WIEGAND ATTORNEYS & COUNSELORS LAW LIBRARY

Estate Planning Around Your Nest Egg

When you think of "estate planning" you probably imagine writing a will and giving instructions about who gets the house, the car and Grandma's jewelry. But an important asset for many people is their IRA and employer retirement plan. Retirement plans are generally passed to beneficiaries directly and are not disposed of in a will. Talk to your lawyer about your arrangements for your nest eggs because they should be coordinated with your overall estate plan and with your will or trust.

Traditional IRAs

A **traditional IRA** is a retirement plan for individual investors. You can open one if the funds you contribute come from taxable, earned compensation made during the year of the contribution. The advantage of an IRA is that your contributions are not taxed at the time you invest or annually, but only at the time of withdrawal. At that point, you'll pay income tax on whatever you withdraw -- but presumably at a lower rate because your income will be less at retirement. These rules mean you invest every cent of what you put into the IRA, which can add up to a lot of money over 30 years.

You must start making withdrawals after you reach age 70 1/2. The amount you must withdraw each year depends on your age and is calculated so that you will use up your retirement income by the time you die.

You can name someone as the beneficiary of the account on the beneficiary designation form the account custodian gives you when you open an IRA. The beneficiary will inherit the balance of the account when you die. You don't need to mention the IRA in your will or living trust; the beneficiary form is the only thing you'll need to sign. And don't worry: you can change your beneficiary at any time. After all, it's your money.

When the beneficiary receives the funds, he or she has several options. If your spouse is the beneficiary, he or she is allowed to roll over your retirement plan into his or her own IRA. No other beneficiary has this option, not even your children.

Denver

P: 303.741.6410
F: 303.741.6512

280 E. 20th Ave.
Denver, CO 80205

Breckenridge

P: 970.390.6587
F: 707.922.1047

291 Gold King Way
Breckenridge, CO 80424

Copyright © 2010 Wiegand Attorneys & Counselors, LLC

All beneficiaries have the option of withdrawing all the money from the IRA immediately, although if they do this they will have to pay income tax on the money they receive. However, with careful planning, your beneficiary may be able to spread distributions out over many years.

It's important to remember when you're planning your estate that your IRA passes to beneficiaries outside your will and does not go through probate. However, it is not an ideal vehicle if your primary aim is to pass money to beneficiaries because the compulsory withdrawal of funds means the money will be depleted at your death -- unless you die earlier than the actuarial tables suggest. If you want to build up your estate, pass money to beneficiaries and avoid probate, a much better option is the Roth IRA.

Roth IRAs

Roth IRAs do not offer a tax deduction for contributions, but they do provide tax-free withdrawals. In addition, they do not mandate compulsory withdrawals after you turn 70 1/2. For these reasons, Roth IRAs are an appropriate vehicle for people who want to build their estate and avoid probate after death.

You can contribute up to $3,000 each year to a Roth IRA (more if you're over 50) and let the income accumulate tax-free. After your death, the money will go to whomever you named as the beneficiary. The beneficiary will simply need to show a certified copy of the death certificate to claim the funds quickly and without going through probate.

Employer Retirement Plans

Most of us are entitled to retirement benefits from an employer. One popular option is a 401(k) plan, which allows you to defer part of your salary into a retirement fund so that you can save for retirement while simultaneously reducing your income tax.

Typically, an employer retirement plan will pay benefits to beneficiaries when you die. There are all kinds of rules that may attach to employee retirement funds, including stipulations that benefits be paid to beneficiaries in the form of a survivor annuity. A lump sum distribution may be available only if you file a waiver before you die.

Copyright © 2010 Wiegand Attorneys & Counselors, LLC

Estate Planning Around Your Nest Egg

In most cases, the law requires that some portion of these retirement benefits be paid to your spouse, who may roll the money over into his or her own retirement plan. Your spouse may waive the right to receive a portion of your retirement benefits only by giving a properly witnessed, signed consent. Why would your spouse waive the right? There are several possible reasons. Your spouse might not wish to pay income tax on the distributions from the plan, or perhaps the money might be better used by another beneficiary. If your spouse does waive the right, then your plan should allow you to name some other beneficiary, such as a child or a trust.

Be Clear About Your Beneficiaries

It might seem easy to nominate beneficiaries to these retirement vehicles, but life has a way of making things difficult. Remember, the bank or plan will do what the form tells them to do, so it's up to you to make sure that the form reflects your current intentions. If you get divorced, for example, you've got to remember to update your IRA beneficiary form so that your ex-spouse no longer is listed as beneficiary.

Or what if your wishes are complicated? Say you want to leave your IRA account to your son and daughter with the intention that your daughter's children share any money left over when your daughter dies? This may not be a standard option in the forms offered by banks and brokers. If your bank or broker allows it, you should attach an additional beneficiary designation to the printed form provided. In this document, you can provide more detailed distribution planning. However, banks and retirement funds aren't in the business of settling your estate, and there are limits to what you can ask them to do through beneficiary designations.

Trusts

The best way to undertake complex planning, make your wishes clear, establish a mechanism for carrying them out and save time and heartache for your relatives down the line, is to name a trust as the beneficiary of your 401(k), IRA, insurance policies and other accounts. Then the money will go into the trust after your death and will be distributed to beneficiaries as dictated by the terms of the trust. This means you can be much more specific about where the money goes. You can leave 10 percent to the ASPCA, 30 percent to your brother and the rest to your daughter -- with any unexpended funds to go to the Cancer Research Society after her death.

Copyright © 2010 Wiegand Attorneys & Counselors, LLC

Other Issues

Beneficiary designations are key components of many other kinds of plans, including annuities, Keogh Plans and a variety of retirement plans available to business owners. Each of these may have special rules, and all should be carefully coordinated with the rest of your estate plan.

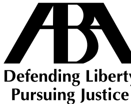
Your lawyer also may be able to help advise you and your beneficiaries on their options for receiving the bequest (lump-sum distribution, monthly pay-out); the interface between your decision about whom to name as beneficiaries and your family situation, particularly in the case of blended families or divorce or separation; naming charities as beneficiaries; and how to handle contingent beneficiaries (those who you would like to receive benefits in case one of your primary beneficiaries dies).

About Wiegand Attorneys & Counselors

· Business Law
· Tax Law
· Estate Planning
· Probate and Trust
· Financial Planning
· Elder Money Management
· Income Tax for Businessses and Individuals

A Trusted Denver Law Firm, Focused On Longterm Prosperity and Security

Since 1977, we have specialized in providing counsel to clients in these arenas. Thanks to our background in management and added Tax Law expertise, clients benefit from real-world insight that most career attorneys can't offer. From Business Planning to Probate Law and Estate Planning, we're better equipped to look at issues from your perspective.



Your Law is prepared by the ABA Division for Public Education. Articles in Your Law do not necessarily represent the official policies of the American Bar Association or of the participating firms, and the information contained in the newsletter should not be acted on without professional advice. Your Law articles focus on broadly applicable legal principles. Contact your lawyer for the specific law in your state. Copyright © 2003, American Bar Association, 541 North Fairbanks Court, Chicago, IL, 60611-3314.

Copyright © 2010 Wiegand Attorneys & Counselors, LLC