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Elder Law | Estate Planning
Assuring peace of mind

23 REASONS TO MAKE OR UPDATE YOUR ESTATE PLAN

(Besides Taxes)

ABOUT THE FIRM

Zimmer Law Firm has served Greater Cincinnati families with comprehensive estate planning, estate settlement and elder law issues including Medicaid benefits planning since 1993. Their seminars are informative, easy to understand, and reflect of the extensive background and experience of the firm's lawyers. Barry Zimmer, firm founder, is the only area member of the American Academy of Estate Planning Attorney, an exclusive membership organization dedicated to promoting excellence in estate planning and elder law. Zimmer received the designation of Academy Fellow in 2008. He continues to hold this honor in recognition of his commitment and accomplishments in estate planning. He was also selected "Best of Cincinnati – Estate Planning Law" by Best Business Company in 2015 and 2016.

We consider it a great privilege to help families plan their estate and leave a meaningful legacy. We realize that clients entrust us with all their worldly wealth and ask us to make sure it's preserved, not only for their use but for generations to come.

We work to make a difference in our community – one family at a time, and we are passionate about helping families assure their peace of mind.

Since 1993, I have helped thousands of people protect their families and their wealth. I have personally helped loved ones as they age, suffer through grave illnesses, and die. I am a husband and father and know the angst that clients experience when they think about the future of their family without them. I am legal guardian for my special needs brother.

I know firsthand the importance of good planning, and the disruption created by poor planning or no planning at all. I get deep personal fulfillment from helping people plan for these issues. That is why I do what I do.

Barry Zimmer
Founder

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INTRODUCTION: ESTATE PLANNING IS NOT A SINGLE-ISSUE MATTER

There is no "one size fits all" estate plan. Nor is there any single factor that determines what kind of estate planning fits a person or his or her family. Planning should be driven by your goals and circumstances. That means everyone is different.

However the volume of information about estate planning available through the media, the internet, and seminar sponsors, can make the process seem overwhelming. How do you separate hype from truth? Myth from reality?

A Common Myth. Some people believe that avoiding the federal estate tax is the key purpose for making a Living Trust. They argue that since Living Trusts save taxes for married persons with estates valued above the estate tax exemption, there is no reason to create a Living Trust if one does not expect to exceed the exemption amount. The amount a person can leave to heirs without estate tax is $5.34 million for 2015, indexed annually for inflation. Because that exemption can be doubled for a married couple under the new "portability" law, some people argue that a trust is not called for unless you have an estate worth at least that amount. (For more explanation of how Living Trusts save estate taxes for married couples, see the section below entitled "How a Living Trust Helps Save Federal Estate Taxes if You Have a Taxable Estate.")

There is a variation on this theme for unmarried persons. That argument is that, because only married couples can save taxes with a Living Trust, you don't need to make a Living Trust if you are not married.

These arguments against Living Trusts are **myths**. This report debunks the commonly-held myth that Living Trusts are primarily for the "wealthy" – whatever that term may mean today. It will put estate taxes and Living Trusts in perspective, and discuss the relative significance of taxes when deciding between a Living Trust and other options.

The Tax-Tail Should Not Wag the Estate Planning Dog! The idea that estate planning with a Living Trust is worthwhile *only* for estates that exceed the Applicable Exemption Amount is misleading, myopic, and a costly misconception for multiple reasons. The underlying philosophy of that assertion is that estate tax savings is the *only* worthwhile reason to make an estate plan. But estate planning is not – nor should it be – a single issue concern! That thinking could lead to unfortunate results for the family and heirs of those who think this way.

Reducing taxes is a good reason to plan, but in truth the best reasons for making an estate plan aren't tax-related. *Family goals and values* should be the primary reason for estate planning and should be the North Star. Protection and preservation of wealth from the many forces that can reduce a financial legacy *other than estate taxes* is another overriding goal for most people. At minimum that means avoiding probate proceedings and their costs. Another universal goal is the desire for the right people to inherit rather than the wrong people, and for the transition to take place under controlled circumstances. This includes understanding and identifying the forces and circumstances at work in our society that could undermine or destroy inherited wealth. And of course, making sure that the people you choose are in charge of your affairs and can settle your estate with the least amount of hassle, is another top concern.

The most popular form of planning today among savvy consumers and professional advisors is the funded Revocable Living Trust. This report reviews the most common **non-tax reasons** why people make a Living Trust their estate planning tool of choice compared to a simple will, or no plan at all. Armed with this information, you should be able to ask the appropriate questions about whether a Living Trust fits your needs, goals and circumstances. Your next step will then be to find a qualified estate planning attorney to help you implement your planning, whether you opt for a Living Trust based plan, or other more traditional planning.

WHERE THE LAW STANDS TODAY

Some say that only those with a minimum estate value should make a trust. At first, the commonly-cited number was $600,000. Then people used to say anywhere from $1 million to $5 million. Now it's $5.43 million per person. Where do these numbers come from and what is their significance?

These figures are based on the amount of an estate that the federal estate tax law allows people to pass on at death without tax. The value of the estate is calculated based on the worth of such things as houses, cash holdings, investments, life insurance policies, retirement accounts, personal belongings, and other assets. If, after all an estate's assets have been added, the estate's value is less than the federal estate tax exemption amount, then the tax does not apply. The tax applies to the value of the taxable estate over the exemption amount.

A Brief History of the Federal Estate Tax. Until 1997, the estate tax exemption was $600,000 per person. In 2001, the Economic Growth Tax Relief Reconciliation Act scaled up the federal estate tax exemption over an 8-year period. The Laws were enacted in 1997 and 2001 that increased the federal exemption and gave it a new name – the Applicable Exemption Amount ("AEA"). AEA grew from $600,000 in 1997 to $3.5 million per person in 2009.

For people who died in 2010, there was no federal estate tax, due to stipulations in EGTRRA. The law that eliminated the tax in that year was to "sunset" on January 1, 2011, causing the exemption amount to revert back to the $1 million amount from 2001. However, Congress enacted legislation at the eleventh hour by enacting the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, referred to commonly as TRA 2010. Under TRA 2010, the federal estate tax exemption was reset to $5 million per person.

TRA 2010 also provided that if you are married and your estate does not fully meet the exemption amount, then the exemption was "portable" to your surviving spouse. In other words, if your estate is worth less than $5 million when you die, your spouse can take advantage of his/her $5.0 million exemption and add onto that your unused AEA. But this was only if you both died in 2011 or 2012. Beginning in January 2013, the old law from 2001 was set to apply again, at a $1.0 million per person exemption amount, with no portability of the AEA.

What happened to the sunset of TRA 2010? On January 1, 2013, a new law was enacted, called the American Taxpayer Relief Act of 2012, or ATRA 2012. That law, in part, made the $5.0 million exemption and its portability "permanent." It indexed the AEA for inflation and made the lifetime gift exemption from gift tax the same as the AEA. That's how the exemption got to be $5.43 million for 2015, and it will adjust for inflation in the future from time to time. But the Act did not address the spending side of the federal budget, and deferred that challenging issue.

Because Congress has yet to solve the budget deficit, there is skepticism amount estate planning professionals as to whether the current estate tax law is truly "permanent". The cynical among commentators in this area say that, as long as the current budget crisis and debt ceiling issues continue, Congress could find it to be compelling to lower AEA again in order to raise more revenue.[1]

TOP 23 REASONS TO MAKE A LIVING TRUST (OTHER THAN TAXES)

In no particular order, the following are the most common reasons for using a Living Trust for planning compared to a simple Will.

1. Designating who will manage your affairs should you become incapacitated or when you pass away, instead of leaving that decision to someone else and requiring involvement of the courts.

2. Avoiding the impact of the legal system on your affairs while you are alive if you become incapacitated.

3. Simplifying the process to settle your affairs at your death or during incapacitation.

4. Minimizing the time it takes to settle your affairs and distribute your estate after your death.

5. Keeping your private affairs confidential, instead of opening them to public scrutiny under the death probate process.

6. Protecting your children from a prior marriage from being disinherited if you remarry and die first, before your next spouse.

7. Providing for your spouse without having to disinherit your children if you remarry.

8. Protecting your financial assets from your heirs' legal predators and creditors -- including ex-spouses, and lawsuits.

9. Planning for Medicaid and its impact on your estate if you must go into a nursing home or require nursing care.

10. Imposing discipline upon children (and/or grandchildren) who may not be capable or experienced in managing money.

11. Provide for "special needs" children and grandchildren (those with disabilities such that they cannot provide their own care), and do so without sacrificing their eligibility for government entitlements such as SSI or Medicaid that are "means tested".

12. Insuring that a specific portion of your estate, or specific items of personal property or real estate, actually gets to children, grandchildren, charities, etc., as you wish – no matter what.

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[1] A full analysis of the present status of the federal estate tax is a complicated discussion that is beyond the scope of this Report.

13. Shielding a portion of your estate if you pass away first and your surviving spouse remarries.

14. Addressing your children's varying needs.

15. Preventing or discouraging challenges to your estate plan by disgruntled heirs or intentionally omitted family members.

16. Rewarding and encouraging heirs who make smart life decisions, and preventing the depletion of your estate by those who do not make smart choices.

17. Assuring an education for children/grandchildren, despite what they (or their parents) dream of doing with their inheritance to the contrary.

18. "Brady-Bunch" family estate planning: assuring that the step-parent doesn't spend your children's inheritance and/or provide for a spouse without sacrificing the intended legacy for children of a prior marriage.

19. Planning for succession of a family business or farm to junior family members in a way that is fair to everyone.

20. Allowing a sole proprietorship or general partnership business to continue even in the event of your death or incapacitation, rather than being forced by law to close and liquidate.

21. Making sure the wrong people don't inherit your estate.

22. Planning an inheritance for substance abuser children or heirs with personal problems, without jeopardizing their welfare or encouraging their vices and shortcomings.

23. Favoring charitable institutions or causes with planned giving, which can also benefit you during your lifetime.

WHAT IF YOU ALREADY HAVE A LIVING TRUST?

Regardless of tax issues, an estate plan should be reviewed from time to time and tuned-up as needed. The non-tax issues for estate planning discussed in this report are a good review checklist in case things have changed since you made your Trust. Following is a list of common reasons why people amend or update a trust after it is established:

1. Changes in health.

2. Changes in the law.

3. Birth of children or grandchildren with special needs (for example, physical or mental impairments).

4. Death of a beneficiary (heir) or of a person who had a role to play in your plan.

5. Illness or injury of a beneficiary that has made him/her entitled for government entitlements such as Medicaid or SSI.

6. Birth or adoption of a child.

7. Second thoughts about who you named as a Trustee or Power of Attorney Agent, or changes in circumstances that make a prior decision inappropriate.

8. Your change of heart about who inherits.

9. Divorce or separation in contemplation of divorce.

10. Remarriage after a divorce.

11. First-time marriage when a Trust has already been created.

12. Acquisition of assets or property rights of substantial value.

13. Changes in circumstances that make you believe it would be imprudent to give an heir access to an inheritance without supervision or rules.

14. Declining health, family or job pressures, relocation, or other issues that make your choices for Trustee, Executor or Power of Attorney no longer appropriate.

15. Divorce or troubled marriage of your beneficiaries.

16. Birth of special-needs beneficiaries.

17. Family discord causing estrangement of children.

18. Economic hardship of a beneficiary, making additional gifts desirable.

19. Growth of your estate in excess of twice the then-applicable federal estate exemption amount if you are married, or if you are single then in excess of the exemption amount.

20. Acquisition of substantial life insurance on your life or the life of your spouse if you are married;

21. Remarriage or divorce of a beneficiary; a beneficiary's troubled marriage.

22. Financial or legal problems of a beneficiary that would risk the inheritance to loss to the beneficiary's creditors.

23. Actual or potential bankruptcy of a beneficiary.

This is a partial list and by no means exhaustive. Trust amendments, or changes to other estate planning documents, should be made with a formal document that should be prepared by a lawyer. A trust amendment must be signed with the same formalities as the execution of your original trust document. It is not effective to make changes to your trust by marking up the pages yourself.

HOW A LIVING TRUST HELPS SAVE FEDERAL ESTATE TAXES
(IF YOU HAVE A TAXABLE ESTATE)

If any of these issues apply to you or concern you, don't let estate tax reform sidetrack you. The ideas discussed previously are significant and need to be addressed even if there is no estate tax or your estate is within the federal estate tax exemption levels so that the estate tax becomes a non-issue.

If the estate tax applies to you, then a Living Trust will have another significant advantage for you and your family. A married couple with a properly structured and funded Living Trust will save twice as much or more on the estate tax as the married couple that does not plan properly, even with portability of the AEA. That's because a living trust that creates a credit shelter trust at the first spouse's death will ultimately shelter more estate assets from tax than using the portability option, due to inflation indexing and asset appreciation. Relying on a simple Will, jointly owned accounts or real estate, or pay-on-death beneficiary designations is not a full and always reliable solution. Although there will not be an estate tax when the first spouse dies with a simple will, the two estate assets will be combined and the combined total will be includible in the taxable estate of the surviving spouse. The effect of combining the two estates into one may be increasing the estate of the second spouse to a level that will make it taxable. A living trust can avoid this by applying each spouse's exemption and still make all assets and income available to the surviving spouse, applying each spouse's AEA, enjoying the benefit of the inflation indexing of the AEA, and sheltering asset appreciation of the first spouse's estate after his or her death. Portability alone cannot deliver all these protections. That's why living trusts with estate tax planning provisions are still the best practice. Portability is planning as an after-thought, or a way to fix a broken estate tax plan.

Because most Living Trusts are revocable, they can be modified to reflect any changes in the estate tax. Making a revocable Living Trust does not tie your hands and permanently commit you to any one strategy. There are even ways to design a trust so that your Successor Trustees can react and make appropriate adjustments to carry out your wishes if the estate tax is permanently repealed.

A properly drafted Living Trust with the flexibility to change it even after death of the Trustmaker (which requires special drafting and protections in the document) is a good hedge against the uncertainty of the time of death and the future of the federal estate tax. This makes the Living Trust a more flexible and appropriate planning tool than before.

A WORD ABOUT THE STATE DEATH TAX

Although states may have varying laws regarding estate planning, they do share in federal estate tax revenues. This is known as the state death tax credit. When someone dies and his or her estate value is above the federal exemption amount, the decedent's state receives a portion of the federal tax. Some states simply charge a tax equal to the state death tax credit.

As the federal estate tax exemption decreased over time, so did the state death tax credit revenues to the states. In 2010, there was no revenue sharing at all since the federal estate tax ceases. Thus, EGTRRA transferred some of the cost of tax reform to the states. Some states enacted or re-enacted death taxes to make up for this loss.

Ohio has no estate tax, effective with deaths occurring on or after January 1, 2013.

CONCLUSION

The basic goals of planning -- control of one's estate and affairs, addressing family and personal issues, assuring the right people receive your legacy, minimal delay, assuring privacy, and maximizing the estate by avoiding the intrusion of the legal system – are always relevant regardless of whether we have an estate tax. These planning points are timeless -- and they have no relation to the existence of an estate tax.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.

The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine, Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

ADDITIONAL REPORTS

Request any reports of interest to you or your family. Simply call our office at 513.721.1513 or visit our website at **www.zimmerlawfirm.com.**

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- Beware of Living Trust Scare Tactics
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