ESTATE PLANNING

By Michael H. A. Ostrem

8 things everyone should know

1. *Estate planning now requires more than just making a will.*

A well thought-out estate plan should also include provisions for protecting an estate from unnecessary costs, taxes or claims of creditors; assuring adequate income during an individual's lifetime and after death; and management of the estate in the event of incapacity. Ultimately, estate planning is designed to be considerate of your survivors, and to be prepared for nearly all contingencies.

2. *If all of your property or the property of you and your spouse, including life insurance and pension benefits, exceeds $1,500,000 you will likely face a costly estate tax liability, unless you act to minimize taxes.*

The tax code provides a limited exemption against estate and gift tax for property transferred to someone other than a spouse. As a result of this exemption, an individual can pass a total estate of $1,500,000 to someone other than their spouse free from estate tax assuming no lifetime transfers subject to gift tax. However, if their estate exceeds $1,500,000 or will likely exceed this amount in the future, the excess amount will be subject to a substantial estate tax which may be avoided through proper planning.

3. *If you are ever hospitalized with a serious condition, your family will be asked if you have a Living Will or if you have appointed a Power of Attorney for health care decisions.*

A Living Will provides advance instructions for an individual's care in the event they are in a terminal condition and unable to express their wishes. A Durable Power of Attorney for Health Care grants authority to another person (usually a spouse or family member) to make health care decisions for an unconscious person or one otherwise unable to verbalize their wishes. Both documents are necessary in any well thought-out estate plan.

4. *If you are a member of a combined family (i.e. there are separate children of one or both parents) and have made no special arrangements, the children of the first parent to die could be disinherited.*

In a combined family situation, the first parent to die often leaves all of their property to the surviving spouse under the assumption that a fair share of the property will eventually go to their natural children upon their spouse's death. However, the surviving spouse is free to leave their entire estate, including the property of the deceased spouse, to anyone they want which may or may not include the natural children of the deceased spouse. The use of a trust is often necessary to plan for this contingency.

5. Revocable trusts have many benefits, including avoiding probate and guardianship proceedings and providing privacy for your financial affairs, but these instruments are not right for everyone.

A revocable trust is created during an individual's life and can be modified or terminated at any time before death. The major advantage of a revocable trust is that it bypasses the probate process which can be costly. In addition, the revocable trust allows for confidential distribution of an estate as compared to the public probate process, as well as aiding asset management in the event of incapacity. An attorney's advice is useful in deciding if and when a revocable trust is appropriate for you or a family member.

6. If you own real estate in more than one state, using a trust or corporation to own the property will avoid costly and time-consuming ancillary probate proceedings.

Generally, a probate proceeding must be initiated in every state in which an individual owns real estate at the time of their death, which can be time consuming and expensive. Many states, such as Florida, have sizable minimum fees to transfer property. If the real estate is held in trust or owned by a corporation or other similar entity, these ancillary probate proceedings can be avoided.

7. If you own a business, you should have a business succession plan so there is legal authority to continue the business in the event of your death.

A business succession plan can take many forms, but the primary function is to provide for the continued operation of the business in the event of the owner's unexpected death. Without such a plan, the business will be a part of the estate and may be liquidated as part of the distribution of assets of the estate. In some cases, there may be no legal authority to continue operations.

8. If you own a business with someone else, you should have an agreement which would assure that your heirs receive fair market value for your interest.

A well thought-out estate plan for the co-owner of a business will include a Buy-Sell Agreement. The Buy-Sell Agreement is established between the co-owners of the business to buy and sell their respective interests at a fair price fixed in the Agreement in the event of death or incapacity. This type of agreement is frequently funded with life insurance contracts.

Michael H. A. Ostrem received his B.A. from St. Olaf College and is an honor graduate of the University of Minnesota law school. Mr. Ostrem worked for four years at the Minneapolis firm of Faegre & Benson in their estate planning department. Prior to attending law school, he spent five years with Lutheran Brotherhood working with various life insurance and annuity products.

Mr. Ostrem joined Mulligan & Bjornnes in 2007. His areas of practice include business succession planning, estate planning, estate administration and the preparation of estate tax returns, pre-nuptial and post-nuptial agreements, and business transactions.