Reprinted from WASHINGTON BUSINESS JOURNAL

Volume 21, Number 24 October 18-24, 2002

In estate planning, it's important to touch all the bases

Batter Up. Planning your estate requires the forethought of a Major League Baseball manager planning for the World Series.

Whether you are in the final innings having spent years working to create a legacy for yourself and your loved ones or are a rookie just starting the savings game, ask yourself, "Have I covered all my bases?"

Expert Opinion

JEFFREY KATZ

Passing property without a will, trust or other planning vehicle is like stepping up to home plate without a bat.

Will you strike out? The answers may surprise you.

STRIKE 1. FAILING TO PLAN.

If you don't already have a plan, your home state has one for you, under the state's "Intestacy" statute (Latin for, "without a will"). The statute may not pass property to the people you want in the percentages you would like. It will transfer your assets according to your state's probate code... perhaps even to the state.

A will removes the uncertainty. You can name your beneficiaries, specify when they receive funds and nominate a guardian for any minor children.

You also can name executors or personal representatives — depending on where you reside at the time of death — to handle all matters related to the administration of your estate. You can specify dispositions of personal property and help avoid family squabbling. Furthermore, you can leave a legacy gift to hospitals, foundations, universities or other worthy causes.

STRIKE 2. PROBATE.

Although executinga will avoids the uncertainty of where your assets go, estate assets transferred by a will must pass through "probate," a court supervised process, mandated by most states, which advertises the fact that you have died and makes publicly available the value of your assets, and the names and addresses of your beneficiaries.

Fees associated with this process may deplete the estate by as much as 10 percent. Plus, it takes significant time (think rain delay) before the estate can be settled.

BALL 1. PROBATE AVOIDANCE.

You can avoid probate on your assets by titling your assets in joint names so they pass automatically, making use of beneficiary designations, and/or using a revocable or living trust.

But beware: jointly titled property may allow an owner to sell the property, or allow creditors to exert a claim on that property. This creates other problems, such as tax liability.

Where real estate, is owned in multiple states, probate may need to be undertaken in each state to transfer that property.

Revocable trusts act as will substitutes, and when properly executed and funded, avoid probate.

BALL OR STRIKE? FEDERAL TAXES.

Revenue sharing? The federal government may be a major league beneficiary of your life savings.

Despite all the recent media attention from the press box concerning the demise of the federal estate tax, estate taxes remain alive and well.

The federal tax exemption, currently at $1 million, is slated to rise to $2 million in 2006, to $3.5 million in 2009, and be repealed in 2010. But, the tax steals home in 2011 (your home, perhaps?) unless Congress makes another fast pitch, and makes the repeal permanent.

Under current law, the tax is computed on the value of all of your assets (including your home, investments, retirement and certain life insurance policies). If the tax outlives you, look forward to the federal government taking a minimum of 37 percent of the assets in excess of the exemption.

Leaving everything outright to your spouse? You'll dodge the tax pitch at the time of your death, but lose out on the value of your exemption.

Drafting a Credit Shelter Trust (CST) into the estate plan will allow your surviving spouse the use and benefit of the funds during his or her lifetime, (effectively doubling your exclusion), without providing control over all the funds.

Currently with a CST you could pass up to $2 million without incurring any federal tax liability. A CST can protect the departed spouse's assets from claims of the surviving spouse's creditors (including Medicaid liens), guard against the deceased's children from becoming completely disinherited and potentially qualify the surviving spouse for government benefits such as Medicaid and Supplemental Security Income. Appropriate planning allows federal and state benefits to cover the cost of nursing home care, while funds remain available for life enhancing benefits not covered by these programs.

Holding appreciated assets until death, can avoid capital gains tax. Careful planning is required to get the full benefit of this estate "step up." At its lowest levels, the estate tax is a little less than double the long-term capital gains rate, but under current law the fair market value of assets "steps up" to its value as of the date of a person's death (or alternate valuation date).

For individuals with assets under the exclusion amount, appropriate titling of assets that are held at death can rainout income taxes, which would otherwise be due on the realization and recognition of gain for assets otherwise sold during your lifetime.

THE FINAL PITCH: YOU CAN'T AFFORD TO LOSE THIS GAME.

If you fail to execute estate planning, the state's default plan will take effect.

Implementing your wishes means formulating a plan, which for the team members left behind may mean the difference between striking out in the last inning or another chance at a World Series championship.

■ **JEFFREY KATZ** IS THE FOUNDER AND MANAGING ATTORNEY FOR BETHESDA-BASED JDKATZ: ATTORNEYS AT LAW, WHICH DESIGNS AND IMPLEMENTS TAX AND ESTATE PLANNING FOR INDIVIDUALS AND COMPANIES. **EMAIL:** JEFFREY@JDKATZ.COM. **PHONE:** 301/913-2948. THE INFORMATION IN THIS COLUMN IS PROVIDED FOR DISCUSSION PURPOSES AND IS NOT INTENDED AS LEGAL ADVICE.