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'Tis the Season . . . to Review Your Estate Plan: A New Year's Resolution That's Easy to Keep

By Gina M. Barry, Esq.

It's the time of year for New Year's resolutions. Most resolutions are so cumbersome, the maker of the resolution is unable to keep the resolution, which is self-defeating. A simple resolution to make, and keep, is to review your estate plan. Annual review of your estate plan ensures that your plan remains current as there are many issues that can make an update to your plan necessary.

Obviously, in order to review your Estate Plan, it is first necessary to have a plan in place to review. If you have not already established a basic Estate Plan, including a Last Will and Testament, Durable Power of Attorney, Health Care Proxy and Homestead Declaration, there is no time like the present to take action. Establishing a plan is not as difficult, nor as expensive, as you may think. In addition, the peace of mind that comes from establishing a plan is immeasurable.

Assuming you have established a plan, it is important to be aware that the federal estate tax threshold will change many times in the coming years; however, it appears that the state estate tax threshold will hold steady. A deceased person may pass up to \$1 million to his heirs without

incurring any Massachusetts estate tax. This same individual may pass up to \$2 million to his heirs without incurring any federal estate tax. In 2009, the federal threshold will increase to \$3.5 million. In 2010 only, the federal estate tax is repealed. Note well, however, that in 2011, the federal threshold returns to \$1 million.

When property is passed to a spouse, even if its value exceeds the current threshold, no estate tax will be incurred as the unlimited marital deduction allows "free" passage of assets from one spouse to the other. Be wary of the trap that awaits married couples here. When the surviving spouse passes away, the assets will be in the estate of that spouse and will be fully taxed. If you are married or single and your estate exceeds the current threshold, proper planning can minimize the estate tax.

Even if your estate is valued at less than the estate tax thresholds, you should review your estate plan annually to ensure that your wishes will be carried out upon your incapacity, and ultimately, upon your death. When reviewing your estate plan after several years have passed since the plan was established, you will often find that the documents need updating. Perhaps, an additional

child or grandchild has been born, and there are no provisions for this new family member. Perhaps, your children have matured significantly, and a trust is no longer necessary to hold and administer their inheritance. Conversely, a child may have predeceased you or may have proven to be a spendthrift, in which case a trust may now be in order.

You should also review your estate plan to be sure that your assets remain sufficient to carry out your plan. Many estate plans include bequests of specific dollar amounts with the remainder of the estate then passing to those intended as the primary beneficiaries of the bulk of the estate. If your assets have decreased substantially, large specific bequests can effectively disinherit the heirs that receive the remainder of your estate after the specific bequests. Another alternative would be to change the dollar figures in your Will to percentages so that fluctuations in your assets will be adjusted for automatically.

Another reason to review your estate plan is to make sure that the individuals you have named in key positions are still able to serve. You should review the nominations in your Will,

including your named Executor and Guardians, as well as in your Durable Power of Attorney and Health Care Proxy. You should also consider naming alternates in your documents, who would serve in the event that the person you named can not serve at the necessary time. Also, if your Health Care Proxy does not contain Living Will language, which addresses your end of life medical decisions, your Health Care Proxy should be updated to include your wishes.

Many times, once an estate plan has been established, complacency sets in. While some sense of security should follow the establishment of a plan, it is important to review your plan regularly. 'Tis the season to review your estate plan. Go ahead. Make the resolution that is easy to keep.

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