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Estate Planning – The Challenge of Getting Started

A sound estate plan cannot be constructed in a void and requires the following.

- Full disclosure all assets and liabilities.
- Full disclosure of the needs and objectives, with no regard to the tax consequences or feelings about the member's family, their requirements, their strengths, and weaknesses, and their potentials and goals.
- Full disclosure of any existing estate plan.
- Full communication concerning the existing plan's merits and disadvantages, the options for improving or replacing it, and the consequences of the various choices.

However, there is typically a certain reluctance to disclose personal and financial details needed to formulate a sound estate plan. There may be fears of breach of confidence or emotional difficulties in examining attitudes and feelings toward family members. There may be existing misconceptions about estate planning and the estate planner's role or concerns about the legitimacy and viability of different tax planning

strategies. And there is frequently the understandable tendency to avoid facing up to one's own mortality.

In order to construct a successful estate plan, there must be a degree of trust and understanding. The following are some approaches that may prove helpful.

"Estate Planning"

To some, "estate planning" smacks too much of death. Financial planning might be a better description. It must be pointed out that building, preserving, and transferring wealth and property are all key elements in the planning process and that that proper planning can help ensure that the needs of loved ones are met.

The costs of nondisclosure

The consequence of nondisclosure or incomplete disclosure often results in lost opportunities for tax savings. When we are finally confronted with the deemed disposition at

death rules, this often becomes very apparent and strategies to save on tax are too late to implement.

Openness to hypothetical situations

One needs to be open to consider hypothetically situations when constructing a comprehensive estate plan. The possible scenarios of handicapped children, the marital status and sexual orientation of children, divorces, separations, estrangements, and intra-family jealousies and resentments should be given due consideration.

Similarly, the surviving spouse's remarriage could be a hypothetical possibility and may require the use of a trust for the surviving spouse of management responsibilities and protection from creditors or the demands of relatives, while at the same time protecting the children as the ultimate beneficiaries, even if the survivor should remarry.

Realistic values

Values for assets without established market values are apt to be unreliable. The relevant figure is fair market value, not book value or cost. If a business interest is involved, an accountant's or auditor's valuation may be requested. If insurance values are sought, an agent or broker, or the insurance company itself may supply the answers.

Misconceptions

In estate planning, as elsewhere, a little knowledge can be a dangerous thing. Misconceptions regarding estate planning often include:

- avoiding probate is always a good idea;
- making lifetime gifts to children cannot hurt;
- designating a beneficiary of a life insurance policy is always a good idea;
- joint ownership is the easiest and best way of transferring property at death; and
- the only reason you might establish a trust for your spouse or other family member is if they are unable to manage the funds.

These misconceptions should be addressed with the estate planner before starting the estate planning process in order to make the right strategic choices in formulating a successful estate plan.