

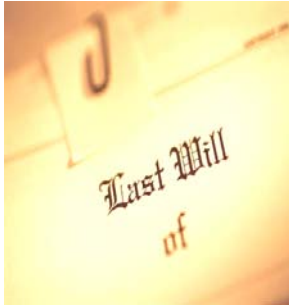
ESTATE PLANNING NOTES

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WHEN A WILL DOES NOT WORK



So you want to leave your assets to your heirs. The process seems simple - - you write a Will. Nowadays though, much of an individual's wealth is wrapped up in forms that will not pass through a Will.

Your Will tells the family how you want your assets distributed when you die, but your Will can be overridden by other forms you have signed and perhaps forgotten about. These include beneficiary forms for life insurance and retirement accounts. If the beneficiary forms are not synchronized with your overall estate plan, the wrong person might inherit.

Let's take that beneficiary form that came with your life insurance policy. Perhaps, you named your first spouse or your children from your first marriage as beneficiaries. Now, though, you are remarried with another child. If you die without changing the form, only your ex-spouse or your initial children will receive the insurance money. Also, minor children may not receive large sums of money at your death unless a guardian is appointed for them. Your insurance form should name a trust to receive the proceeds for the children. That way, the trustee can handle the money until the children are mature, and a guardianship is avoided.

Then, there is your IRA. The beneficiary designation form for the IRA also overrides the Will. We have seen multiple cases where an IRA owner forgets to change the IRA beneficiary form after a divorce. Upon the IRA owner's death, the ex gets the money.

Also, there is your 401(k) retirement plan. If you are married, your spouse automatically is entitled to the entire 401(k), no matter who you name in the beneficiary form. Your spouse must have filed a notarized waiver to allow someone else to receive the proceeds at your death. This is often important in a second marriage, where you want the 401(k) to benefit the spouse during life, but you want whatever is left of your retirement money after the spouse's death to go to your children from your first marriage.

If the beneficiary forms are not synchronized with your overall estate plan, the wrong person might well inherit.

We also see problems with joint accounts. Elderly parents will add one of their children as a joint owner to a large savings account, checking account or a certificate of deposit. They may do this for convenience purposes and believe that the one child will split everything with the other children upon the parent's death. However, legally the money in the account belongs to the child as the joint owner upon the parent's death. The other children are simply left out, unless the child wishes to make gifts. If the gift exceeds \$12,000, it becomes a taxable gift to the child.

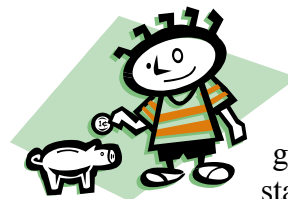
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In order to have a complete estate plan, your estate planning attorney must coordinate your beneficiary forms with your Wills and/or trusts. All beneficiary forms should be reviewed and changed at the time you prepare a Will. Additionally, these forms must be changed if there is a divorce, remarriage or death of a spouse.

Congratulations!

The Indiana State Bar Association recently created a special Certification Board to certify attorneys who are exceptionally qualified in estate planning and probate administration. The first certification ceremony was held April 27, 2007, and a handful of attorneys from across the state were awarded their *Certification as an Estate Planning and Administration Specialist*. We are proud that Vicki Anderson was a recipient.

Give Your Children Money to Establish a Roth



Want to give your working child or grandchild a financial head start? Open a Roth IRA for them. Roth IRAs have been around since 1999. Anyone who works (including children) can put away up to \$4,000 per year (\$5,000 if over the age of 50). So, if your child or grandchild has a summer job or otherwise earns money, the earnings, up to the maximum, can fund a Roth. If the child does not want to part with the earnings, you can gift an equal amount to the child to contribute to a Roth. The Roth contribution cannot exceed the child's income.

The Roth is a wonderful form of retirement account. While contributions to the Roth are from after-tax dollars, the Roth itself

can grow for decades, income tax free. Once the Roth owner hits age 59 ½, the owner can take tax-free withdrawals. However, the Roth owner never has to take any distributions from the Roth. Instead, a Roth owner may die with the entire Roth account and transfer it on to children or grandchildren. As these beneficiaries receive the Roth amounts, they come out totally income tax free.

Some parents or grandparents have decided to help their offspring build a retirement nest egg by gifting the money so the child can establish a Roth. The children begin their savings much earlier in life and, with steady deposits, will have an impressive fund that is tax free upon withdrawal. The children also can remove up to \$10,000 for their first home, without tax or penalty.

**Example #1
Child's Roth – Single Deposit**

Suppose you give just \$2,000 to your grandson when he is age 16 to establish a Roth account. He makes absolutely no other deposits into the Roth ever. Based on an average growth rate of 8% per year on the \$2,000, his retirement account would look something like this at age 60:

<u>Number of Years</u>	<u>Roth Value</u>
20	\$ 9,322
30	\$ 20,125
40	\$ 43,449
50	\$ 93,802
60	\$ 202,514

**Example #2
Child's Roth – \$4,000/year**

Let's say instead, the child makes a \$4,000 contribution to a Roth, beginning at age 16 and continues with \$4,000 contributions each

year for 20 years, until the child is age 36. The child makes no further contributions after the 20 years and just lets the money grow. When the child hits age 64, he will have a Roth worth about \$2 million.

Example #3 **Leave your Roth to your Grandkids**

You can create a Roth for yourself and then save it to give to your grandchildren at the death of you and your spouse.

If you leave a \$200,000 Roth to a 10-year-old grandchild, the grandchild begins receiving minimum distributions from the Roth the year after your death and every year thereafter. Over the child's lifetime, he/she will have received total distributions from the Roth of \$9,408,000. Now that is quite a gift!



Low-Carb Widow's Woes

The legacy of Dr. Robert Atkins extends far beyond the fad diet arena. Since his death in 2003, Dr. Atkins has set a valuable example of poor estate planning. Perhaps instead of minding America's carbohydrate intake, he would have been better served to "mind his own business."

During his life, Dr. Atkins failed to do any sort of business succession planning. Therefore, when his company sold for \$400 million, his financially naive widow suddenly had a lot of money to manage. Dr. Atkins failed to appoint a bank or trust company, or other trusted advisor to handle his affairs. So, Ms. Atkins was left to her own devices. She selected three individuals to "help her," and she:

- agreed to pay each of the three advisors \$1.2 million per year;

- signed the advisors to 10-year contracts with built-in extensions; and
- allowed each of the advisors to purchase a \$5 million life insurance policy on her life, naming themselves as beneficiaries.

After making these not-so-savvy decisions, the bereaved Ms. Atkins (who lives off of approximately \$1.2 million+ a month in interest) then married a twice-divorced alleged "financial predator," stopped paying her three advisors, and wound up embroiled in a nasty breach of contract lawsuit.

The moral of the story: Prepare a proper estate plan, carefully plan your business succession and choose trusted advisors to counsel your heirs.

Update on Federal Estate Tax

It is unlikely that any action will be taken this year to address the Federal Estate Tax issue. Currently, the tax is scheduled to be eliminated in 2010, but for one year only. A bill has been introduced, though, to stretch the elimination date to 2012. In 2011 the Federal Estate Tax returns, but the credit amount (the amount you are permitted to give away without any Federal Estate Tax) reduces to \$1 million. Currently, the credit is \$2 million and is scheduled to increase to \$3.5 million in 2009.

We expect Congress will postpone addressing the Federal Estate Tax until 2009.

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Behind The Scenes



Meet Ann Dunavent, HH&C's staff member responsible for making the Estate Planning Notes (the "EPN") newsletter happen.

While the content of the EPN newsletter is compiled by the firm's probate attorneys, Ann designs the layout in final preparation of the printer-ready publication. The design process includes selection of color, clip art, quotable quotes, "pull-quotes" and other features which hopefully create interest, contrast and maintain readability.

Ann has been with HH&C nearly 20 years and during that time has served in various and important capacities with the firm. She is also responsible for updating the firm's client mailing lists, so be sure to call our office and speak with her if you have a change of address. We want to make sure you continue to receive your copy of the EPN newsletter.

Oh – we almost forgot! Another important area of Ann's service to HH&C is keeping the Peanut M&M candy jar full!!

Thanks Ann!