Estate Planning Basics

Bob Fulton died from a heart attack a few years ago. He was 73 years old. He died while still "at the top of his game" (to borrow a phrase from baseball) as a distinguished college professor at Georgia Tech and a voice of reason on the Fulton County Board of Commissioners.

It says something about our times that his death seems much too soon. Twenty years ago he would have been considered "elderly." The suddenness of it reminds us of how precarious life can be. Since I worry about such things as part of my work, it reminds me of how important it is that a person not only have a well-drafted will, but also an up-to-date estate plan. A will that is ten years old can still work very well from a legal perspective, but in those ten years a person's estate plan can become obsolete.

An estate plan matches a person's economic reality to the legal arrangements to dispose of their wealth in the event of death. It's designed to implement their wishes and minimize exposure to taxes. Whether a person uses a Last Will and Testament or a combination of a Will and a "living trust," organizing the title to property and the beneficiary designations is essential to a successful estate plan.

A while back I had a client, who is not married and has no children, tell me that he wanted a clause in his will setting aside a percentage of his assets to pay for some of the college costs of his niece and nephew. He controls about $300,000, but most of it is in retirement accounts, which are not affected by his will. His estate plan must coordinate his beneficiary designations and the bequests in his will so as to get the "correct" portion of that $300,000 into a college fund.

A person can title his or her property in several ways, all of which have implications for how ownership of it will pass in the event of death. It is common for a husband and wife to have their home and other real property titled jointly with right of survivorship. This approach emphasizes flexibility over predictability. It postpones the issue of the ultimate passage of title to a non-spouse beneficiary (such as the children of that marriage, or of multiple marriages) to the "second death," the death of the surviving spouse, whoever that might be.

Let's consider the hypothetical case of Mr. & Mrs. Hitech who both work in North Fulton County for telecommunication companies. They each have grown children from previous marriages who are all in their 20's, with some still in college. Counting life insurance and retirement accounts, each of them would leave an estate worth $800,000. However about 80% of that wealth is in retirement accounts or death benefits from life insurance.

With recent changes in the federal estate tax, the Hitech family is relatively safe from the IRS. As of January 1, 2006, $2.0 million can be passed to the children without any tax and that amount increases to $3.0 million in 2009. Tax planning has become less important. Arranging the beneficiary designations on the retirement accounts and life insurance has assumed new importance. Those designations could be pivotal in the transmittal of wealth to the surviving spouse and children in a fashion satisfactory to the client.

If the spouse is the sole beneficiary, there is a real possibility that the entire $1.6 million of family wealth will be controlled by the wishes of whoever happens to be surviving spouse. If there is a trust in

the will of the first spouse to die it may get few, if any, assets because practically all of the decedent's assets never "passed under" the will (and thereafter to the trust) because of those beneficiary designations. Even in a case where there is no blended family, there is no guarantee that the surviving spouse will not re-marry and leave the entire family wealth from the first marriage to that second spouse.

It should be obvious by now that drafting a good set of documents is only part of the solution. A person needs to coordinate the economic reality with those legal documents and keep them coordinated in the years after their execution. Failure to do so may cause a lot of disappointment and heartache when the documents "work" but the estate plan doesn't.

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