Resolve to review your estate plan before it's too late

There's a calm comfort that comes with estate planning. A sense that your ducks are in a row and that your family will be taken care of after you pass away (hopefully at a ripe old age, peacefully in your sleep surrounded by those you love who love you right back). Sadly, it doesn't always happen that way. Forgotten details can create confusion and havoc for your family – or, suck them into a time-consuming court case to get it all ironed out.

Even those who think they've got their estate plans buttoned up can and should review – then update – those documents at least once a year. A new year is a great time to get into the habit. You won't regret thoroughly reviewing your estate plan; perhaps even better, you'll take comfort in knowing you gave your family one less thing to worry about when the time comes.

As featured in WORTHWHILE, a quarterly periodical dedicated to serving the clients of Raymond James advisors and affiliated advisory firms.

Avoiding the great estate "oops"

After all, you probably don't want your family members to end up in a drawn out legal battle over grandma's grand piano. You may even have seen how ugly it can get, watching the heirs of the rich and famous publicly fight over a celebrity estate that fell victim to a great estate "oops." These are the kind of fights that tarnish legacies and tear apart even the closest of families. Regular reviews can help prevent your estate from descending into chaos. Let's look at the consequences of neglecting your estate plan and forgoing this oft-overlooked but absolutely critical review.

I GOT YOU BABE (AND BABE)

Back in 1998, after Sonny Bono's untimely death in a skiing accident, we learned he never wrote a will. And a man claiming to be an illegitimate son attempted to get part of the Bono estate, as did ex-wife Cher, with whom he shared royalties on music they made together. His blended family became a public spectacle at a time of grief and uncertainty.

AVOIDING THE OOPS: Resolve to write a will as soon as possible.

And keep your beneficiaries updated. Everyone over 18 needs an estate plan that includes a comprehensive will (at the very least) and properly documents your wishes. Remember, life is unpredictable, perhaps more so if you have a complex professional or personal life.

THE GIRL WITHOUT A RING

Stieg Larsson, who wrote *The Girl with the Dragon Tattoo*, was devoted to his girlfriend of 32 years. When the Swedish author died without a will, his entire estate was divided between his father and brother in accordance with Swedish law. His beloved was left out, legally speaking.

AVOIDING THE OOPS: Resolve to learn how estate laws affect nontraditional relationships.

Learn and understand the laws that govern transfer of property in your chosen state or country, so you can protect the interests of those you love. And don't presume others will honor your wishes without a written directive. Beyond writing a will, asset titling is especially important when you're in a "nontraditional" relationship. Legally, your partner may not have the same rights a spouse would.

THE INJUSTICE OF IT ALL

Former Supreme Court Justice Warren Burger presided over his own will, penning a brief 176-word declaration. But the poorly executed document left his family with more than $450,000 in estate taxes and court fees that could have been avoided. You'd think a Supreme Court judge would know better, but he didn't.

AVOIDING THE OOPS: Resolve to consult a professional.

Trust a qualified estate planning professional to help you write your will and other estate planning documents. To find one, ask for a referral or visit the American Academy of Estate Planning Attorneys or the National Network of Estate Planning Attorneys. Most of us have limited expertise when it comes to complicated tax and estate planning, and even though dedicated software can help you create the necessary documents, it's still a good idea to have an estate planning attorney review what you have.

NO LAUGHING MATTER

The Dark Knight actor Heath Ledger drafted a will naming his sibling and his parents as beneficiaries. Sadly, he didn't update it after the birth of his daughter, Matilda. When he passed away unexpectedly, there was great confusion about who were the rightful heirs of his estate, and the difficulties played out publicly.

AVOIDING THE OOPS: Resolve to review your plan any time your life changes.

Remember that every life event – births, adoptions, disability, deaths, marriages, divorces, even moving – should trigger a review and update of your estate documents. If any of these events occur in the life of a beloved beneficiary, take note! That requires another look, too.

EMPTY TRUST

Michael Jackson created a trust, but it seems the king of pop may not have fully funded it. As a result, members of his famous family fought in probate court – and in the media – before settling the estate.

AVOIDING THE OOPS: Resolve to retitle assets in a trust's name.

Work with your financial team to name your trust as the owner of the assets you want it to control. For example, changing the title on your house from "Sarah and Mark Jennings, Joint Tenants with Rights of Survivorship" to "Sarah and Mark Jennings, Trustees of the Jennings Revocable Trust dated January 4, 2014" means that the trust is now funded with your primary residence. Without this retitling, the trust is an empty shell, and you've likely wasted time and money setting it up in the first place. To find out if a trust makes sense for your family, consult knowledgeable estate planning professionals to learn more about the various types.

A COMPLICATED MAN

When he died earlier this year, actor Philip Seymour Hoffman left his entire estate to his long-term girlfriend, bypassing his three young children because he didn't want them to become entitled trust-fund babies. But their non-married status meant that she didn't qualify for the marriage exemption on inherited assets, according to *Forbes*. So approximately $30 million of the $35 million estate ($5.34 million is excluded because of the federal lifetime exclusion; $10.68 million for couples), which could have been passed tax-free, was fully taxable at up to a 40% rate. On top of that, New York state has its own 16% estate tax for non-spouses on any amount over its $1 million exemption. *Forbes* estimated that the Oscar winner's loved ones lost at least $15 million to the IRS and the state.

AVOIDING THE OOPS: Resolve to research estate-planning strategies that align with your wishes.

Remember to review and revise your estate plan any time your life changes. Also, don't let principles cloud your judgment. We're not saying ignore them. We're suggesting that your professional advisors may be able to keep the IRS at bay and protect your legacy, while still respecting your stance against the institution of marriage or an unwillingness to bequeath significant wealth to your children. For example, Hoffman could have provided for his minor children's future education without making them millionaires overnight. There are also several insurance policies and other types of accounts that could have offered them basic financial protection.

Review estate plans regularly – at least once a year – and identify any changes that will impact your plan, including family, personal interests, wealth and changes in tax law.

PAPA DIDN'T KNOW BEST

Like the Hoffman family, Sopranos actor James Gandolfini's family ended up owing $30 million in taxes on his $70 million estate. While he had a plan that included his wife, children (some from a previous relationship) and sisters, he neglected to implement some well-known techniques that could have minimized that tax burden. For example, he left 20% of his assets to his wife, which didn't take advantage of the unlimited marital deduction that allows tax-free transfers between spouses, in most cases. Instead, 80% of his wealth was subject to federal estate taxes and New York's 16% estate tax. While he may not have wanted his current wife to inherit all his wealth, he could have implemented different provisions to protect the financial security of individuals within his blended family, while softening the tax blow.

AVOIDING THE OOPS: Resolve to take advantage of all available estate-planning techniques.

Make sure your will accurately reflects your existing family structure. And, don't forget to talk to professionals about estate planning techniques that take advantage of all the tax exemptions currently available. Doing so could ease the transfer of assets and keep more of your hard-earned wealth within the family, not in Uncle Sam's coffers. For example, Gandolfini could have set up what's known as a bypass trust or credit shelter trust with his wife as the lifetime beneficiary and his children as the remainder beneficiaries. The assets in the trust would have passed free from estate tax upon his death and free of estate tax when his wife passes. That way he could have protected his full estate tax exemption amount from federal estate taxes.

Did you know?

Estate taxes no longer apply to most Americans, thanks to the American Taxpayer Relief Act of 2012, which raised the exemption to $5.34 million ($10.68 million for couples). In addition, the "portability" clause allows a deceased spouse's estate to transfer any unused portion of the $10.68 million (2014) exemption to the surviving spouse. Income tax is still a factor, but if your estate plan hasn't been updated to reflect these higher limits, you're definitely due for another look.

Real people, real mistakes

Celebrities, you'd think, should be immune from these types of mistakes, particularly since they can well-afford good counsel. The reality is that professional estate planning isn't cost prohibitive even for regular folks. In fact, paying a little today may save your heirs from losing thousands down the road. And many of us can use some help to avoid making money mistakes. Take a look at the all-too-common scenarios below.

UNINTENDED CONSEQUENCES

William and Mary divorced 20 years before he passed away. But he never bothered to take her off his life insurance policy. He added their daughter, Josephine, as his heir in his will and on his pension, but Mary was the one who walked away with $450,000 from the insurance policy.

Catherine and Henry fell into a similar situation. They were happily married for

14 years before she passed away suddenly. But her $1.2 million pension benefit went to her sister, based on a beneficiary designation she made before meeting Henry later in life.

AVOIDING THE OOPS: Resolve to update all beneficiary forms.

Review your estate plan in context with supplementary documents to make sure they're cohesive and complement each other.

CTRL-V VICTIMS

There's even a story of an advisor who found a couple of strangers' names hiding among his client's trust documents. The two unfamiliar names were a result of a quick copy-and-paste of boilerplate language. It seems whoever drafted the trust neglected to replace the names with the client's chosen beneficiaries. Imagine what could have happened if someone hadn't read the fine print and that "oops" hadn't been found.

AVOIDING THE OOPS: Resolve to get expert advice.

Enlist a second set of eyes to critically review your documents. We often take a set-it-and-forget-it stance and neglect to read the fine print, but the devil's in the details. Accuracy makes a difference in the eyes of the law.

BAD FORM: A $400,000 MISTAKE

Leonard died in 2008, but not before creating a comprehensive estate plan to benefit his children. But instead of naming the individual children as beneficiaries for his IRA, he wrote: "To be distributed pursuant to my last will and testament," which invalidated the beneficiary form. His surviving spouse, whom he married just before dying, became the beneficiary by default and inherited the $400,000 intended for her stepchildren.

AVOIDING THE OOPS: Resolve to not cut corners.

In many cases, estates will transfer smoothly if you provide specific information as to your wishes. Leonard's family learned a painful lesson that could have been avoided if Leonard had been more specific about his intended beneficiaries. It's also possible that an attorney could have caught this mistake during a regular review.

A definite do: Careful titling

You've read several reminders of the importance of updating titles and beneficiaries. Here's one more. Account titling often occurs haphazardly – an individual opens a bank or brokerage account, meets Mr. or Miss Right, they get married and … down the line there's a problem. If one partner dies and that bank or brokerage account is still titled only in the original holder's name, those assets can't be accessed readily by the survivor. The solution can be as straightforward as changing to joint accounts, but it's not always that simple. In fact, titling has implications across a wide range of estate planning issues, as well as other situations such as Medicaid eligibility, special needs qualifications and borrowing power, to mention just a few. Account titling is more than just using the right form – it also can be a tool for estate planning. Review your account titling and determine if it reflects what you want.

THE NOT-SO-EZ ROUTE

Take the case of Ann, a Florida resident who stipulated that her younger sister inherit all her assets. If the sister died first, Ann wanted her brother to inherit. Well, the sister died first, and Ann inherited her estate – but she neglected to add these new assets to her online-generated will. When Ann died, only the originally named assets passed to the brother, who had to go to court to claim the full estate.

AVOIDING THE OOPS: Resolve to revise your will if your financial status changes.

Changes to your family dynamics and other life events should trigger a review, but so should changes in tax laws and financial status, like the one Ann experienced. Remember, too, that online tools can be a great starting point when writing a will, but no matter how easy they seem, they still need to be reviewed and updated regularly.

TIP

Moving? Your estate documents, including your will, powers of attorney and living will, may not comply with the laws in another state. Make sure to review your new state's requirements when you relocate and update your estate plan accordingly.

TAKE CARE OF BUSINESS

The owner of a small nursery died unexpectedly of a heart attack, with no estate plan in place. Her three children were scattered, one in Florida, one deployed overseas and one who had no interest in taking over the California-based business. Fighting ensued, and the value of the nursery declined in the meantime, ultimately forcing the siblings to sell it to a third party. In this case, no one got what they wanted, and their mom's small-business legacy ended up being worth little more than dirt.

AVOIDING THE OOPS: Resolve to protect your personal and professional assets.

Small-business owners' personal and professional lives intertwine in myriad ways, but particularly on the financial side. You need an estate plan for your business that includes a clear succession plan.

Resolve to review

Like any financial plan, an estate plan is based on the best available information when the plan was developed. But once created, the work is not over. Life isn't a snapshot; it's more like a video that changes second by second – sometimes subtly, sometimes dramatically. Your estate plan reflects just a single frame. Shouldn't it be edited to include the important events – and people – that make your life meaningful?

Don't put this off. Resolve to review your documents, or put new ones in place, before the end of January and start the New Year with one less thing to worry about. And don't forget to take into account any changes that could impact your plan, including family, personal interests, wealth and changes in tax law. There are more than enough reasons to review your estate plan on a regular basis. You may not recognize a change, but your expert advisors might. ■

Eight essentials

Estate planning goes beyond a will. Here's a look at what you may need.

Last will and testament

A legal document used to distribute property to heirs, specify last wishes, name guardians for minors and identify who is responsible for managing the estate and implementing your wishes. Every adult needs one. If you don't specify who'll take care of your kids and who gets your stuff, the state will.

Durable financial powers of attorney

A durable power of attorney gives someone you trust authority to handle your financial and legal decisions if you're unable to do so yourself. Of course, the person selected needs to be someone who will represent your best interests.

Durable medical power of attorney

You assign a healthcare proxy or durable power of attorney to make medical decisions for you when you are not capable to do so for some reason. That person will need relevant health information so be sure to include a HIPAA provision that gives your physicians permission to disclose your medical information.

Living will and medical directives

An estimated 70% of Americans have no written directives outlining how they'd like to be treated should they need life-sustaining medical treatment. A living will lets you specify what types of medical treatment you want to sustain your life, if you're terminally ill or are in a vegetative state. Medical directives apply in the event you become incapacitated and are unable to communicate your wishes for treatment.

Revocable or living trust

In many states, a living trust can be used to distribute property a little more privately than a will. It also can help avoid a costly and stressful probate court process and may offer substantial tax benefits. Living trusts also can be used to transfer assets in an orderly, and private, manner. You can even stipulate provisions for the bequests, if you wish.

Beneficiary forms

For insurance policies, retirement accounts and some other assets, the beneficiary form prevails over the will. So whomever you've named will receive those assets unless you update the form. It's a good idea to keep current copies, as well.

Letters of instruction

A way to share any wishes not covered by a will (e.g., who'll take care of your minor children or whether you want to donate your organs).

List of contacts

A detailed list of people to contact in certain circumstances, including family, friends and the professionals who oversee your legal, financial, insurance and health matters.

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