INSIGHT ON
ESTATE PLANNING
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## When should you turn down an inheritance?

"Thanks, but no thanks." If you expect to receive an inheritance from a family member, such as a parent or other loved one, you might choose to use a qualified disclaimer to refuse the bequest. As a result, the assets will bypass your estate and go directly to the next beneficiary in line. It's as if you were never named as the beneficiary in the first place.

Why would you ever look this proverbial gift horse in the mouth? Frequently, using a legally valid disclaimer (see "Five legal requirements for qualified disclaimers" on page X) will save gift and estate taxes, while redirecting funds to where they ultimately would have gone anyway. This estate planning tool is designed to benefit the entire family.

**Reasons for using a disclaimer**

Federal estate tax laws are fairly rigid, but a qualified disclaimer offers some unique flexibility to a forward-thinking beneficiary. Consider these possible reasons from an estate planning perspective:

**Gift and estate tax savings.** This is often cited as the main incentive for using a qualified disclaimer. For starters, the unlimited marital deduction shelters all transfers between spouses from gift and estate tax. In addition, transfers to nonspouse beneficiaries, such as your children and grandchildren, may be covered by the gift and estate tax exemption.

Currently, the exemption can shelter a generous $5.49 million in assets for 2017. By maximizing portability of any unused exemption amount, a married couple can effectively pass up to $10.98 million in 2017 to their heirs free of gift and estate taxes.

However, despite these lofty amounts, wealthier individuals, including those who aren't married and can't benefit from the unlimited marital deduction or portability, still might have estate tax liability concerns. By using a disclaimer, the exemption won't be further eroded by the inherited amount. Assuming you don't need the money, shifting the funds to the younger generation without it ever touching your hands — as well bypassing your taxable estate — can save gift and estate tax for the family as a whole.

**Generation-skipping transfer (GST) tax.** Disclaimers may also be useful in planning for the GST tax. This tax applies to most transfers that skip a generation, such as bequests and gifts from a grandparent to a grandchild or comparable transfers through trusts. Like the gift and estate tax exemption, the GST tax exemption is $5.49 million for 2017.

If GST tax liability is a concern, you may wish to disclaim an inheritance. For instance, if you disclaim a parent's assets, the parent's exemption can shelter the transfer from the GST tax when the inheritance goes directly to your children. The GST tax exemption for your own assets won't be affected.

**Family businesses.** A disclaimer may also be used as a means for passing a family-owned business to the younger generation. By disclaiming an interest in the business, you can position stock ownership to your family's benefit.

**Creditor protection.** Any inheritance you receive would immediately be subject to claims of creditors. It might be possible to avoid dire results by using a disclaimer to protect these assets. However, be aware that state laws and federal bankruptcy laws may defeat or hinder this objective. Consult with your estate planning advisor concerning your specific situation.

**Charitable deductions.** In some cases, a charitable contribution may be structured to provide a life estate, with the remainder going to a charitable organization. Without the benefit of a charitable remainder trust, an estate won't qualify for a charitable deduction in this instance, but using a disclaimer can provide a deduction because the assets will pass directly to the charity.

**Look before you leap**

Before you "give away the farm," make sure that you're standing on firm legal ground and that using a disclaimer is the best approach. Find out about the applicable laws, especially if you're relying on a disclaimer for creditor protection. Be careful to meet any deadlines impose under federal and state laws. And be aware that multiple disclaimers may be required if you're not the only beneficiary.

Finally, don't make assumptions that this strategy will have its intended results. Be absolutely certain about the next beneficiaries in line. Once you've checked all the boxes, your estate planning advisor can provide the necessary assistance.

**SIDEBAR: 5 legal requirements for qualified disclaimers**

To be legally valid as a qualified disclaimer, the following five requirements must be met:

1. The disclaimer is made in writing and signed by the disclaiming party.
2. The disclaimer properly identifies the property, or interest in property, that's being disclaimed.
3. The disclaimant doesn't accept the interest or any of its benefits.
4. The disclaimer is delivered to the person or entity charged with the obligation of transferring the assets.
5. The disclaimer is written less than nine months after the date the property was transferred or nine months after a disclaimant who is a minor reaches age 21.

## Would a spendthrift trust help achieve your estate planning goals?

Are you concerned that some of your beneficiaries might squander their inheritances or simply aren't equipped to handle the financial responsibilities that come with large sums of money? You don't have to hold onto your assets until the day you die with the hope that your heirs will change their ways by that time. Instead, consider using a spendthrift trust that can provide protection, regardless of how long you live.

As with other trusts, a spendthrift trust may incorporate various tax benefits, but that's not its primary focus. Regardless of whether estate tax reform is enacted in the near future, this trust type can help you provide for an heir while protecting assets from his or her potentially imprudent actions.

**Spendthrift trust in action**

With assistance from an estate planning advisor or attorney, set up the trust according to state laws and transfer assets to the trust account. Generally, the assets will consist of securities such as stocks, bonds and mutual funds, and possibly real estate and cash. The appointed trustee then manages the assets. Essentially, the terms of the trust restrict the beneficiary's ability to access funds in the account.

Therefore, the beneficiary can't invade the trust to indulge in a wild spending spree or sink money into a foolhardy business venture. Similarly, the trust assets can't be reached by any of the beneficiary's creditors.

Instead of having direct access to funds, the beneficiary usually receives payments from the trust on a regular basis or "as needed" based on the determination of the trustee. For example, the trust might call for two scheduled payments to be made during the year for the fall and spring semesters at the beneficiary's college. The trustee is guided by the terms of the trust and must adhere to fiduciary standards.

Be aware that the protection isn't absolute. Once the beneficiary receives a cash payment, he or she has full control over that amount. The money can be spent without restriction and may be attached by creditors.

**Role of the trustee**

The role of the trustee obviously is an important one. Depending on the trust terms, he or she may be responsible for making scheduled payments or have wide discretion as to whether funds should be paid, and how much and when.

For instance, the trust may empower the trustee to make set payments or retain discretion over amounts to be paid or even over whether there should be any payment at all. Or

maybe the trustee is directed to pay a specified percentage of the trust assets, so the payouts fluctuate depending on investment performance. In the same vein, the trustee may be authorized to withhold payment upon the happening of specific events (such as if the beneficiary exceeds a debt threshold or has to declare bankruptcy).

Designating the trustee is an important consideration, especially in situations where he or she will have broad control. Although it's not illegal to name yourself as trustee, this is generally not recommended. More often than not, the trustee will be an attorney, trust company, or someone else with the requisite experience and financial acumen. You should also name a successor trustee in the event the designated trustee dies before the end of the term or otherwise becomes incapable of handling these duties.

**Other key considerations**

There are several other critical aspects relating to crafting a spendthrift trust. For example, you must establish how and when the trust should terminate. The trust could be set up for a term of years or termination may occur upon a specific event (such as a child reaching the age of majority). In addition, you should provide for contingencies, such as the beneficiary dying or sustaining a serious illness or injury before the trust ends.

Finally, try to anticipate other possibilities, such as enactment of tax law changes, that could affect a spendthrift trust. A word to the wise: This isn't a do-it-yourself proposition. Consult your estate planning advisor for assistance when setting up a spendthrift trust.

## Planning ahead after a divorce

If you've recently divorced, your time likely has been consumed with meetings with attorneys and contentious negotiations. Probably the last thing you want to do is review your estate plan. But you owe it to yourself and your children to make the necessary updates to reflect your current situation.

**Keep assets in your control**

The good news is that a divorce generally extinguishes your spouse's rights under your will or any trusts. So there's little danger that your ex-spouse will inherit your property under the terms of an old will or trust, even if those documents haven't been revised yet. However, if a party to a divorce has an employer-sponsored pension plan that is governed by ERISA (a federal law governing pensions), and the former spouse is designated as the primary beneficiary, that beneficiary designation will not automatically become ineffective. Also, if you have minor children, your ex-spouse might have more control over your wealth than you'd like.

Generally, property inherited by minors is held in a conservatorship until they reach the age of majority in the state where they reside (usually, age 18). In most cases, a surviving parent — perhaps your ex-spouse — will act as conservator. Even though the conservatorship is supervised by the court, your ex-spouse will have considerable discretion in determining how your assets are invested and spent while the children are minors.

One way to avoid this result is to create one or more trusts for the benefit of your children. With a trust, you can appoint the person who'll be responsible for managing assets and making distributions to your children. It's the trustee of your choosing — not your ex-spouse.

This also allows you to determine when and under what circumstances your children will receive your property. For example, you may want to delay distributions until they're beyond the age of majority or have reached certain milestones, such as attaining a college degree or finding a job.

Furthermore, a trust can be beneficial when adult children inherit assets. In the event that your child gets divorced, the trust can be designed to shield the assets from your child's ex-spouse. However, if the child has too much control over the trust, a court may view the trust assets as marital property subject to division in divorce. For greater protection, give the trustee full discretionary authority over distributions.

**Types of trusts**

As part of the post-divorce planning process, you might include a variety of different types of trusts including, but not limited to, the following:

**Living trusts.** With a revocable living trust, you can arrange for the transfer of selected assets to designated beneficiaries. This type of trust is exempt from the probate process and is often used to complement a will.

**Credit shelter trusts.** This trust type is typically used to maximize estate tax benefits when you have children from a prior marriage and you also want to provide financial security for a new spouse. Essentially, the trust maximizes the benefits of the estate tax exemption.

**Irrevocable life insurance trusts (ILITs).** If you transfer ownership of life insurance policies to an ILIT, the proceeds generally are removed from your taxable estate. Furthermore, your family may use the part of the proceeds to pay estate costs.

**Qualified terminable interest property (Q-tip) trusts.** A Q-tip trust is often used after divorces and remarriages. The surviving spouse receives income from the trust while the beneficiaries — typically, children from a first marriage — are entitled to the remainder when the surviving spouse dies.

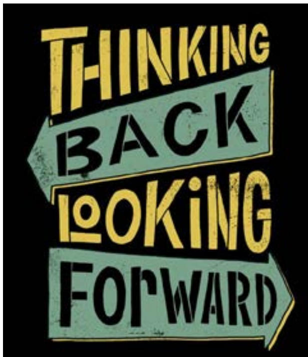
**Considerations for the future**

Finally, consider the possibility that you might re-marry, requiring revisions to your will and trusts. Otherwise, a substantial portion of your estate may go to your children (under your ex-spouse's control, if they're minors). This may not be the optimal result, particularly if your new spouse and any children of the second marriage need more financial support than children from the previous marriage.

In any event, whether remarriage is in the cards or not, your plans should account for taxes. Under current law, a couple can maximize federal estate tax benefits through a combination of the unlimited marital deduction and estate tax exemption. Again, you can use trusts to further this purpose and they should be coordinated under your post-divorce plan.

If you're currently in the middle of a divorce, it's critical to contact your estate planning advisor to make the necessary revisions.

## Year end is an ideal time to review your estate plan




As of this writing, it's still anybody's guess as to whether Congress will enact major tax reform legislation affecting federal gift and estate taxes. This situation casts a large shadow over estate planning at the end of 2017 and how to proceed for 2018.

Nevertheless, it's advisable to review your current plan at this time of year and pinpoint specific areas that should be addressed, regardless of the prospects for tax reform. Where should you be looking? Let's take a look at four points of interest.

1. **Where there's a will, there's a way.** A will is the primary legal document for determining how your assets will be distributed and what would happen to your minor children on your death. But you can't just place your will in a fire-safe box and forget about it: review and update it regularly to reflect changes in your personal circumstances as well as other events.

   For instance, you might add to or subtract from the list of beneficiaries, possibly because of births of children and grandchildren and marriages or divorces of family members. Furthermore, you may want to replace the executor you initially named in your will with another choice, perhaps a professional instead of a family member. And your will may need to be amended if and when significant tax reforms are passed.

2. **Trust in a living trust.** Like a will, a living trust provides for distributions of assets to named beneficiaries. Unlike a will, however, a living trust avoids the probate process — which can be lengthy and expensive in some states — and is shielded from

public inspection. For these reasons, a living trust is often used to complement a will, with select assets being transferred to the trust.

Similar to a will, changes in your circumstances may dictate revisions to a living tryst. Typically, after reviewing this document, you may decide on a reallocation of assets. The trust may also be affected by sales or acquisitions of property. In addition, you may want to change the guardians of minor children in a pour-over will. Generally, the trustee will have substantial discretion in financial matters, so make sure you are comfortable with the current designation.

3. **Find the power.** When the unexpected occurs — such as a lengthy illness or a disabling injury — a power of attorney can come in handy. This legal document authorizes a designated agent to act on your behalf. A "durable" power of attorney continues in the event of an illness or injury.

   A power of attorney can be especially beneficial if you are planning to buy or sell assets, undergo major surgery or embark on an extended trip. As with the executor of your estate and the trustee of a living trust, you might switch to another agent after a year-end review.

4. **Address end-of-life situations.** A living will, not to be confused with a regular will, can provide guidance to loved ones concerning difficult life-sustaining decisions. With a living will, you decide ahead of time about use of life support, medication, tube feeding and artificial hydration in the event you become terminally ill or can no longer speak for yourself. Also, by using a health care power of attorney, you may authorize someone to ensure that your wishes are met.

   Although living wills are often associated with the elderly, unexpected health events can happen at any age. That's why it is important to create this document if you haven't done so already. During your annual review, you may update your living will to reflect any significant changes in your health condition or upcoming surgeries.

Invariably, everyday life will provide plenty of twists and turns. It's important to adapt your estate plan to reflect the events that are both within and beyond your control. As one year draws to an end and a new one beckons, review these four legal documents and then act accordingly.