't accept the donation.

Preserving your legacy

There are many other ways to create a charitable legacy. They include establishing a lifetime or testamentary charitable trust, creating a private foundation, or investing in a donor-advised fund. Your estate planning advisor can help you design a charitable giving plan that has a lasting impact while maximizing tax efficiency.

ESTATE PLANNING RED FLAG

You have one or more POD or TOD accounts

Payable-on-death (POD) and transfer-on-death (TOD) accounts can be simple, inexpensive tools for leaving assets to your heirs outside of probate. But in some cases they can lead to unintended — and undesirable — results.

Generally, POD is used for bank accounts while TOD is used for stocks and other securities. But they work basically the same way. You complete a form provided by your bank or brokerage house naming a beneficiary and the assets are automatically transferred to the beneficiary when you die.

Despite their simplicity and low cost, POD and TOD accounts have some significant disadvantages in comparison to more sophisticated planning tools, such as revocable trusts. For one thing, unlike a trust, POD or TOD accounts won't provide the beneficiary with access to the assets in the event you become incapacitated.

Also, because these assets bypass probate, they can create liquidity issues for your estate, which can lead to unequal treatment of your beneficiaries. Suppose, for example, that you have a POD account with a $200,000 balance payable to one beneficiary and your will leaves $200,000 to another beneficiary.

When you die, the POD beneficiary automatically receives the $200,000 account. But the beneficiary under your will isn't paid until the estate's debts are satisfied, which may reduce his or her inheritance.

Unequal treatment can also result if you use multiple POD or TOD accounts. Say you designate a $200,000 savings account as POD for the benefit of one child and a $200,000 brokerage account as TOD for the benefit of your other child.

Despite your intent to treat the two children equally, that may not happen if, for example, the brokerage account loses value, or you withdraw funds from the savings account. A more effective way to achieve equal treatment would be to list both assets in your will or transfer them to a trust and divide your wealth equally between your two children.

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Legal Insight. Business Instinct. Community Impact.

Founded in 1925, the Shumaker team of more than 300 lawyers and advisors is a premier provider of legal and legislative solutions, focused on being a positive and impactful difference maker for our clients and in the communities we serve. Aligned with this mission, we are committed to understanding your business in order to provide the exact legal resources you need.

Our firm's presence in multiple states dramatically increases our ability to meet our clients' estate planning and estate administration needs. Shumaker attorneys are located across our 12 offices in Toledo, Columbus, and Akron, Ohio; Tampa, Sarasota, Tallahassee, Dade City, and St. Petersburg, Florida; Bloomington, Minnesota; Charleston and Greenville, South Carolina; and Charlotte, North Carolina. In total, we have attorneys licensed to practice in 26 states, the District of Columbia, Puerto Rico, and Ontario, Canada and have established relationships with partner firms in the other states to seamlessly manage transactions across state lines.

Wealth Strategies

Shumaker's Wealth Strategies Service Line focuses on all areas of personal succession, business succession, insurance, asset protection, and charitable giving planning to develop fully informed estate plans that meet the specific needs and wishes of individuals, families, and business owners. Our attorneys regularly advise high-net-worth individuals and business owners on estate planning strategies that maximize wealth preservation and minimize taxes on transfers to family members, charities, and other recipients. Recognizing the importance of a strong lawyer-client relationship, we work as strategic partners with our clients, allowing us to respond effectively to their evolving estate planning and estate administration objectives.

Since the complexities of estate planning can involve many areas of the law, we arrange for clients whose complex estate plans are impacted by tax, corporate, and pension planning issues to consult with firm colleagues in these areas in order to develop fully informed plans. Clients depend on our familiarity with all aspects of the estate planning and administration process, as well as with the latest planning tools and techniques, to help them achieve their goals.

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We welcome the opportunity to discuss your situation and provide the services required to help you achieve your estate planning goals. Please call us today and let us know how we can be of assistance.

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