

## **Estate Planning FAQ's**

### ***A. The Financial Planning Team***

1. Needs to consist of a number of professionals
  - a. Financial Planner
  - b. Estate Planning Attorney
  - c. Accountant
  - d. Life Insurance agent
  - e. Banking/Trust officers
2. The financial planner is the team “manager” who coordinates the work of the other team members’ services in developing and implementing the client’s comprehensive “Financial Plan”.

### ***B. What is Estate Planning?***

1. In simple terms, estate planning is financial planning for death or incapacity.
2. In other words, it is the process of planning for how your estate will be “settled” upon your death or disability;
3. How debts will be paid; How the remaining assets will be transferred to surviving beneficiaries;

### ***C. There are two basic ways to settle an estate after death***

1. Allow the government do it for your family through probate court; or
2. Have your own estate settlement plan in place that allows your family to do it themselves privately, without the involvement of probate court.

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***D. The Government's Plan – Probate***

1. Can take six to 12 months or longer;
2. Deprives family of access and control over the estate assets while in probate;
3. Results in loss of family's personal & financial privacy (public court records);
4. Costs & fees can consume 8 to 10 percent of the estate assets before family receives anything! (That's \$30,000 for an estate valued at \$300,000!)
5. When finally settled, assets are turned over to beneficiaries in lump sum with no protection from creditors and predators.

***E. Your Own Family Estate Settlement Plan (No government involvement!)***

1. You can set up a Living Trust to hold your assets for you;
2. Your estate avoids probate court completely, since you don't own anything in your own name;
3. You name yourself as the managing trustee over your assets;
4. You also name who will succeed you as managing trustee upon your death or disability;
5. Your living trust spells out in detail how your estate will be settled, and how the assets are to be transferred to the beneficiaries
6. *Probate Avoidance* is the primary goal of estate planning, since it applies to everyone regardless of the size of their estate.

***F. Benefits of a Living Trust***

1. Your family has ongoing, uninterrupted access and control over the assets; (no probate court involvement);
2. Allows the financial planner to continue managing the family's investment portfolio, and avoid any downturn losses that could occur during the 6 to 12 months the estate would have been tied up in probate;
3. Family's personal and financial privacy remains intact (no public record);
4. The only cost is the original, one-time, set-up fee (usually \$1,250 for a single; or \$1,850 for a couple); (plus the cost to prepare & file a new deed, usually about \$150)(Compared to the costs of probate – 10% of the estate value);
5. This cost also includes other important planning documents, e.g. financial powers of attorney, healthcare powers of attorney, designation of guardian in the event of mental or physical incapacity, and also advanced medical directives, e.g. living wills; i.e. a "comprehensive" Estate Plan for the client;
6. Living Trust allows the client to pass property to the individual(s) of the client's choice without any court challenge; eliminates so-called "will contests";
7. The living trust becomes "creditor and predator" proof upon the client's death, protecting the estate assets for the beneficiaries;
8. If the client's spouse re-marries, the assets in the trust are protected from becoming "blended" with the new marital assets, and are therefore preserved for the children of the client's marriage;
9. Blended families can provide for the children of different marriages as they see fit, without any probate court involvement or hard feelings;
10. If there is a child, or an adult, with "special needs", the client can provide for supplemental care that will not jeopardize their eligibility for any special programs or public assistance;

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11. Domestic partners can assure that their property will pass to their life partner without any court challenge;
12. Allows the client to arrange for efficient business succession;
13. Allows the client to arrange for delayed or “sprinkled” distributions to minor children, or younger adults, or individuals who are not good with money;
14. Allows the client to protect the share of a beneficiary who may be in an “unstable” marital situation;
15. Allows the client to arrange for charitable contributions, or legacy gifts to their church or preferred charity;
16. Allows the client to reduce or eliminate the federal estate tax (presently levied on estates in excess of \$5 million);
17. Affords the client, and the family, peace of mind;

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***The Federal Estate Tax Avoidance Goal of Estate Planning***

*Federal Estate Tax Avoidance* is only a secondary goal of estate planning for most families, since it only applies to families with larger estates valued in excess of the tax exemption threshold amount.

On January 1<sup>st</sup>, we not only welcomed a new year, but also the largest exemption from federal estate taxes ever for married couples - a whopping \$10 million exemption! (As well as the smallest tax rate ever – 35% for estates valued in excess of the exemption amount!).

And while the federal estate tax exemption was retroactively reinstated in 2010 with a \$5 million exemption that will also be in effect for the 2011 and 2012 tax years, the heirs of decedents who die during 2010 will have the *choice* between using the old 2010 modified carryover basis rules, or applying the new retroactively reinstated 2010 estate tax and receive the full step-up in basis.

2011 also ushered in the new concept of "portability" of the estate tax exemption between spouses. In simple terms, portability of the federal estate tax exemption between married couples means that if the first spouse dies and doesn't use up all of his or her federal exemption from estate taxes, then the exemption that the deceased spouse didn't use will be transferred to the surviving spouse's exemption when the surviving spouse later dies. This means that married couples can pass on up to \$10 million free from federal estate taxes without having to use AB Trust planning. However, this new rule only applies to married couples, not parents & children, and not domestic partners. This will by far eliminate the worry about federal estate taxes for many people, but don't forget about the Ohio estate tax which is still in effect to date. Nor does any of this affect the vast majority of our clients, for whom the primary goal of their living trust planning is probate avoidance, not estate tax avoidance.

Aside from the increase in the federal estate tax exemption and portability between spouses, the federal generation skipping transfer tax exemption has also increased to \$5 million for the 2011 and 2012 tax years. And while the new year didn't result in an increase in the annual exclusion for gifting - it will remain at \$13,000 for 2011 - the lifetime gifting exclusion has also increased significantly from \$1 million to \$5 million for the 2011 and 2012 tax years.

While we know what the federal estate tax rules will be for 2010, 2011 and 2012, what will happen beyond 2012 is up in the air. Under current law the estate tax exemption is scheduled to drop significantly from \$5,000,000 to \$1,000,000 in 2013, and the estate tax rate is scheduled to jump from 35% to 55%, unless Congress acts before then.

So, what's in store for 2013 and beyond, when the current estate tax laws are set to sunset? Only time will tell.

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***Ohio Estate Tax***

- Ohio has no *inheritance tax* (i.e., a tax that is levied on the recipient's share *after* distribution to the beneficiaries);
- Ohio does have an *estate tax* (i.e., a tax that is levied on the asset value in the estate *before* distribution to the beneficiaries);

***What are Ohio's estate tax rates?***

For dates of death on or after January 1, 2002:

If the net taxable estate is over \$338,333, but under \$500,000, then the tax imposed is \$13,900 plus 6% of the excess over \$338,333.

If the net taxable estate is over \$500,000, then the tax imposed is \$23,600 plus 7% of the excess over \$500,000.

***What's included in the estate for tax purposes?***

Real estate located in Ohio, bank accounts, stock, tangible personal property (i.e. autos, boats, furniture, etc.), business interests, and life insurance proceeds paid to the decedent's estate are a few examples.

***What's excluded?***

Funeral expenses, unreimbursed medical expenses, real estate mortgages, real estate taxes, attorney and/or executor fees, income taxes, utilities, and charitable contributions are a few examples.

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**Conclusion**

- Who needs estate planning to avoid *probate*? Everyone.
- Who needs estate planning to avoid *federal estate taxes*? People with assets over the \$5 million threshold as of now through 2012.
- What you should do next? Complete the planning worksheet with your family information, and your desired distribution plan. Forward your worksheet to Attorney Jim Keys. Your legal documents will be delivered for your review in about one week.

Remember, if you don't have your own private estate plan in place for your family, the government has a plan of its own ready for your family, called Probate. You do not want your family to have to go through the government plan.

For more information about setting up your own private family estate plan, you may contact Attorney Keys at (513) 349-1678, or [JKeys@KeysLaw.com](mailto:JKeys@KeysLaw.com)

*Attorney Keys offers family estate planning services from his office in West Chester, OH. His distinguished 35-year career includes experience in civil law, family law, probate, and business law. Jim is vice chair of the Atrium Medical Center's board of directors, and also serves on the Atrium Foundation board.*

*(The use of trusts involves a complex web of tax rules and regulations. You should always consider the advice and counsel of an experienced estate planning attorney to assist you in setting up and implementing your estate plan.)*

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