

Save Your Estate from Uncle Sam, and Your Kids by Kathleen McGinn Spring

U.S. 1 October 29, 2003 - reprinted with permission

The federal estate tax, recently skimming up to 49 percent of assets over \$675,000, appeared to be on the way out. But now, thanks at least in part to expenses involved in rebuilding Iraq, it may be poised for a comeback. As part of President Bush's tax cut package, explains attorney Valerie Howe, the estate tax exclusion will rise each year through 2010. But then, in 2011, it returns to where it was a year ago. The shifts, she says, "make planning difficult."

Where not too long ago, a couple could make an estate plan and leave it alone for a decade, relatively sure that nothing would change, it is now prudent to rebalance assets every two years or so.

A surprisingly large number of people need to be thinking about estate planning, and many more urgently need to draft wills, living trusts, and durable power of attorney. There is an understandable impulse to put off these tasks, given that they signal an acceptance of mortality, but doing so can have a devastating effect on the family's financial well-being.

Howe talks about must-have documents, and smart estate strategies when she speaks on "New Jersey Estate Law Changes, Trust Planning, and Wills" on Wednesday, November 5, at 6:30 p.m. at a free meeting sponsored by her firm, Mason, Griffin & Pierson, at the Nassau Club. Call 609-436-1205 for a reservation.

A Hopewell native, Howe studied psychology at the University of Virginia (Class of 1980), and worked as a psychologist for a year before enrolling in the law school of George Washington University. She worked as a prosecutor for four years, but decided that litigation, with its long, unpredictable hours, was not a good fit with family life. She enjoyed tax law, and decided to obtain a master's degree in the specialty from William and Mary. With Mason, Griffin & Pierson since 1991, and a partner for five years, she also returned to Hopewell, which she praises as an excellent place to raise children.

Many of Howe's clients are in their 50s and 60s, but she says that after 9/11 she began seeing much younger people. Bouncing along in good health, people in their 20s and 30s rarely give a thought to estate planning. Or they didn't until 9/11 demonstrated just how badly things could go wrong. Here is her advice on protecting a family's stability, at any age:

Draft a will. Many of the young people who died on 9/11 did not have wills, Howe says. While it is a common assumption that assets pass to the surviving spouse, that is not the case. The first \$50,000 of an estate goes to the spouse, but 50 percent of the remainder goes to the children. "Infants inherited millions of dollars," says Howe. One of the biggest problems, she points out, is that, without a will, these babies will have full

control of that money when they turn 18. Parents worry that the children will not go to college and will not handle the money wisely.

It doesn't take a tragedy on the scale of 9/11 to create a situation few young parents would intend. Howe speaks of a client, a woman in her 20s, whose young husband was killed in a car accident. His estate was split between his wife and their baby. In addition to worries about a teenager gaining control of a substantial amount of money, the surviving spouse has to worry about paying the bills with only half of an estate.

These problems can be mitigated if there are beneficiaries, and if the will sets up a trust mechanism for them. In the case of minor children, for example, a will can state that money is to be put in trust, and is to be paid out at a given age. Howe says it is often a good idea to make the payout gradual, perhaps one-third at 21, one-third at 25, and one-third at 35. Or a teen-ager could receive income from the trust, and gain access to the principal at a later age.

Stick to one executor. Howe's clients, afraid of hurting a grown child's feelings, often want to name all of their children as executors of their wills. She discourages this, saying that multiple executors, and even two executors, complicate the process of settling the estate. There tend to be differences of opinion, and even in the best of cases, each of the scores of documents that have to be reviewed, signed, and notarized have to be passed back and forth.

"Beneficiaries have significant rights," she points out. Therefore, children not named as executors do not have to worry much about being treated unfairly.

Howe suggests that naming the eldest child can be a good way to go, as can naming the child who lives closest. Giving such a relatively objective rationale to the executor's siblings can ease any feelings of resentment.

Draw a living will and a durable power of attorney. It's a good idea to take care of these chores during the visit to the attorney to prepare a will. The first document states wishes in regard to medical treatment in case of incapacitation and the second transfers financial tasks, also in case of incapacitation.

While thinking of the unthinkable, it is a good idea to take the process a step further and to factor in the doubly unthinkable. "Provide an alternate," says Howe. That way, should you and the person you name be seriously injured in the same accident, there will be someone else to decide on medical care and to keep signing checks to the mortgage company.

Calculate the size of your estate. This year, \$1 million of assets are sheltered from federal estate tax. That figure, not so long ago the mark of extravagant wealth, has descended to a pretty routine estate figure for many middle class families.

"Remember," says Howe, "life insurance is included in the estate." Add a home, the value of which may have increased 10-fold in the past three decades, and a lot more people have an interest in sheltering assets from federal estate tax.

Take assets out of the estate. Estate planning is complicated, and tends to be very different for different families, but there are some general principles. A start could be taking an insurance policy out of the estate by putting it in a trust. This works well for term insurance policies, which are pure insurance. It can get more tricky with whole life policies, Howe points out, because placing them in an estate puts them off limits. It is no longer possible, for example, to borrow from a policy once it has been put in a trust.

Separate assets. The federal estate tax exclusion is \$1 million for each person, therefore it is generally a good idea to divide assets between spouses, to keep each, if possible, under that mark. This is where rebalancing needs to occur for many families. Next year the exclusion rises to \$1.5 million. In 2006, it is \$2 million, and in 2009, \$3.5 million. The increases might mean that ownership of a business or a summer house or a stock portfolio should be reconsidered.

Set up a trust for the surviving spouse. Tax law permits a spouse to pass \$1 million into a trust for his mate upon his death. This money typically is used for the mate's needs after other assets have been depleted. Upon the death of the surviving spouse it passes, untaxed, to the other beneficiaries. The tax-free status applies, Howe explains, even if the money has appreciated significantly in the meantime.

Don't forget New Jersey. With the rise in exclusion amounts at the federal level, states were losing revenue. Some, New Jersey among them, decided to do something about the situation. So, while the federal exclusion is now \$1 million, and will rise considerably over the next few years, New Jersey has passed a law under which it collects 11 to 14 percent of everything over \$675,000.

Parcel out the jewelry. Couples tell Howe again and again how well their adult children get along. Few anticipate problems when the will is read, but says Howe, "I see the other end." There are often squabbles after a parent dies, but, surprisingly, they are most often not over money. The bone of contention? Personal belongings. "I had two sisters go to court over photographs," she says.

Cut off the arguments at the pass. New Jersey allows a listing of bequests of personal belongings in an addendum to a will, and, says Howe, it is easy to draw one up. No witnesses or notaries are required. Just name the gifts and their recipients, and date and sign the list.

Few people like the connotations that attach to "putting your affairs in order," but a knowledge of the full consequences of not doing so should be enough to encourage many to schedule an appointment to plot estate strategy.