Estate Planning

THE BASICS

Part 1: Getting Started

People spend a lifetime working and building resources to carry them through their retirement years: an estate. To many, "estate planning" sounds like something only for the rich. Yet few families today can do without it.

Some people avoid estate planning because it deals with attitudes and feelings about death, property ownership, business arrangements, marriage, and family relationships. Others neglect or postpone estate planning with such excuses as "I'm too young," "It's too expensive," or "I don't have time." But isn't it worth investing some time and money now to avoid the confusion, delay, expense, and family quarreling that might occur if you die without an estate plan? If you don't make a plan, state and federal law decide what happens to your estate.

Accept the fact that you are going to die someday. Ask yourself: "If I should die before tomorrow—

- what would happen to the property I've worked a lifetime for?
- who would care for my minor children or aging parents?
- would my spouse and children be provided for in a fair and equitable manner?
- would the family business continue?
- would the estate settlement be conducted by someone with my family's interest and needs in mind?
- would estate and inheritance taxes, probate fees, and other administrative or legal costs be held to a minimum?"

If you have not considered these and other related questions, now is the time to get started in estate planning.

What is estate planning?

Basically, estate planning is the process of arranging your affairs to meet your objectives regarding the use, conservation, and disposal of your property. It involves the coordination of all your properties (stocks, bonds, cash, real estate, business interests, life insurance, retirement benefits, and other assets) into a total program.

You can't take these "riches" with you. Someone is going to inherit your property, so it seems only sensible to have the results of your efforts distributed according to your wishes and conserved, as much as possible, from estate and inheritance taxes and other costs of estate settlement.

Basic steps in estate planning

There are six basic steps in the estate planning process:

1. Initiate the discussion;
2. Take stock of the present;
3. Develop objectives;
4. Choose professional advisers and discuss objectives;
5. Consider alternatives and implement the plan; and
6. Review and modify.

Step 1—Initiate the discussion

Perhaps the greatest hurdle in the path of most families is lack of communication. All too often, family members are hesitant to discuss estate planning. Parents considering retirement may wish to delay any discussion because of the unpleasant overtones connected with growing old and dying. Adult children may hesitate mentioning estate planning to avoid placing additional stress on their parents and grandparents and because they do not wish to appear greedy or as trying to "take over."

How do family members initiate a discussion about the need to develop an estate plan without causing misunderstandings? One way is to use this publication as a conversation piece. Share what you learn with other family members. Encourage them to read the material.

Other ways to stimulate conversation include: reading books, magazine articles, and publications from banks, trust companies, and other reputable sources; or attending estate planning seminars or meetings. These may serve as the basis of discussion and illustrate the benefits of planning (and the consequences of not planning).

Other opportunities can come from visits with attorneys, bankers, accountants, and insurance representatives. A discussion of estate matters may come up in an incidental fashion and serve to initiate action. It's tragic—but true—that the death of a neighbor, friend, or relative may lead a family to realize that estate planning is not a subject to be overlooked.

Once the discussion is initiated, it should be easier to discuss the family's situation, concerns, and objectives. Difficult decisions may need to be made. But the alternative is letting someone else decide.

Step 2—Take stock of the present

The next step is to make a critical review of your present financial situation. This step is crucial because it is the foundation of your entire estate plan. The end result will be satisfactory only if the information is complete.

The checklist on page 3, "What Your Attorney Should Know," will give you an idea of the information needed. It asks for family information, locations of legal and business papers, and names and addresses of persons you consult for advice. The checklist also will help you determine what your estate contains (liabilities as well as assets), its value, and how ownership of property is held (see the discussion on property ownership on page 3). It is a good idea to review with professionals every document that bears on your personal and business situation to avoid "surprises" later.

Step 3—Develop objectives

As you begin forming an estate plan, think about objectives for your estate. What do you want to accomplish? Objectives vary from family to family due to differences in liabilities and assets, abilities and ages of survivors, number of children, and values that are important to the person making the estate plan. The objectives of each family member, as well as overall family objectives, should be considered. Remember that objectives may change with your age, marital status, income, amount and kind of property, and other circumstances.

Step 4—Choose professional advisers and discuss objectives

Estate planning is technical and complex. Most people do not have enough time to learn all they need to know to plan an estate thoroughly or to keep up with changes in state and federal laws. That's where professionals, such as attorneys, accountants, financial advisers, trust officers, and life insurance underwriters, can help.

An attorney with expertise and experience in property law, probate, trusts, tax law, and other estate settlement issues generally serves as the key person on the team, coordinating the work of other team members.

When working with professionals to design and implement an estate plan, be aware that they may have different opinions. You have the final say, however. It's important that you be as knowledgeable as possible about your objectives, your situation, and various estate planning alternatives and their consequences. Ask questions. Insist on understanding the plan and its implications.

Some common estate planning objectives are listed below. Check those that apply to your situation and list any you wish to add. If there is conflict among the objectives, they should be ranked in order of importance.

_____ 1. Provide security for surviving spouse.

_____ 2. Relieve surviving spouse of estate management responsibilities.

_____ 3. Provide security for both spouses after retirement.

_____ 4. Retire at age _.

_____ 5. Provide security for an incapacitated family member.

_____ 6. Assure continuity of farm, ranch, or other business.

_____ 7. Provide educational opportunities for beneficiaries.

_____ 8. Assist beneficiaries, including in-laws, to get started in business.

_____ 9. Minimize estate and inheritance taxes.

_____ 10. Name guardians, conservators, or trustees for minor children.

_____ 11. Name the personal representative (executor) of the estate.

_____ 12. Provide means for paying expenses of estate settlement, taxes, and other debts.

_____ 13. Provide equitable (not necessarily equal) treatment of family members.

_____ 14. Transfer specific property to specific people.

_____ 15. Make gifts to family members and others during lifetime.

_____ 16. Reduce income taxes by disposing of income property during life.

_____ 17. Transfer property during life by installment sale.

_____ 18. Provide for charitable bequests to a favorite charity or organization.

_____ 19. Minimize probate and settlement costs.

_____ 20. Review current operation and ownership of farm, ranch, or other business.

_____ 21. Other ____

____

Step 5—Consider alternatives and implement the plan

There may be several ways to reach your objectives. Ask your professional advisers to explain the alternatives. Explore the consequences of each one. Decide who is to receive what, when, and how.

You may need a sounding board—someone to talk things over with, try ideas on, and get reactions from. This may be your spouse, a friend, a partner, or one of your professional advisers. A sounding board can help you explore the needs of your beneficiaries, your property and its value to your family, and the proper balance between providing for your own future and meeting your estate planning objectives.

Once the plan has been formulated, it is important to implement it. Otherwise, the time, energy, and money involved in the previous steps may have been wasted.

Step 6—Review and modify

Once your estate plan is completed, you can relax—but only temporarily. We live in a world of continuous change, so your plan should change with your circumstances. For example, the value or nature of your property may change; your objectives may change; recipients may marry, divorce, die, or have children; or tax laws may be revised.

Some professional advisers suggest a review of an estate plan every three to five years, or whenever there is a major change in your situation or the tax laws.

What can a plan do for you?

A good estate plan can help provide financial security for you and your family, now and in the future. A properly designed plan may save thousands of dollars in income taxes, federal estate or gift taxes, Kansas inheritance taxes, and various estate settlement costs.

A well-thought-out estate plan can protect your family from bitter quarrels by providing for contingencies. It can prevent the forced sale or disposition of a farm, ranch, or family business. It can provide for skillful property management for younger family members, as well as for older family members who can no longer manage their own financial affairs.

No one is going to force you to make an estate plan. You may do nothing, if you wish. However, not making an estate plan is, in fact, making one. For example. your solely owned property and share of tenancy in common property will pass to the persons and in the proportions prescribed by Kansas law. This may or may not be the way you would prefer your estate to be disposed of.

What your attorney should know

You can save time and money by having necessary information and documents in hand for that first visit to your attorney and other estate planning professionals. The following checklist is a condensed summary of information your attorney will need. Actual documents also may be needed, such as wills; deeds; major debt instruments; past gift tax returns; income tax returns and financial statements for the past five years; trust instruments; information relative to income tax basis of property; and any other document where you are not sure (after checking the document) how the property is titled or who would be responsible for the debt.

- ❑ Personal information (family members' names, birth dates, addresses, occupations, social security numbers)
- ❑ Real estate (type of property and size, location and description, year acquired, cost, how titled, market value)
- ❑ Personal property (motor vehicles, machinery, livestock, crop inventory, home furnishings, jewelry, art, antiques, personal items—describe, include cost, value, who owns, how titled)
- ❑ Bank and savings accounts (name of institution and location, exact names on accounts, amount in each account, how titled on signature card, number for each account)
- ❑ Stocks, bonds, and other securities (description, when purchased, number, exact name of owner, face value, cost)
- ❑ Life insurance (company and address, policy number, face amount and any supplemental values, cash value and any outstanding policy loan, exact name of owner, name of insured, beneficiary)
- ❑ Trusts (type, location, trustee, who established, exact name of beneficiary, value of trust property)
- ❑ Notes, mortgages, and other accounts receivable (description, year acquired, value, person who owes you, repayment plan)
- ❑ Mortgages and other real estate debts (description, name of creditor, date due and amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured)
- ❑ Liens against personal property (description, name of creditor, date due, remaining amount to be paid, whether debt is an individual or joint responsibility, whether insured)
- ❑ Other personal liabilities (unsecured notes, notes endorsed, real estate taxes, personal property taxes, state taxes, federal taxes, unsettled claims—name of creditor, date due, amount remaining to be paid, whether debt is an individual or joint responsibility, whether insured)
- ❑ Retirement benefits (pensions, profit sharing, deferred compensation, individual retirement accounts, social security, qualified domestic relations orders—amount invested, accrued benefits, annual benefits, death benefits)
- ❑ Other financial information (income last year, current income, salary, qualified domestic relations orders, retirement income, annuities, rents, interest, bonuses, dividends, trusts, capital gains)
- ❑ Taxable gifts (amounts, when made)
- ❑ Where important papers are kept (husband's and wife's wills, trust documents, deeds, insurance policies, stocks and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnerships and corporation agreements, profit sharing plans, divorce decrees, pre- and post-nuptial agreements, employment contracts, pension benefits)

The publication, *Our Valuable Records,* MF-685, may help you identify and pull together some of this information.

Property ownership

Estate planning requires an understanding of property and property rights associated with its ownership. The form of property ownership has an important impact on the degree of control during life, as well as how property will be taxed and distributed after death.

Property can be broadly categorized as *real* or *personal.* Real property includes land, attached structures, and mineral rights. Personal property includes both tangible and intangible property. Tangible personal property encompasses such things as household goods, automobiles, business or farm equipment, and stored grain. Intangible personal property includes bank deposits, life insurance policies, stocks, and bonds.

There are two major elements in property ownership: degree of interest in (or control over) the property and the relationship between co-owners (when there is more than one person with a present interest in the property). It is important to note that there is no such thing as absolute ownership of property. In all civilizations, governments may reserve the right to levy taxes on property, to regulate ways in which it may be used, and to appropriate private land for public use by the power of eminent domain.

Fee simple absolute. The closest thing to absolute ownership is called "fee simple absolute." With property held this way, the owner (or owners) generally has power to sell it, borrow against it, receive income from it, lease it, and transfer it to others during life or at death.

Life estates and remainder interests. A more limited form of property interest is a life estate. Holders of a life estate—or life tenants—share property interests with "remaindermen" (persons designated to receive a transfer of the property after death of the life tenant).

Life tenants manage and receive income from property during their lifetimes, but cannot dispose of the property at death. Life tenants generally may not sell or mortgage the property without the permission of the remaindermen and are responsible for property taxes, mortgage payments, and adequate property maintenance. It should be noted that the terms and provisions of a life estate may vary, depending on the instrument creating it.

Sole ownership. With sole ownership, only one name appears on the deed or title. All solely owned property becomes a part of the owner's gross estate and, upon death, passes to named beneficiaries under a will or to heirs according to Kansas law (if there is no will).

Co-ownership. Co-ownership of property occurs when two or more persons hold legal title to the property. There are two types of co-ownership in Kansas: tenancy in common and joint tenancy.

Tenancy in common. Involves multiple owners, each of whom has a partial, undivided interest in the property. A tenancy in common is generally created by the words "to A and B." A transfer "to A or B" or "to A and/or B" also denotes tenancy in common. Should one of the tenants wish to dispose of his or her interest in the property, this can be done by mutual agreement or the court can decide how best to dissolve the co-ownership.

When a tenant in common dies, his or her undivided property share passes to the beneficiaries specified by will or, if no will exists, to heirs under Kansas law. The property does not pass to the co-owner unless named as the beneficiary in the will or unless the co-owner is considered an heir under state law. Only the portion of the property owned by the deceased tenant in common is included in the gross estate for federal estate and Kansas inheritance tax purposes.

Joint tenancy. Carries with it the right of survivorship. It is generally created by the words "to A and B as joint tenants with right of survivorship and not as tenants in common." In this instance, two or more persons own property together, again with undivided interests. Each owner can terminate co-ownership upon agreement or by requesting the court to partition the property or sell it and divide the proceeds.

The right of survivorship controls the disposition of property at the death of one co-owner. Property owned in joint tenancy immediately passes to the surviving joint tenant(s). Wills or state intestate laws do not control property held in joint tenancy. Even if listed in a will, property held in joint tenancy with right of survivorship supersedes or bypasses instructions in a will.

Some people are tempted to use joint tenancy with right of survivorship as an alternative to a will. This form of co-ownership does have some advantages. For example, it is a quick and convenient way to pass property to surviving joint tenants; it may provide quick access to funds or property for the surviving joint tenants; and it can save some of the delays and expense associated with probate. However, there are also several potential disadvantages.

Joint ownership gives another person equal control over jointly held property. For example, a joint owner could withdraw all the funds in a joint bank or savings account, without permission of the other joint tenant. Permission from all joint owners may be needed before jointly held real estate can be sold. This could become a significant problem if one of the joint tenants becomes incapacitated or incompetent. Jointly held property may be subject to inclusion in marital property (for purposes of dividing property during a divorce, for example), or have a lien placed upon it because of a lawsuit settlement against one of the joint tenants. If a joint tenancy is created with someone other than a spouse, the entire value of the property is included in the gross estate of the first joint tenant to die (for federal estate and state inheritance tax purposes), unless the estate of the deceased joint tenant can prove contribution by the surviving joint tenant(s) to the acquisition or maintenance of the property. Further, for married couples with large estates, having property in joint tenancy with right of survivorship may result in a substantial federal estate tax liability upon the death of the second spouse.

It should be noted that under Kansas law, transfers to two or more persons creates a tenancy in common, rather than a joint tenancy, **unless it is clear** that a joint tenancy was created.

References

This publication was primarily adapted from *Getting Started in Estate Planning* by Carol A. Stoltz, former specialist, Cooperative Extension Service, Kansas State University.

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The author would like to thank the following for their review of this publication:

Theron E. Fry, Tim O'Sullivan, Cheryl Cook Boushka, and Steven Brown, members of the Executive Committee of the Real Estate, Probate, and Trust Law Section of the Kansas Bar Association.

Douglas F. Beech, Extension Agricultural Economist, Cooperative Extension Service, Kansas State University.

This publication is not intended to provide a substitute for legal advice. Nor is it intended to serve as a complete and exhaustive text on estate planning. Rather, it is designed to provide basic, general information about the fundamentals of estate planning so you will be better prepared to work with professional advisers to design and implement an effective estate plan.

Information in this publication is based on the laws in force on the date of publication.

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KSU
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COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

L-849 May 1992

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File: Family Economics—3 5-92—10M; 1-93-7M