

ARE YOUR KEY DOCUMENTS UP TO DATE?

By Kevin Lanigan, Carlson Estate Planning

Estate attorneys were relieved when Congress finally agreed to a long-term resolution of the amount of the federal estate tax exemption. Finally, after a decade of not knowing what would happen to federal estate taxes, lawmakers settled the matter when the American Taxpayer Relief Act of 2012 became law.

As a reminder, the estate-tax exclusion, was set to revert to \$1 million per person (from the 2012 level of \$5.12 million), and the top estate-tax rate was due to rise to 55 percent from 35 percent.

With the enactment of the new law, the basic exclusion amount will “permanently” remain at \$5.12 million and will adjust higher with inflation in the future, and the tax rate will increase to 40 percent. While the federal estate tax now has a diminished impact, Minnesota’s estate tax exclusion remains fixed at only \$1 million, and estates over that amount should consider available estate tax planning options.

Now that there is clarity on the federal estate tax there are no longer any good excuses for delaying needed updates for your estate documents.

Here are a few estate planning basics that you should consider:

WILL: A legal document that ensures your assets are passed to your designated beneficiaries, in accordance with your wishes. In the drafting of the will, you will name an executor, the person or institution that oversees the distribution of your assets, and you can designate where assets will go.

If you have minor children, you need to name a trustee to oversee their assets until they are older, and a guardian should be named for them. If you die intestate (without a will), your state of residence will determine what happens to your estate and who should raise your kids. That potential alone should prod you to get going with the process.

PROBATE: The legal process by which a state court officially appoints the executor and accounts for the deceased's property and assets, as well as debts. Probate is a public process, which can be lengthy and costly, but it usually goes fairly smoothly as long as the estate is not contested by any heirs, or has other problems.

HEALTH-CARE DIRECTIVE: The document that allows you to appoint someone to make health-care decisions for you if you lose the ability to make decisions for yourself.

POWER OF ATTORNEY: The form that allows you to appoint someone to act as your financial agent in a variety of circumstances, like executing a trade, withdrawing money from a bank or responding to a tax inquiry.

TRUSTS: Like a will, a trust can be used to transfer assets and detail your wishes to your heirs. (Guardianship can only be addressed in a will.) There are various types of trusts, but the one that is often used to avoid estate taxation for married couples is called a "Credit Shelter Trust." This

type of trust is structured so that each spouse can utilize his or her basic exclusion amount, thereby allowing couples to pass up to \$10.24 million federal-tax-free to their heirs and \$2 million free of Minnesota Estate Tax. While there aren't too many people who are now subject to federal estate taxes (the IRS said 15,000 federal estate-tax returns were filed in 2010), a gross estate can add up quickly to exceed the \$1million Minnesota exemption when life-insurance proceeds and real-estate assets are included, and may be subject to the Minnesota Estate Tax.

Also, as noted above, Minnesota estates may be subject to state estate taxes, so be sure to check with your attorney to determine whether such a trust may be advisable.

Many people consider using Revocable Living Trusts, even if their total estates are below the tax limits, because assets held within these trusts avoid probate. A trust also allows a maximum amount of control over disposition of those assets.

Because these are legal documents, it is generally appropriate to hire an experienced estate attorney to draft them.

To keep your costs down, consider how you want your assets distributed before you set foot inside the lawyer's office. The whole process typically takes only 3 to 5 hours, a relatively small investment of your time considering the importance of the issue.