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BASIC THOUGHTS FOR A FAMILY ESTATE PLAN

By Victor S. Sy, CPA

There are two important aspects to consider in estate planning:
1. Asset protection which shields your assets from lawsuits and creditors; and
2. Asset reduction which reduces your estate and the amount of estate taxes that must be paid upon death.

Gross estates over the following amounts are taxed at the following rates:

2006	$2.0 million	46% maximum,
2007-08	$2.0 million	45% maximum.
2009	$3.5 million	45% maximum.
2010	no estate tax!	
2011	$5.0 million	35% maximum

Estate plans should have a combination of the following instruments:

1. Revocable Family Trust avoids probate of your assets upon death. It provides step-up basis (and reduced taxes) for any property held and directs the distribution of assets to beneficiaries upon death of either spouse. It also defers estate taxes until the second spouse dies by use of a marital deduction.

2. Pour-Over Will ensures that all your assets are placed in a Family Trust upon death. It takes care of assets that you may have forgotten to transfer to the living trust as well as assets acquired after executing your living trust.

3. Durable Power of Attorney becomes effective if either spouse becomes incapacitated or incompetent. It names a conservator and avoids court procedures. Durable POAs end at death.

4. Limited Liability Company (LLC) is a new form of hybrid business association that combines the advantages of a corporation with the flexibility of a partnership. It gives some form of liability protection for each member (unlike general partnerships whose partners are personally exposed to liabilities of all other partners). Liabilities are limited to the equity invested by each member. The LLC has become the entity of choice for real estate rentals.

5. Family Limited Partnership (FLP) shelters your assets from creditors by having them owned by a limited partnership. The partnership allows asset reduction by gifting partnership ownership to children and other beneficiaries. The gifting makes use of the annual exemption that avoids gift taxes thereby reducing estate tax.

6. Irrevocable Life Insurance Trust (ILIT) reduces your assets as it takes life insurance proceeds out of your estate and uses it to fund a trust for your beneficiaries and to control fund distribution. It's an excellent tool to preserve insurance money to pay tuition fees and medical expenses of your children, grandchildren, and other beneficiaries. This trust also serves as the main source of funds to pay any estate tax at your death.

7. Qualified Personal Residence Trust (QPRT) reduces your assets as it takes your home out of your estate and transfers it to your beneficiaries at the end of the term of the trust. It also affords asset protection as the residence is transferred to an irrevocable trust. It is no longer owned by you. In the meantime, you still have the right to live and use the residence during the term of the trust. (TIP: This trust, if treated as a grantor trust, can also avail of the $250,000/500,000 exclusion of gain from the sale of principal residence). And yes, you may continue to enjoy your mortgage interest and property tax deductions.

These estate plan vehicles save significant amounts of estate tax dollars while helping protect your assets from frivolous lawsuits and unwanted creditors.