THE ESTATE PLANNER

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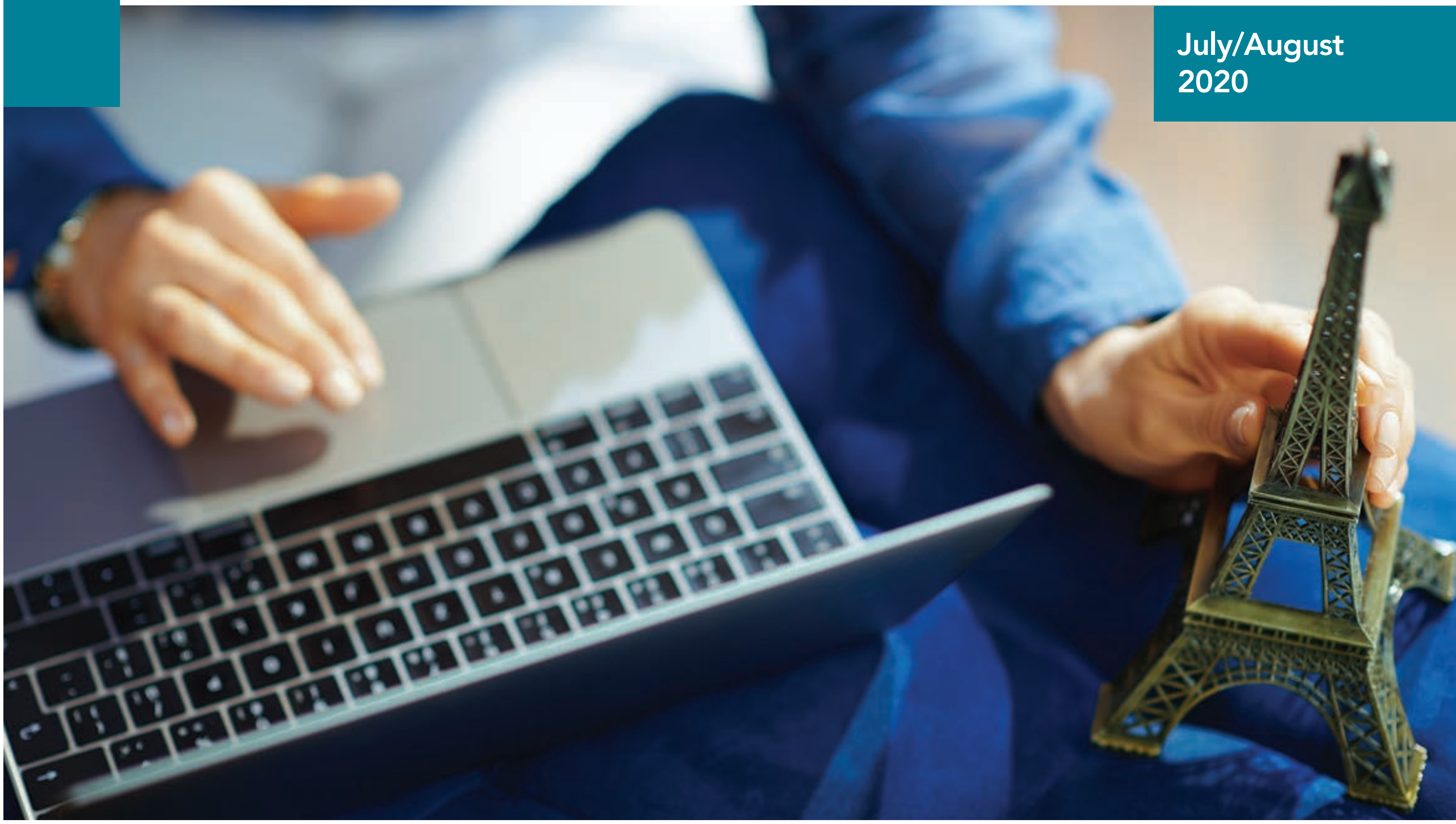

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Shumaker, Loop & Kendrick, LLP

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Don't overlook foreign assets when planning your estate

You'd be surprised how often people fail to disclose foreign assets to their estate planning advisors. They assume that these assets aren't relevant to their "U.S." estate plans, so they're not worth mentioning. But if you own real estate or other assets outside the United States, it's critical to address these assets in your estate plan.

Watch out for double taxation

If you're a U.S. citizen, you're subject to federal gift and estate taxes on all of your worldwide assets, regardless of where you live or where your assets are located. So, if you own assets in other countries, there's a risk of double taxation if the assets are subject to estate, inheritance or other death taxes in those countries. You may be entitled to a foreign death tax credit against your U.S. gift or estate tax liability — particularly in countries that have tax treaties with the United States — but in some cases those credits aren't available.

Keep in mind that you're considered a U.S. citizen if 1) you were born here, even if your parents have never been U.S. citizens and regardless of where you currently reside (unless you've renounced your citizenship), or 2) you were born outside the United States but at least one of your parents was a U.S. citizen at the time.

Even if you're not a U.S. citizen, you may be subject to U.S. gift and estate taxes on your worldwide assets if you're domiciled in the United States. Domicile is a somewhat subjective concept — essentially it means you reside in a place with an intent to stay indefinitely and to always return when you're away. Once the United States becomes your domicile, its gift and estate taxes apply to your assets outside the United States, even if you leave the country, unless you take steps to change your domicile.

Now that the federal gift and estate tax exemption is up to \$11.58 million (\$23.16 million for married couples), you may not be concerned about U.S. gift and estate taxes. But remember, the exemption amounts are scheduled to revert to their pre-2018 levels of \$5 million and \$10 million, respectively (indexed for inflation) as of the beginning of 2026. And there's always a chance that lawmakers will reduce them earlier. So even if your estate is well within current exemption amounts, it's a good idea to plan for a potential estate tax bill down the road. Further, for married couples, the rules are different — and potentially a lot more complex — if one spouse is

Estate planning for foreign citizens

For foreign citizens living in the United States, estate planning can be complicated. One source of confusion is the difference between residency and domicile. If you're a U.S. resident — which is based on the amount of time you spend in the U.S. — you're subject to U.S. income taxes on your worldwide income. But resident aliens aren't subject to U.S. gift and estate taxes unless they're domiciled in the U.S. You can be a resident without being a domiciliary, although residency is a factor in determining domicile.

If you're not a U.S. citizen or domiciliary — that is, if you're a resident alien who's not domiciled in the United States, or you're a nonresident alien — then U.S. gift and estate taxes will not reach your assets outside the United States. However, you'll be subject to those taxes on assets that are "situated" in the United States, including real estate and certain investments in U.S. businesses. And unlike the $11.58 million allowed to U.S. citizens and domiciliaries, the estate tax exemption amount is a paltry $60,000.

Under those circumstances, life insurance can be an effective way to cover estate taxes on significant U.S. assets because, for those who aren't U.S. citizens or domiciliaries, life insurance proceeds are excluded from their taxable estates.

neither a U.S. citizen nor considered a resident for estate tax purposes.

One will may not be enough

To ensure that your foreign assets are distributed according to your wishes, your will must be drafted and executed in a manner that will be accepted in the United States as well as in the country or countries where the assets are located. Often, it's possible to prepare a single will that meets the requirements of each jurisdiction, but it may be preferable to have separate wills for foreign assets. One advantage of doing so is that separate wills, written in the foreign country's language (if not English) can help streamline the probate process.

If you prepare two or more wills, it's important to work with local counsel in each foreign jurisdiction to ensure that the wills meet each country's requirements. And it's critical for your U.S. and foreign advisors to coordinate their efforts to ensure that one will doesn't nullify the others. Also, keep in mind that some countries have forced heirship or similar laws that can override the terms of your will.

Trust issues

A typical U.S. estate plan uses one or more trusts for a variety of purposes, including tax planning, asset management and asset protection. And it's common for U.S. wills to provide for all assets to be transferred to a trust.

Be aware, however, that many countries don't recognize trusts. So, if your estate plan transfers foreign assets to a trust, there could be unwelcome consequences, including higher foreign taxes or even obstacles to transferring the assets as intended.

Plan early

If you own foreign assets, talk to your estate planning advisor as soon as possible about steps you can take to ensure that those assets are distributed in accordance with your wishes, and in the most tax-efficient manner possible. And if you're considering purchasing foreign assets, consult your advisor before you buy. He or she can help you structure ownership of these assets in the optimal manner, in accordance with the laws of the United States and the country where they're located.

Estate planning during uncertain times

As people continue to grapple with the fallout from the novel coronavirus (COVID-19) pandemic, it's important to consider the impact of the crisis on your retirement and estate plans. Few people are immune to the virus's financial effects, but there are strategies available that can aid your recovery. These include estate planning opportunities that are especially effective in the current environment, as well as relief available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Windows of opportunity

Tax reform legislation enacted in 2017 doubled the lifetime gift and estate tax exemption — through 2025 — to an inflation-adjusted $11.58 million (a combined $23.16 million for married couples). This creates a window of opportunity to use your gift tax exemption to transfer assets to your loved ones. This window is scheduled to close on January 1, 2026, when the exemption amount drops to $5 million (indexed for inflation), although it's possible the window will be closed sooner. It's also possible that future lawmakers will reduce the exemption amount even further. Acting now allows you to lock in the elevated exemption amount and remove any future income and appreciation on transferred assets from your estate.

The CARES Act offers welcome tax and retirement relief designed to help people ride out the current storm.

Another reason to act soon is that in the current economic climate, many assets have declined in value. This allows you to transfer a greater amount of wealth without triggering gift taxes. Also, because interest rates are low, estate planning tools that are most powerful in a low-interest environment — such as intrafamily loans and grantor retained annuity trusts (GRATs) — are especially attractive.

Financial relief

The CARES Act offers welcome tax and retirement relief designed to help people ride out the current storm. Key provisions include:

- Suspension of required minimum distribution (RMD) requirements for IRAs and certain qualified retirement plans in 2020. Skipping RMDs in 2020 is particularly advantageous because the amount is based on year-end 2019 account values. Otherwise, you might be forced to liquidate account assets at depressed values.

- Relief for early withdrawals. If you were affected by the COVID-19 pandemic, the law permits you to withdraw up to $100,000 this year from IRAs, 401(k) plans or certain other retirement plans without a 10% penalty, even if you're under age 59½. In addition, you can avoid tax on these funds by recontributing them (without regard to otherwise applicable contribution limits) within three years. To the extent withdrawals aren't recontributed within that period, they're taxable, but the tax may be prorated over three years. You qualify for these benefits if either 1) you or your spouse or dependent was diagnosed with COVID-19, or 2) you suffered financial hardship as a result of the pandemic because you were quarantined, furloughed, laid off, had your work hours reduced, were unable to work due to lack of child care, or a business you own closed or reduced its hours.

- Doubling of the amount you may borrow from certain qualified retirement plans to the lesser of $100,000 or 100% of your vested account balance, for loans made within 180 days after the law's enactment date (March 27, 2020). If you had any outstanding loans on that date, you may delay any repayments due in 2020 for one year.
- Relaxed restrictions on certain charitable deductions. For charitable gifts made this year, the act increases the deduction limit from 60% to 100% of adjusted gross income and creates a new $300 above-the-line charitable deduction for non-itemizers. These benefits are available for *cash* gifts to qualified public charities other than donor-advised funds and supporting organizations.

Review your plans

In light of our uncertain economic environment and the relief provided by the CARES Act, now's a good time to review your retirement and estate plans and adjust your strategies if appropriate.

Roll with the changes

Your estate plan must evolve as you age

Regardless of the stage of life you're currently in, it's important to bear in mind that your estate plan isn't a static document. Reviewing and revising your estate plan is critical — because what's important to you in your 20s or 30s likely will be different in your 60s or 70s. Let's review some general estate planning guidelines to follow as you progress through life.

Your 20s and 30s

If you've recently embarked on a career, gotten married, or both, now is the time to build the foundation for your estate plan. And, if you've recently started a family, estate planning is even more critical.

Your will is at the forefront. Essentially, this document divides up your accumulated wealth upon death by deciding who gets what, where, when and how. With a basic will, you may, for instance, leave all your possessions to your spouse. If you have children, you might bequeath some assets to them through a trust managed by a designated party.

A will also designates the guardian of your children if you and your spouse should die prematurely. Make sure to include a successor in case your first choice is unable to meet the responsibilities. If you don't have a will, state law governs the disposition of assets and a court will appoint a guardian for your minor children.

As you approach the later years, your children may have graduated from college and moved out of the house. This usually changes the dynamic for "empty nesters." Significantly, you may start shifting your emphasis from college savings to asset preservation, with appropriate revisions to estate planning documents.

Your golden years

Once you've reached retirement, you can usually relax somewhat, assuming you're in good financial shape. But that doesn't mean estate planning ends. It's just time for the next chapter.

During your early years, your will may be supplemented by other documents, including trusts, if it makes sense personally. In addition, you may have a durable power of attorney that authorizes someone to manage your financial affairs if you're incapacitated.

Your 40s and 50s

If you're a middle-aged parent, your main financial goals might be to acquire a home, or perhaps a larger home, and to set aside enough money to cover retirement goals and put your children through college. So you should modify your existing estate planning documents to meet your changing needs.

For instance, if you have a will in place, you should periodically review and revise it to reflect your current circumstances. Now that your children are older, you may not have to worry about a guardian, but you might shift the division of assets to accommodate college expenses. Again, a trust may be a convenient way to address these issues, especially if you're concerned about a child squandering his or her inheritance.

If you haven't already created a power of attorney, the need is often more pronounced during the middle years. Furthermore, health care directives can complement a power of attorney.

For instance, you may be inclined to change bequests in your will, perhaps adding provisions to include grandchildren born in recent years. Or, if there's been a family conflict, you may wish to "disinherit" family members by removing them from your will. Depending on the situation, a codicil may suffice. Proceed cautiously, with the help of your attorney, to ensure that you minimize or eliminate any potential challenges by the party or parties being excluded.

> *If you haven't already created a power of attorney, the need is often more pronounced during your 40s or 50s.*

The same principles apply to a power of attorney. It may be advisable to designate a different agent or name a new successor. A divorce can also precipitate amendments to your estate plan.

If you haven't already done so, have your attorney draft a living will to complement a health care power of attorney. This document provides guidance in life-ending situations and can ease the stress for loved ones.

Finally, create or fine-tune, if you already have one written, a letter of instructions. Although not legally binding, it can provide an inventory of assets and offer directions concerning your financial affairs.

Gain peace of mind

Updating and revising your estate plan today can provide you peace of mind that your loved ones will be taken care of in the future. Your estate planning advisor can help you determine if any revisions are needed.

ESTATE PLANNING RED FLAG

Your estate plan doesn't treat your grandchildren equally

Many people, when planning their estates, simply divide their assets equally among their children. But "equal" doesn't necessarily mean "fair." It all depends on your family's circumstances. Providing for grandchildren is one area where equal treatment can inadvertently result in unfairness.

Consider this example: Bob has two children, Ted and Carol. Ted has two children and Carol has four. Suppose Bob's estate plan calls for his $8 million estate to be divided equally between his two children. When he dies, Ted and Carol each receive $4 million. But after they die, Ted's two children receive $2 million each from their grandparents' inheritance, while Carol's four children receive only $1 million each. (This assumes, of course, that Ted and Carol each preserve the full amount of their inheritances.)

One way to resolve this inequity is through the purchase of life insurance. For example, Bob could purchase a policy on his own life, with the proceeds divided equally among his grandchildren. Alternatively, he could arrange policies on the lives of Ted and Carol designed to provide equal amounts to each grandchild. One advantage of this approach is that, because Ted and Carol are younger, the available death benefits would be greater. Bob could use gifts or loans to help Ted and Carol pay the premiums.

Life insurance allows Bob to provide more for his grandchildren, on an equal basis, while still dividing his other assets equally between his children. Depending on how Ted and Carol spend their inheritances, Ted's children may still receive more than Carol's on a per capita basis, but the additional assets provided by life insurance will likely make Bob's estate plan appear "more fair" in the eyes of his grandchildren.

Experience. Responsiveness. Value.

At Shumaker, we understand that when selecting a law firm for estate planning and related services, most clients are looking for:

- A high level of quality, sophistication, and experience.
- A creative and imaginative approach that focuses on finding solutions, not problems.
- Accessible attorneys who give clients priority treatment and extraordinary service.
- Effectiveness at a fair price.

Since 1925, Shumaker has met the expectations of clients that require this level of service. Our firm offers a comprehensive package of quality, experience, value and responsiveness with an uncompromising commitment to servicing the legal needs of every client. That's been our tradition and remains our constant goal. This is what sets us apart.

Estate planning is a complex task that often involves related areas of law, as well as various types of financial services. Our clients frequently face complicated real estate, tax, corporate and pension planning issues that significantly impact their estate plans. So our attorneys work with accountants, financial planners and other advisors to develop and implement strategies that help achieve our clients' diverse goals.

Shumaker has extensive experience in estate planning and related areas, such as business succession, insurance, asset protection and charitable giving planning. The skills of our estate planners and their ability to draw upon the expertise of specialists in other departments — as well as other professionals — ensure that each of our clients has a comprehensive, effective estate plan tailored to his or her particular needs and wishes.

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We welcome the opportunity to discuss your situation and provide the services required to help you achieve your estate planning goals. Please call us today and let us know how we can be of assistance.

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