

Dodging Fiscal Cliff Doesn't Diminish Estate Planning

Congress and President Obama finally reached an agreement to prevent the fiscal cliff, which returned many of the estate tax provisions to the 2012 levels. For example, all individuals are allowed to give - during life and at death - a total of \$5,250,000 (to be indexed for inflation) of assets without incurring federal estate or gift tax. In addition, under the so-called "portability" rules, a married couple can shelter assets totaling \$10,500,000 from federal estate tax with no estate planning. The primary change to the pre-2013 estate tax laws is that the rate is increased to 40% (up from 35%).

Now that there is a permanent law in place (albeit subject to future legislative whims) allowing you to pass a generous amount free of federal estate tax, does this mean you don't need to do any estate planning? The answer is a categorical NO - and here are several reasons you should have a current estate plan in place:

1. **State estate taxes.** A number of states, including Maryland, and the District of Columbia, have their own estate tax system in place, totally independent of the federal estate tax. Maryland and D.C. impose an estate tax with rates as high as 16% on estates valued at more than \$1 million. That means, for example, a married couple with a \$2 million estate would be faced with a \$99,600 tax on the surviving spouse's estate. This liability, however, can be reduced or eliminated with proper estate planning.

2. **Asset protection.** Many people are justifiably concerned that an inheritance may be squandered. A beneficiary may not be used to handling large sums of money, he or she may lose a portion of the inheritance in a divorce or may not be able to properly manage the money due to medical conditions. Trusts can be created to protect the inherited funds for these and many other reasons.

3. **Disability planning.** Estate planning is much more than simply "planning for your death." It is crucial to have documents in place to ensure that there is someone to manage your financial and health care matters in case of disability. Executing Powers of Attorney and Medical Directives will allow you to designate the decision makers if you become disabled - and also prevent the courts from getting involved in the process.

4. **Non-traditional couples/second marriages.** Estate planning for non-traditional couples and second marriages offers a unique set of challenges and issues. Some of the tax benefits granted to those in traditional marriages are not always available to couples in non-traditional marriages. Proper planning is crucial to ensure that assets are distributed in the intended manner and that you maximize the available tax benefits.

5. **Choosing the right people.** One of the most important decisions in estate planning is to choose the right people to make decisions for you. You may need to select a Trustee to manage your assets, a Guardian to care for minor children and a Personal Representative (Executor) to administer your estate. For a young couple with minor children, these decisions are probably the most important part of the estate plan. These designations should be monitored over time, as the people you chose five years ago to fill those positions may not be the same people you would select today.

6. **Probate avoidance.** Going through probate may be costly and both labor and paper intensive. Creating and funding a Revocable Trust can help avoid many of the filings involved in the probate process.