Does Your Estate Plan Include An Unnecessary Bypass Trust?

A once-popular estate planning tool may now cost families more in taxes than it saves. Changes in the estate tax have made the "bypass trust" a less appealing option for many families. If your estate plan includes a bypass trust not drafted by this office, you should reconsider its necessity because it could be doing more harm than good. (Our office typically drafts bypass drafts that are "disclaimer funded," meaning they will only be used when necessary to save taxes under current tax law).

When the first spouse dies and leaves everything to the surviving spouse, the surviving spouse may have an estate that exceeds the state or federal estate tax exemption. A bypass trust (also called an "A/B trust" or a "credit shelter trust") was designed to prevent the estate of the surviving spouse from having to pay estate tax. The standard in estate tax planning was to split an estate that was over the prevailing state or federal exemption amount between spouses and for each spouse to execute a trust to "shelter" the first exemption amount in the estate of the first spouse to pass away. While the terms of such trusts vary, they generally provide that the trust income will be paid to the surviving spouse and the trust principal will be available at the discretion of the trustee if needed by the surviving spouse. Since the surviving spouse does not control distributions of principal, the trust funds are not included in the surviving spouse's estate at his or her death and will not be subject to tax.

In 2013, estate taxes changed dramatically and now very few people are subject to federal estate taxes. Currently, the first $5.45 million (in 2016) of an estate is exempt from federal estate taxes, so theoretically a husband and wife would have no estate tax if their estate is less than $10.90

million. The estate tax is now also “portable” between spouses, accomplishing the same purpose as a bypass trust. This means that if the first spouse to die does not use all of his or her $5.45 million exemption, the estate of the surviving spouse may use it (provided the surviving spouse makes an “election” on the first spouse’s estate tax return).

One problem with a bypass trust is that the surviving spouse does not have complete control over of the assets in the trust. The surviving spouse’s right to use assets in the trust is limited and requires the filing of accountings and separate tax forms. In addition, if the trust generates income that is not passed to the beneficiary, that income can be taxed at a higher tax rate than if it wasn’t in a trust.

Another problem is that a bypass trust can actually cost more in capital gains taxes than it saves in estate taxes. When someone passes away, his or her assets receive a step-up in basis. When an asset is in a bypass trust, it does not receive a step-up in basis because it is passing outside of the spouse’s estate. If the assets are sold after the surviving spouse dies, the spouse’s heirs will likely have to pay higher capital gains taxes than if the heirs had inherited the asset outright.

A bypass trust can still be useful in some circumstances If your estate is greater than the current federal estate tax exemption, a bypass trust is still a good way to protect your assets from the estate tax. In addition, some states tax estates at thresholds much lower than the federal estate tax, and a bypass trust may help in those states. For other people, these trusts have other uses besides avoiding estate taxes.

Four Social Security Myths Debunked

There are a lot of misconceptions surrounding the Social Security system. Here are four common myths and the truth about how Social Security works and its future prospects.

Myth 1: You Should Collect Benefits Early

This is one of the biggest Social Security myths. In 2015, more than half of Social Security recipients began collecting benefits before their full retirement age (66 for those born between 1943 and 1954), potentially costing themselves thousands of dollars in additional benefits. If you take Social Security between age 62 and your full retirement age, your benefits will be permanently reduced to account for the longer period you will be paid.

On the other hand, if you delay taking retirement, depending on when you were born your benefit will increase by 6 to 8 percent for every year that you delay, in addition to any cost of living increases. There are a lot of factors that go into the decision as to when to take Social Security benefits, but if possible it is usually better to wait until your full retirement age or older.

Myth 2: Your Money Goes into an Account with Your Name on It

When you pay into Social Security, the money is not set aside in a separate account, as with a 401(k) or IRA. Instead, your contributions are used to pay current recipients. When you start receiving benefits, people paying into the system will be paying your benefits.

Myth 3: Social Security Will Be Out of Money Soon

Many young people believe the Social Security system will run out of money before they have a chance to collect anything. Currently, the Social Security trustees predict that the trust fund will run out of money in 2034. Politically, it seems unlikely that Congress and the President would let this happen. Changes will likely be made to the system by either raising taxes (such as by lifting the cap on income subject to Social Security tax), reducing benefits for high-income individuals, increasing the retirement age, or doing something else that will allow Social Security to be fully funded. However, even if the trust dries up and there isn't enough money to pay all the promised benefits, people will still be paying into the system and Social Security will be able to pay at least 75 percent of benefits.

Myth 4: If You Haven't Worked, You Cannot Collect Benefits

If you haven't worked outside of the home, you will not be able to collect Social Security benefits on your own record, but you may be able to collect them based on your spouse or ex-spouse's record. Spouses are entitled to collect as much one half of a worker's retirement benefit. This rule applies to ex-spouses as well, as long as the marriage lasted at least 10 years and the spouse applying for benefits isn't remarried.

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Last Chance to Use File and Suspend Strategy for Claiming

Social Security Benefits

Time is running out to use a potentially very lucrative Social Security benefits-claiming strategy. Spouses will no longer be able to use the “file and suspend” strategy after April 29, 2016. Beware, however, that the new rules are causing confusion at some Social Security offices.

The federal budget agreement that was signed in fall 2015 ended two Social Security strategies that some spouses have used to maximize benefits. The “File and Suspend” strategy allowed a worker to file for benefits and then suspend them. The worker’s spouse or children could then begin to receive spousal or children’s benefits while the worker postponed receiving benefits and continued to earn retirement credits.Under the new law, which takes effect April 29, 2016, a spouse cannot begin receiving benefits until the worker is actually receiving benefits, too. Workers can still file and suspend, but spouses (or other dependents, including minor and disabled children) cannot receive benefits during the suspension. There is an exception for divorced spouses. A divorced spouse can continue to receive spousal benefits if the worker suspends benefits.The second strategy, “Claim Now, Claim More Later,” allowed a spouse at full retirement age to choose whether to take spousal benefits or benefits on his or her own record. Under the new law, if you were not 62 years old by January 2, 2016, you do not get to choose which benefit to take. You may take whichever benefit is higher, but you cannot take spousal benefits and then switch to your own record later.

If you are at 66 years old or older before April 29, 2016, you should immediately consider whether or not you want to file and suspend your Social Security benefits. If you do not file and suspend before April 29, 2016, your spouse will not be able to collect spousal benefits unless you are also receiving benefits. Filing and suspending can be a beneficial strategy for certain couples. For example, suppose a husband is 66 and his wife is 65. The husband can file and suspend before April 29, 2016. Because the wife was 62 years old or older on January 2, 2016, when she turns 66, she can choose to take her spousal benefit while her own benefit continues to accrue. Meanwhile, the husband continues to work, so his benefit is also growing.

If you do decide to file and suspend before the deadline, beware that according to articles in *Forbes* and *Investment News*, some Social Security offices are giving out incorrect information about using file and suspend before the new law takes effect, claiming that a worker can only file and suspend if his or her spouse is also 66. While Social Security has issued emergency memos about the changes to field offices, they have yet to issue formal guidance. If you run into trouble with a Social Security office, you may need to be persistent to get the correct information. **Update: Social Security has published answers to frequently asked questions on file and suspend and on "claim now, claim more later" (which it calls deemed filing). For the first, click here; for the second, click here. For an article on Social Security's explanation of its new rules, click here.**

For more information about Social Security, go here.

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10 Ways the Elderly Can Avoid Financial Abuse

Increased dependency due to illness, disability or cognitive impairments can make seniors susceptible to financial abuse. Nest eggs accumulated over decades also often make seniors attractive targets for predators, whether an offshore bogus sweepstakes or a care provider who sees an opportunity to be paid more than an hourly wage.

Just as sunlight makes the best disinfectant, transparency provides the strongest abuse protection. If others are aware of the senior's finances, either possible predators will see that no opportunity exists to take advantage of the senior or the family members or professionals can step in to keep any fraud from going too far. Here are some steps seniors or their loved ones can take to prevent financial abuse.

1. Arrange for account oversight

Make sure that someone close to the senior has access to her accounts to be able to see if anything unusual is going on, for instance large checks being made out or larger-than-usual cash withdrawals from ATMs. The oversight can be through copies of monthly statements or online access to accounts.

2. Create joint accounts

A joint account with someone gives them oversight as well as the ability to write checks, make investment decisions and take steps if necessary to protect the funds in the account. It also avoids probate, making the transition somewhat easier at the owner's death. But make sure you only add the name of someone you really trust to the account because it can also be an avenue for financial abuse if the joint owner becomes the perpetrator.

3. Use a revocable trust

Revocable trusts can be useful for a number of reaons. They include all of the benefits of joint accounts, with few of the drawbacks. Your revocable trust gives someone you trust access to your accounts in trust and the ability to step in seamlessly if you become disabled. Unlike a joint account, it does not give the trustee any ownership interest in the account. If, for instance, you had four children but named one as a co-owner of your joint accounts, at your death she would have the legal right to keep the funds rather than share them with her siblings. That would not be the case with a revocable trust.

4. Visit often

Nothing prevents financial abuse or stops it in its tracks better than frequent visits by loved ones. Either the potential perpetrator will see that he can't isolate the senior and take advantage of him or family members or friends will notice the abuse before it goes too far.

5. Get help paying bills

If someone helps you pay your bills, they will help you make sure that you're not letting anything slip through cracks or paying something that you shouldn't. They will be able to help you sort through your mail and determine what is important and what is not.

6. Use a limited credit card

Credit cards are now available that allow another person to monitor the activity of the cardholder and to limit both the amount he spends and where he can spend it. One of these is the True Link card.

7. Sign up for do not call registry

It is quite easy to register your telephone number with the

Federal Trade Commission's Do Not Call Registry either online at www.donotcall.gov or by calling 888.382.1222. While this may not stop someone intent on defrauding a senior, it should help reduce calls from salespeople.

8. Sign up for Nomorobo

You can sign up for Nomorobo to block robo calls. Unfortunately, it does not work with all telephone providers, including Verizon.

9. Consult with an attorney

An estate planning attorney can help set up a revocable trust and durable power of attorney to assist with financial management, advise on the best protective steps to take in each situation and provide additional oversight to discourage financial abuse.

10. Opt out of mail solicitations

At www.dmachoice.org the Direct Marketing Association permits you to limit the amount of catalogs, credit card offers and other direct mail pieces you or a loved one receives. You may well ask why the Direct Marketing Association does this. The answer is that they don't want to waste their print and mail costs sending to consumers who have no interest in the product being marketed.

While there's no foolproof measure you can take that will both prevent financial fraud and leave you or your lived one with at least some independence and control over her finances, the steps described above can make her world a safer financial place. Just remember what was said at the beginning: isolation is a breeding ground for financial abuse (as well as depression and other ills). Social involvement is the best protection.

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6 Things to Ask Before Agreeing to Be a Trustee

Being asked to serve as the trustee of the trust of a family member is a great honor. It means that the family member trusts your judgment and is willing to put the welfare of the beneficiary or beneficiaries in your hands. But being a trustee is also a great responsibility. You need to go into it with your eyes wide open. Here are six questions to ask before saying “yes”:

1. May I read the trust?The trust document is your instruction manual. It tells you what you should do with the funds or other property you will be entrusted to manage. Make sure you read it and understand it. Ask the drafting attorney any questions you may have

2. What are the goals of the grantor (the person creating the trust)?Unfortunately, most trusts say little or nothing about their purpose. They give the trustee considerable discretion about how to spend trust funds with little or no guidance. Often the trusts say that the trustee may distribute principal for the benefit of the surviving spouse or children for their “health, education, maintenance and support.” Is this a limitation, meaning you can’t pay for a yacht (despite arguments from the son that he needs it for his mental health)? Or is it a mandate that you pay to support the surviving spouse even if he could work and it means depleting the funds before they pass to the next generation? How are you to balance the needs of current and future beneficiaries? It is important that you ask the grantor while you can. It may even be useful if the trust's creator can put her intentions in riding in the form of a letter or memorandum addressed to you

3. How much help will I receive?As trustee, will you be on your own or working with a co-trustee? If working with one or more co-trustees, how will you divvy up the duties? If the co-trustee is a professional or an institution, such as a bank or trust company, will it take charge of investments, accounting and tax issues, and simply consult with you on questions about distributions? If you do not have a professional co-trustee, can you hire attorneys, accountants and investment advisors as needed to make sure you operate the trust properly

4. How long will my responsibilities last?Are you being asked to take this duty on until the youngest minor child reaches age 25, in other words for a clearly limited amount of time, or for an indefinite period that could last the rest of your life? In either case, under what terms can you resign? Do you name your successor or does someone else?

5. What is my liability?Generally trustees are relieved of liability in the trust document unless they are grossly negligent or intentionally violate their responsibilities. In addition, professional trustees are generally held to a higher standard than family members or friends. What this means is that you won't be held liable if for instance you get professional help with the trust investments and the investments happen to drop in value. However, if you use your neighbor who is a financial planner as your adviser without checking to see if he has run afoul of the applicable licensing agencies, and he pockets the trust funds, you may be held liable. A well-respected Massachusetts attorney who served as trustee on many trusts used a friend as an investment adviser who put the trust funds in risky investments just before the 2008-2009 stock market crash. The attorney was held personally liable and suspended from the practice of law. So, be careful and read what the trust says in terms of relieving you of personal liability.

6. Will I be compensated?Often family members and friends serve as trustees without compensation. However, if the duties are especially demanding, it is not inappropriate for trustees to be paid something. The question then is how much. Professionals generally charge an annual fee of 1 percent of assets in the trust. So, the annual fee for a trust holding $1 million would be $10,000. Often, professionals charge a higher percentage of smaller trusts and a lower percentage of larger trusts. If you are doing all of the work for a trust, including investments, distributions and accounting, it would not be inappropriate to charge a similar fee. However, if you are paying others to perform these functions or are acting as co-trustee with a professional trustee, charging this much may be seen as inappropriate. A typical fee in such a case is a quarter of what the professional trustee charges, or .25 percent (often referred to by financial professionals as 25 basis points). In any case, it’s important for you to read what the trust says about trustee compensation and discuss the issue with the grantor.

If after getting answers to all these questions you feel comfortable serving as trustee, then by all means accept the role. It is an honor to be asked and you will provide a great service to the grantor and beneficiaries.

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