

PASQUESI ASSOCIATES

Professional Corporation

ATTORNEYS & COUNSELORS

101 Waukegan Road, Suite 600
Lake Bluff, Illinois 60044

THOMAS A. PASQUESI

MARY D. CASCINO

of Counsel

THEODORE A. PASQUESI

Telephone (847) 295-9980

Fax (847) 295-9981

E-mail: pa@pasquesi.net

Our Answers to Some Frequently Asked Questions About
ESTATE PLANNING

Q. What is an Estate Plan?

A. Your written set of instructions, consisting of a variety of documents providing for the disposition of your assets during your lifetime and upon your death.

Q. What documents are in an Estate Plan?

A. That depends on your individual circumstances but they generally include a will, living (revocable) trust, title to real estate, beneficiary designations on life insurance policies, IRA's and retirement benefits, powers of attorney for healthcare and property and a living will.

Q. Will an Estate Plan make me wealthier?

A. It will not make you wealthier, but should provide some administrative convenience, save some administrative expenses during your life and upon death, and save taxes upon your death when your wealth transfers to your spouse and children and probably for additional generations as well.

Q. Is it true that Congress has increased the amount I can pass tax-free upon death to \$2,000,000?

A. Yes, the unified credit against death taxes has been increased to \$2,000,000 in 2006 and is scheduled to increase in coming years.

Q. If I'm not worth \$2,000,000, do I need an Estate Plan?

A. Possibly. First, remember that in determining tax exposure you must consider the face value of your life insurance and the value of your retirement benefits. Also, even if you do not have a taxable estate, if your children may have taxable estates, then you can very easily make arrangements to significantly reduce the taxes due upon their deaths.

Q. How can I do that?

A. By making certain provisions in your will or living trust. These provisions would say, for example, that upon your death your children's inheritance would not pass outright to the child, but would be held in a trust. If you wish, the child can be his or her own trustee and free to use the trust income and principal for his or her own support and care. When the child dies, the trust is to be divided among a group of beneficiaries, customarily the child's children and if none, your other descendants. Because you have established this trust arrangement, the trust assets should not be taxable upon the child's death and should be substantially sheltered from the child's creditors (including spouse in the event of divorce) during life. You can even continue this same arrangement for your child's descendants.

Q. I thought insurance proceeds were not subject to tax.

A. That's a misconception. Life insurance proceeds are subject to estate taxes. However, if they are paid to your spouse, the proceeds qualify for the marital deduction and are not subject to estate tax on your death (but will be when your spouse dies).

Q. What should I do with my life insurance?

A. There are several answers to that. One answer may be to give the policy to your children. Another alternative is to establish an Irrevocable Insurance Trust, which is a bit complex to create and administer but can provide significant estate tax savings.

Q. If giving away my life insurance policies is a good idea, what about other property?

A. This is a matter of personal choice but should be considered. Generally, most people do not want to give away anything they may later need. How much can safely be given away must be examined in light of the circumstances of each situation. Remember, however, to be effective, the asset must be given away without any strings. There can be no agreement with the recipients that they will return funds in the case of need.

Q. I would give up some of my assets if I can keep the income.

A. Generally, if you retain an income interest or the right to withdraw funds, you will not avoid death taxes. You could, however, establish a trust during your life under which your spouse can receive the income (which keeps the cash flow in your household) and then on your spouse's death the trust property passes to your descendants. In addition, subject to certain conditions, your spouse could receive some of the trust principal. There are also some more complex trusts, like a Grantor Retained Annuity Trust ("GRAT") or a Charitable Remainder Trust, which would allow you to retain an income interest and avoid some death taxes.

Q. What happens after my death if a child or grandchild develops special needs or problems?

A. That can be provided for in a number of ways by drafting your estate planning documents to give flexibility to your spouse or descendants or possibly others to change the terms of the trusts to a limited degree to address special changed circumstances.

Q. Can't I have a simple will leaving everything to my spouse?

A. You can and there would be no death taxes at your death. However, at your spouse's death, all property with a value in excess of your spouse's unified credit (currently \$2,000,000) would be subject to estate taxes. If, however, you provide that at your death your unified credit will be held in trust for the benefit of your spouse, then, at your spouse's death, the assets remaining in the trust will not be subject to a death tax and will pass to your children tax-free. In addition, your spouse can still pass an additional amount equal to his or her own unified credit to your children tax-free. Finally, under this trust arrangement, if your spouse remarries, the second spouse should not be able to reach the trust assets and they should pass to your children (or other designated beneficiaries) and not to the new spouse or that spouse's relations.

Q. Will my estate planning be complicated by the fact that I own a business?

A. Yes, because there are usually a number of questions to be addressed such as, how will the business interests be valued, both now and at your death; who is to receive the interests upon your death and do you have sufficient other assets to equalize that gift; is it advisable to transfer business interests during life and if so, how will that affect the control of the business. These and other questions must be addressed in light of the nature of each business and family objectives.

Q. What is a charitable trust?

A. Usually this reference is to a charitable remainder trust. Under this arrangement, you transfer assets to a trust and then you specify that you will receive back each year a specified percentage of the value of the assets. At your death, what remains in the trust is to be distributed to one or more charitable organizations.

Q. Why should I do that?

A. First, because you want to help the charity. Second, if you have low basis securities, they can be given to the trust and then sold by the trust. The result is that you will not immediately pay the capital gains tax and could even possibly avoid it entirely. Next, if you have given the trust investments that have appreciated in value, but have relatively little dividend income, they can be sold and reinvested to generate more income, which in turn can be distributed to you to increase your cash flow. In addition, you will be entitled to an income tax deduction when you create the trust for the amount projected to pass to the charity. If you can't use the entire deduction in the year the gift is made, you can carry it forward for five more years. If you wish, the income stream could be distributed to you and then on your death to another person, such as a spouse or child. The trust assets would not be taxable for estate tax purposes in your or any other individual beneficiary's estate. These types of trusts may be useful for you to help support an elderly parent, rather than by simply paying bills or making cash gifts.

Q. Should I simply sell some stocks and give the charity a cash gift?

A. No, never sell appreciated securities in order to make a cash gift to charities. It is preferable to give the charity the stock and let the charity sell it. If you sell the stock, you will have to pay

the capital gains tax, but the charity does not.

Q. What about gifts to my children?

A. You can give each of your children and grandchildren (or for that matter, anyone) up to \$12,000 (in 2006) each year without any gift tax consequences. It's a good way of conveying excess assets out of your and your spouse's estates. Remember, the \$12,000 you give away today may well be worth more at the time of your death and that appreciation will also not be taxable at your death. If your spouse consents, even though the gifts may be from your individual assets, they may be increased to \$24,000. Also, you may pay public or private tuition (including grade school, high school, college or other education tuition) directly to the institution in addition to the \$12,000 annual gifts. These tuition expenses can be paid for any relative or non relative, but include only tuition, not books or room and board or other expenses. You may also pay the medical expenses of another, but, again, you must pay the medical provider directly and not give any individual the money to pay medical expenses.

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