The *WRMarketplace* is created exclusively for AALU Members by the AALU staff and Greenberg Traurig, one of the nation's leading tax and wealth management law firms. The *WRMarketplace* provides deep insight into trends and events impacting the use of life insurance products, including key take-aways, for AALU members, clients and advisors.

The AALU *WRNewswire* and *WRMarketplace* are published by the Association for Advanced Life Underwriting® as part of the Essential Wisdom Series, the trusted source of actionable technical and marketplace knowledge for AALU members—the nation's most advanced life insurance professionals.

Thursday, 28 January 2016 WRM 16-04

TOPIC: New Year – New Resolution: 6 Tips for Getting that Estate Plan in Shape.

MARKET TREND: With some estimates showing that over half the U.S. population lack both wills and adequate life insurance coverage, there is a real and urgent need for planning.

SYNOPSIS: Regardless of net worth, everyone should have an estate plan to help ensure their family's financial security during incapacity or after death. Existing plans also should be reviewed regularly to address changes in an individual's wishes and/or family or financial circumstances. Although no one likes to think about estate planning, the following tips can help streamline the process to make it less painful.

TAKE AWAYS: Estate and life insurance planning are critical for all individuals to ensure adequate support for their families, to name guardians for minor children, to facilitate the distribution of their assets as desired, to minimize administrative hassles, to address tax planning, if needed, and, critically, to appoint agents to handle financial and medical decisions in the event of incapacity. Such planning can allow funds to be accessed to support the individual and family and medical decisions made without the need for court proceedings. Life insurance should play a key role in the process, as it can offer simple and flexible solutions to address many estate planning needs, which can minimize later conflicts and promote family security.

Regardless of net worth, everyone should have an estate plan to help ensure their family's financial security during incapacity or after death. Although no one likes to think about estate planning, the following tips can help streamline the process to make it less painful.

TIP #1: GET OR REVIEW A PLAN

- Get a Plan. Individuals without estate plans should make it a priority this year to put one in place, as these plans can help address numerous issues:
  - *Facilitate Estate Distribution/Administration*. Without a will, assets that do not pass by a beneficiary designation or based on title (see #3 below) are distributed according to state intestacy laws, which vary and may result in undesirable distributions. Distributions at death also can require court filings or proceedings ("**probate**"). A will can streamline probate and ensure distribution of the estate to desired beneficiaries. An individual also may avoid probate all together by using a combination of a will and revocable trust.
  - *Appoint Fiduciaries*. To avoid confusion and conflict over who should handle assets and estate matters, the will should name (1) personal representatives/executors to handle estate administration/distribution, (2) guardians for any minor children, and (3) trustees to administer any trusts created for family members.
  - *Plan for Incapacity*. Of critical importance, the estate plan also ***should include documents to plan for an individual's incapacity***, such as:
    - Powers of Attorney. ***Financial and medical*** powers that appoint agents to handle financial matters (e.g., access to funds to support the individual and family) and make medical decisions during incapacity (avoiding the need for court proceedings);
    - Living Wills/Advance Directives. Documents that express preferences for health and medical care, organ donation, etc.; and
    - HIPAA Authorizations. Authorization for access to medical and health information, naming persons who can access and use this information on an individual's behalf.
  - *Address Tax Issues.* For individuals with larger estates (e.g., near or over the federal estate tax exemption ($5.45 million in 2016)) or in states with state estate

taxes,[1] the plan should consider potential estate and income tax issues, including:

- Portability. "Portability" allows a predeceasing spouse's estate to elect to transfer any unused federal estate tax exemption to the surviving spouse, eliminating the need for spouses to re-title property and create "credit shelter" trusts ("**CSTs**") at the first death solely to ensure full use of each spouse's federal estate tax exemption. Portability, however, has several limitations and should not be viewed as a wholesale replacement to estate and transfer tax planning for married couples.

  - Portability ***does not apply to the federal generation-skipping transfer ("GST") tax exemption***, which is lost if not used.

  - Federal portability ***does not apply to state exemptions***, so individuals with state estate tax exposure may need to fund a CST to use state estate tax exclusions.

  - Appreciation in ***CST assets will not be subject to estate tax at the surviving spouse's death according to longstanding and appropriate tax principles***, unlike assets held in a marital trust or by a surviving spouse.

  - The ***surviving spouse has full control over assets left to him or her outright***, an issue in blended families or if the surviving spouse remarries.

- Lifetime Gifts vs. Step-Up at Death. Increases in the federal estate tax exemption and in federal income tax rates (including the 3.8% net investment income tax and the impact of state income taxes) have created a balancing act between lifetime gifting and holding assets until death, due to the potential income tax liability to recipients of gifted property upon later disposition. Thus, planning for larger estates requires an overall tax analysis of whether and what assets, if any, to gift during life.[2]

- Charitable Bequests. Charitable deduction planning will be important for philanthropically-inclined individuals. Rather than just making an outright charitable bequest, the estate plan can customize the bequest to impose certain requirements on how the money should be used, or, for more control, make the bequest to a donor advised fund, charitable trust or private foundation, possibly managed by selected friends or family.

- Review an Existing Plan. Individuals with existing plans should ***review them every three to five years or in any year they experience a major life change*** (marriage/divorce, death of a spouse/child, birth of a child, purchase or sale of a significant asset, etc.) to ensure:

- *Reflect Current Wishes.* Given the new circumstances, their plans still reflect their current desires, ***especially with regard to their health care, financial management, and the distribution of new and existing assets to desired beneficiaries***.
- *Desired Fiduciaries Still Available.* Their designated personal representatives, agents, trustees, and/or guardians (and successors) are still desirable and available to serve.

TIP #2: THINK ABOUT LIFE INSURANCE

- Consider Coverage if None. Life insurance can offer simple and flexible solutions to address many estate planning needs, regardless of the size of an individual's estate. When considering estate plans, individuals without life insurance should think about coverage:
  - *For Estate Liquidity & Expenses/Taxes.* Estates facing estate taxes must pay the liability in cash, generally nine months after the decedent's death. Non-taxable estates will still have expenses, such as funeral costs, outstanding medical expenses and family support, etc. Further, seemingly liquid estates can become essentially illiquid if marketable assets are at significant lows due to market conditions at death (e.g., the depressed stock market in 2008). Ensuring sufficient liquidity for taxes and expenses can minimize conflict, reduce the family's stress, and avoid "fire-sales" of estate assets to generate cash.
  - *To Equalize Beneficiaries.* Life insurance can facilitate disproportionate asset distributions, such as distributions of real estate or business interests to certain family members while equalizing other heirs with cash.
  - *For Blended Family Planning.* For individuals with "blended families," life insurance can minimize conflict by providing for children from prior marriages while also leaving separate assets to the surviving spouse as needed to maintain his or her current lifestyle.[3]
  - *To Equalize Spousal Wealth.* Often, spouses may not have equal assets in their individual names, particularly if a spouse is younger. Although portability can make this less of an issue, as noted above, relying on portability presents unique issues, and it does not apply to the GST tax exemption. Acquiring convertible term insurance on a less wealthy spouse can be a simple and cost-effective solution for increasing that spouse's estate.

- <u>Review Existing Coverage</u>. As with estate plans, existing life insurance should be reviewed periodically ***with the individual's life insurance advisor***, especially if there have been major life changes, to ensure the coverage still meets the family's needs and the policy is performing financially as projected. Questions to review include:[4]

    - *Policy Type*. What kind of coverage does the policy provide -- term or permanent? Term coverage typically ends after a specified term. ***Permanent life insurance often is designed to provide a death benefit for the insured's life,***[5] unlike term insurance, which is generally used for short-term coverage concerns.

    - *Premiums.* What is the current amount, will it vary from year to year, will changes in payment timing and amount impact the policy's death benefit or cash value growth (if any), and will the premiums terminate (i.e., when will the policy become "paid-up")?

    - *Death Benefits:* What is the total death benefit, is it sufficient for current family needs, will it vary (possible with certain permanent policies), and is any part guaranteed?

    - *Cash Value:* For permanent policies, what is the current cash value, is it currently accessible (and under what terms), has it grown, what is the anticipated growth (e.g., what is the effect of interest on money paid and received at different times on the policy), does investment of the cash value need to be actively managed, and if so, by whom?

    - *Conversion/Modification:* Can the policy be converted into another form of coverage (term to permanent) or modified to adjust premiums or benefits to meet new needs, and are there timing issues (e.g., a term policy conversion must occur before a certain year)?

TIP #3: COORDINATE ASSET TITLING & BENEFICIARY DESIGNATIONS*.*

Certain assets, such as IRA and retirement accounts, life insurance policies, and assets held in trust or titled jointly with rights of survivorship, generally will ***<u>not</u>*** pass by the terms of an individual's will,[6] but directly to the person named in the beneficiary designation or by operation of law to the surviving owner, possibly disinheriting desired heirs. For example, assets titled jointly with rights of survivorship with a spouse will pass solely to the surviving spouse, even if the predeceased spouse's will distributes these assets to surviving children. Thus, individuals must carefully review the titling of assets held jointly with others and all beneficiary designations to coordinate them with the estate plan and to update them as needed to reflect changes in marital or family status (e.g., remove former spouses or predeceased children as beneficiaries).

TIP #4: DON'T GO IT ALONE

Individuals should work with an attorney and their insurance, financial, and other advisors to ensure coordination and proper implementation of an estate plan. Probate and intestacy laws are complex and vary by state, and do-it-yourself wills and trusts often lead to nightmare stories, strife among family members, and lost time and money in resolving conflicts and mistakes.

TIP #5: GET STARTED BY GATHERING INFORMATION

Before meeting advisors, individuals should ***collect as much information as possible to make these meetings more effective and cost-efficient***. Helpful information to have on hand includes:

- <u>Net Worth Statement</u>. A current net worth statement listing all assets, their estimated values, how they are titled (individual, jointly, etc.) and any associated debts or mortgages.

- <u>Family Information</u>. A family tree with dates of birth for family members, names and contact information for family members, friends, or others the individual may appoint to serve as fiduciaries under the plan or wish to designate as beneficiaries.

- <u>Tax Returns</u>. Copies of recent income tax returns and any federal gift tax returns filed (as well as information on all prior gifts made, including the specific amounts and to whom).

- <u>Existing Documents</u>. Copies of any existing estate planning documents (wills, trusts, powers of attorney (financial and medical), living wills, etc.).

- <u>Beneficiary Designations</u>. Information on all retirement accounts, deferred compensation plans, life insurance policies, etc. and the current beneficiary designations.

- <u>List of Advisors</u>. Names of current legal, accounting, insurance and/or financial advisors, and their contact information.

TIP #6: KEEP IT ORGANIZED & INFORM FAMILY/FIDUCIARIES

- <u>Keep in Accessible Location</u>. Once the plan is implemented or updated, copies of all current documents, information on financial and retirement accounts, policies, etc., as well as contact information for attorneys and other advisors should be kept in a single organized location and shared with those who will need access to this information. Original documents should be kept in a safe, fire/weather proof location, but generally not in a safe deposit box, unless someone other than the individual can access it without consent.

- Consider Electronic Storage. Storing and/or sharing this information in a secure electronic form may be preferred, as it can then can be readily accessed and transmitted by any authorized person from any location.
- Share Information/Powers. Share powers of attorney and authorization forms with necessary parties (financial institutions, agents, doctors, etc.) and make sure desired family members or other fiduciaries can access digital accounts and passwords, if needed.

TAKE AWAYS

Estate and life insurance planning are critical for all individuals to ensure adequate support for their families, to name guardians for minor children, to facilitate the distribution of their assets as desired, to minimize administrative hassles, to address tax planning, if needed, and, critically, to appoint agents to handle financial and medical decisions in the event of incapacity. Such planning can allow funds to be accessed to support the individual and family and medical decisions made without the need for court proceedings. Life insurance should play a key role in the process, as it can offer simple and flexible solutions to address many estate planning needs, which can minimize later conflicts and promote family security.

NOTES

TCO 361756481v3

WRM #16-04 was written by Greenberg Traurig, LLP

Jonathan M. Forster

Martin Kalb

Richard A. Sirus

Steven B. Lapidus

Rebecca Manicone

Counsel Emeritus

Gerald H. Sherman 1932-2012

Stuart Lewis 1945-2012

DISCLAIMER

This information is intended solely for information and education and is not intended for use as legal or tax advice. Reference herein to any specific tax or other planning strategy, process, product or service does not constitute promotion, endorsement or recommendation by AALU. Persons should consult with their own legal or tax advisors for specific legal or tax advice.

---

[1] A few current examples include Connecticut, D.C., Maryland, New Jersey, New York, and Washington.

[2] See *WRMarketplace #13-35* for a further discussion of this issue.

[3] See *WRMarketplace #15-40* for a more detailed discussion of planning for "blended" families.

[4] *See* e.g., "Life Insurance: Reviewing Your Policy Important to Securing your Family's Future," *NAIC Consumer Alert*, Sept. 2008.

[5] Or until the policy "matures" – e.g., when the insured reaches age 120, assuming required premiums are paid.

[6] Unless a beneficiary designation is left blank or otherwise names the individual's estate as the beneficiary. This approach generally is not recommended, as it places such assets into "probate," as described above, which typically increases the administrative requirements to distribute these assets and can potentially remove certain creditor protections associated with these assets, depending on applicable state and federal law.