Don’t Put Your Estate Plan on the Back Burner

Last year, many of us were astounded to learn that someone as successful, and wealthy, as the rockstar Prince would pass away without a formal estate plan in place. The truth is, you don’t need to be wealthy to wish to control the disposition of your assets should something happen to you; estate planning is for everyone.

A common misconception about estate planning is that only the ultra-wealthy need an estate plan. Your “estate” consists of everything you own at the time of your death, including your home, personal property, investments, bank accounts, interest in a business or partnership, and retirement plans. An estate plan specifies how assets are distributed and who is in control upon your passing. It also designates another person to make decisions in the event of your incapacity.

Some reasons to consider an estate plan include:

- If you have children who are minors, or who have special needs.
- If you were to divorce and remarry.
- If you were to become incapacitated and unable to care for yourself or your family.
- If you want to provide for your spouse and protect your assets for your children (if your spouse should remarry).

The real question is this: Do you have a clear objective as to how and who you would want assets distributed to if something were to happen to you?

Common components of an estate plan may include, but are not limited to, a power of attorney, a will, and a revocable trust. Let’s take a moment to review these.

**Power of Attorney (POA)**

A durable “power of attorney for property” allows an individual to appoint an agent to handle their financial affairs in the event of disability. This would include things like payment of bills (any assets held within a trust would be managed by the successor trustee). Similarly, healthcare decisions would be made by an appointed agent under a “power of attorney for health care.”

- If you have these documents, it is advisable to regularly review the named agents to ensure they are still appropriate.

**A Will**

A will is a public document that transfers separately-owned property under a court appointed probate proceeding. A will does not supersede transfers that occur automatically, such as joint bank accounts, jointly held real estate and assets with beneficiary designations. The will also names guardians for minor children. An executor is the named individual or third party appointed to carry out the terms of the will.

- If you do have a will and your children are still minors, when was the last time you reviewed the named guardians? Are these individuals still appropriate? Are the named executors still appropriate?

**The Value of a Revocable Trust**

Many individuals feel that a trust is unnecessary for them because their wealth does not exceed the current Federal Estate Tax exemption of $5.45 million. However, there are many other reasons to utilize a Revocable Trust.

During an individual’s lifetime, the grantor of the trust (person who funds the trust) retains full power of the assets in the trust. The trust is not treated as a separate tax entity for income tax purposes. It is also revocable and its terms can be changed at any time.
In the event the individual becomes incapacitated, however, the named successor trustee would take over the administration of the trust assets, including distributing funds to the individual, his/her spouse, and their dependents pursuant to the terms of the governing instrument.

Upon the grantor’s death, the trust becomes irrevocable. The terms of the trust provide “control from the grave,” which directs how assets are distributed or retained in trust for family members, charitable organizations, or other individuals. If you’re not sure that it is necessary for assets to be retained in trust, consider the following:

- The distribution of your assets could be managed so your named beneficiaries don’t need to make those decisions, potentially preventing stress and even serious conflicts.
- This is an opportunity to provide for beneficiaries with special needs without disrupting government aid.
- Assets retained in trust may aid in preserving assets for the beneficiary’s lifetime.
- Trust assets may not be includable in the beneficiary’s estate.
- Assets retained in trust may allow for creditor protection.

**What happens if death occurs without a will or trust?**

A number of unintended consequences can occur if a comprehensive estate plan is not in place:

- Assets could pass “intestate” – Assets held in your individual name (not in joint title), without a beneficiary or a will, will be distributed pursuant to the intestacy laws of the state you live in which you reside.
- Assets could pass through probate – In the event your assets pass pursuant to your will and you have no living trust, they will be distributed as provided in the document, but may be subject to state probate proceedings. The probate process may be worth avoiding; it can lead to unnecessary costs that could otherwise be avoided with the execution of a living trust. In addition, a will is a public document, whereas a trust is private.
- Assets could pass by beneficiary designation.
- Without a trust in place, there is the potential for court appointed guardians and/or conservators.

**Still don’t think you need an estate plan?**

Consider the following, if assets are held jointly with your spouse, upon one’s passing the assets would be held for the surviving spouse. Sounds great, right? What if the surviving spouse eventually remarries and does not take the steps necessary to ensure that your assets pass to your surviving children? Having an estate plan is not only a tax planning vehicle, but also a way to ensure that you and your loved ones are provided for in the manner you desire.

Even if you don’t have Prince’s wealth, you still might want to have an estate plan in place. In addition, we recommend that you review your estate plan documents every 3–5 years with your attorney. At Mesirow, as your wealth advisor, we are here to help facilitate the appropriate conversation with counsel and discuss other planning strategies that may be appropriate for your family.