Mississippi Business Journal
Volume 30, Number 20
May 19, 2008-May 25, 2008

Don’t let estate planning myths imperil your financial future

BECKY GILLETTE

It used to be when discussing estate planning, a top consideration was structuring assets to avoid high estate taxes. But today with the typical estate tax exemption at $2 million per person or $4 million per couple, few people have estates large enough to need estate tax planning.

“Estate tax planning is not the driving force currently in estate planning,” said Ronald Morton, a founding member of the Morton Law Firm, PLLC, Clinton, who focuses exclusively on estate planning and elder law. “What we are finding that people are a lot more interested in than tax planning is wealth preservation for their children and grandchildren. I call that legacy planning. That is the trend we are seeing. A lot of the planning we do is to protect assets from creditors and divorce.”

With the divorce rate at close to 50%, and second and even third marriages common, it is important to do careful planning if an individual wants to make sure his or her wealth goes to children and grandchildren. It is common for people to have “his, hers and ours” children. When divorced people or widows and widowers remarry, their new spouse could potentially get up to half of the estate.

“We do a lot of planning for divorce protection,” Morton said. “Then there is the question of after the second death of a couple and it passes to the next generation, do you want to leave the assets outright to children and grandchildren? What if you have concerns about how they will handle the money or if it will mainly go to their creditors? With proper planning, the assets can be protected.”

Morton said “regular people,” not just the rich, are concerned about wealth legacy planning.

Ike Trotter, a financial advisor with Ike Trotter Agency, Greenville, agrees that most people don’t realize that average Mississippians need estate planning.

“When you talk about estate planning, you start seeing eyes glaze over,” Trotter said. “People think it is only for those with more than $10 million in assets. Estate planning is for everybody, but the problem is most people think it has to do with lots of money. It has to do with taking care of your family and making sure what you have is bequeathed to those you love. It is as important for people with $200,000 in assets as someone with $12 million.”

Estate planning draws the perception it is only about dying and only about the very rich. So, very few people take advantage of it. Statistics show well more than half of Americans don’t even have a will.

“If you have that kind of situation in this county, the message on estate planning isn’t getting out there,” Trotter said. “Estate family planning is failing miserable. There are a lot of people who have the need for it and don’t know it.”

Trotter, who gives a program on the nuts and bolts of effective estate planning, has five major recommendations:

First, adhere to a financial budget. Most people spend more time planning a vacation this summer than where they are going to be the next to five to 10 years financially. People need to be realistic and take specific steps for what they want to accomplish. Plan a financial future to protect your loved ones, and strictly adhere to the plan.

Second, do a good job of legal matters like creating a will and a living will. Make sure you have some type of contingency plan if you become incapacitated. Make sure beneficiary designations are correct on insurance and retirement accounts. Review how assets are titled. Know what you have and whom it is going to.

Third, have a good understanding of Social Security. One out of every three retirees today depends on Social Security for 50% of the total income in retirement. Knowing what Social Security does and does not do is critical. Check annual Social Security earnings statements to make sure they are correct.

Fourth is having good financial organization in place so you have an inventory of assets. Make sure your loved ones know where that inventory is.

Fifth is making sure you have your financial well-being prioritized in terms of knowing about the risks you face in life. Risks are different for a 35-year-old with a young family than someone who is 65 and planning to retire.

“Estate planning is not only about the rich but making sure you are organized and have a plan of action,” Trotter said. “It is not a 60-page complicated will no one can understand. Estate planning needs to be moved more back into the center of people’s lives. People are unprepared because it isn’t something they want to think about. Estate planning is about taking care of the basics. We have lost that. That needs to be turned around.”

If you want to make sure your wealth transfers to your children and your children manage it well, it takes more than a few well written legal documents, said Germaine Giani Weldon, CPA/PFS, CFP(r) with Alexander, Van Loon, Sloan, Levens and Favre, PLLC, and AVL Wealthcare, Gulfport.

“According to Vic Preisser of The Williams Group, a California company that specializes in researching and providing advice to families passing on their wealth, 70% of wealth transfers are not successful,” Weldon said. “In most cases, the legal documents direct the assets correctly, but once the heirs receive the money, things fall apart. More often than not, the hard-earned wealth dissipates and the children end up in a big fight.”

What makes some families able to pass on their business and money generation after generation while others fade away? The answer has less to do with business and money and more on with how families conduct themselves day-to-day as a family. “Preisser reports that in research of successful transfers of wealth, three important characteristics were identified,” Weldon said. “Successful families communicated more, they trusted each other more and they spent time preparing their children for the day that they would be managing their future inheritance. Furthermore, the research found that these families valued family unity, philanthropy and responsibility.”

To become successful at passing on your business and your wealth to your family, you have to make time to talk, share information and teach your family. Trust can only be developed over time and by open communication.

“Most successful business owners have worked hard to acquire their wealth and want to provide a lasting legacy to their families,” Weldon said. “Legal documents and estate planning are a necessary part of this process but only with years of open communication, shared values and knowledge can this process be successful.”

William O. Brown Jr., a partner with Copeland, Cook, Taylor & Bush, P.A., Ridgeland, says the most important aspect of an estate plan for a business owner is planning for the succession of the business after his or her death.

The business owner’s estate plan should consider such factors as:

• The legal form of the business (regular corporation, sub S corporation, partnership or limited liability company).

• What entities or persons will receive ownership interests in the business and the rights, voting or otherwise, of those interests?

• Who will participate in the management of the business and how will owners and managers be compensated?

“A proper business succession plan should aid in the orderly transition of the ownership and management of the business after the death of the owner,” Brown said.

Contact MBJ contributing writer Becky Gillette at 4becky@cox.net.