Insight on estate planning

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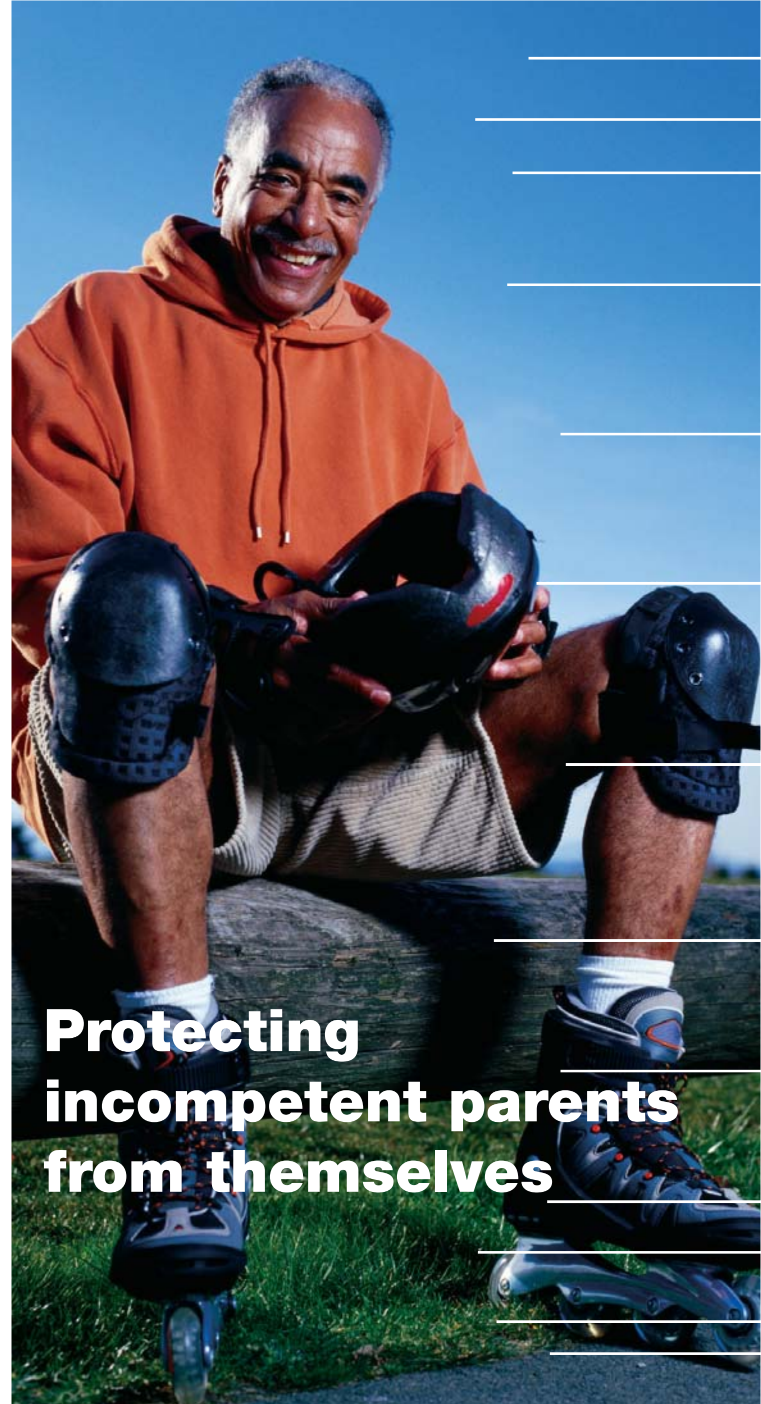

Tax hits hurt! SAFELY transfer business interests to your heirs

Estate planning for unmarried couples' assets

PLUS!
Wealth transfer with 529 plans

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Seeking Legal Protection For an Incompetent Relative

Grace was alarmed when her 81-year-old father, a widower named Vincent, hired a contractor to insulate his garage. The contractor had knocked on Vincent's door one day, convinced him that he needed new insulation, persuaded him to fill out and sign a loan application, and accepted a check as a down payment.

Turns out the garage didn't need insulation — it wasn't even heated. The contractor vanished, taking Vincent's personal and financial information with him.

Protecting Them From Themselves

Unfortunately, this wasn't the first time Grace noticed that her father's good judgment was ebbing. Frequently, he overdrew his checking account and had to pay bank fees. He occasionally locked himself out of the house, and, worse yet, he often forgot the names of his children.

As the only one of Vincent's children who lived nearby, Grace knew she had to take control of his financial affairs to prevent him from making a potentially disastrous mistake.

Any person, including family members or a concerned social services agency, may file a petition for a determination of incompetence.

Grace took her father to meet with a lawyer, who drew up powers of attorney for property and healthcare. That gave her the authority to manage Vincent's finances and make decisions about medical treatment if his doctor considered him mentally incapacitated. To cover all bases, she later obtained a statement from Vincent's doctor to that effect. (For more information about powers of attorney, see "When an Agent Is Overpowering.")

Aside from the heartbreak of seeing her father decline, Grace was lucky because Vincent recognized his failings and acted. Many people aren't so fortunate. Relatives who have been in charge all of their lives understandably fear the loss of their independence and decision-making authority. In some cases, family members must initiate guardianship proceedings, meaning they must prove their relative's incompetence in court. Needless to say, that strains both relationships and wallets.

Taking Immediate Action

An incompetent adult can't make or communicate rationally about his or her well-being, because of illness, an accident or advanced age. (Poor judgment, such as illicit drug use or excessive gambling, doesn't alone indicate incompetency.) If your family member seems unfit, act immediately to ensure that he or she lives safely and healthfully, eats a balanced diet, and interacts socially as much as possible.

Check to see if he or she has a living trust that allows a successor trustee to take the reins. You may have to petition the court to declare your relative incompetent and appoint a legal guardian (known as a conservator in some states) who can protect your family member's estate.

Proceeding to Guardianship

Taking your relative to court is an arduous process for everyone. And some judges don't wish to rob elderly people of their independence without overwhelming proof of incompetence. Sometimes a family member can appear uncharacteristically normal in the courtroom, and you could find yourself portrayed as the callous relative with ulterior motives. Certainly consider guardianship proceedings a last resort, after all attempts at persuasion — by other family members, professional advisors, doctors and family counselors — have failed.

Any person, including family members or a concerned social services agency, may file a petition for a determination of incompetence. The allegedly incompetent relative already may have a lawyer, or the court will appoint one, known as a "guardian ad litem."

Guardianship proceedings begin with reports and recommendations from doctors, social workers and other experts who will advocate for or against a finding of incompetence. The judge will also observe the person before making a determination.

If the relative is deemed incompetent, the court will appoint a guardian, though not necessarily the person who filed the petition, but someone (or an agency) the court believes will act in the family member's best interests. Then the incompetent relative becomes the guardian's ward.

When an Agent Is Overpowering

A power of attorney works well when the principal — your parent, for example — selects an agent (also known as an "attorney-in-fact") who is honest and caring, exercises a high standard of care, and always acts in the principal's best interests. But what if your parent's agent is corrupt or abusive?

You can petition the court to revoke a power of attorney, assuming the principal is unable to do so, if you can prove that the agent's actions or negligence has caused (or threatens) substantial harm to the principal's person or property. If the court agrees with you, it can revoke the power and appoint a guardian to provide for the principal's best interests.

In some instances, the court gives the guardian general or limited control over the ward's affairs. A guardian of the estate, for example, manages the ward's property and finances. A guardian of the person has the authority to approve medical, legal and other professional services. A general guardian can take care of property and person. Note that in many states, a general guardian or guardian of the estate must post a bond before receiving the ward's property.

Appealing the Court's Decision

An adult who is adjudicated incompetent may appeal the court's determination. Later on, if the ward's no longer incapacitated and believes he or she can manage his or her own affairs, dissolve or terminate the guardianship.

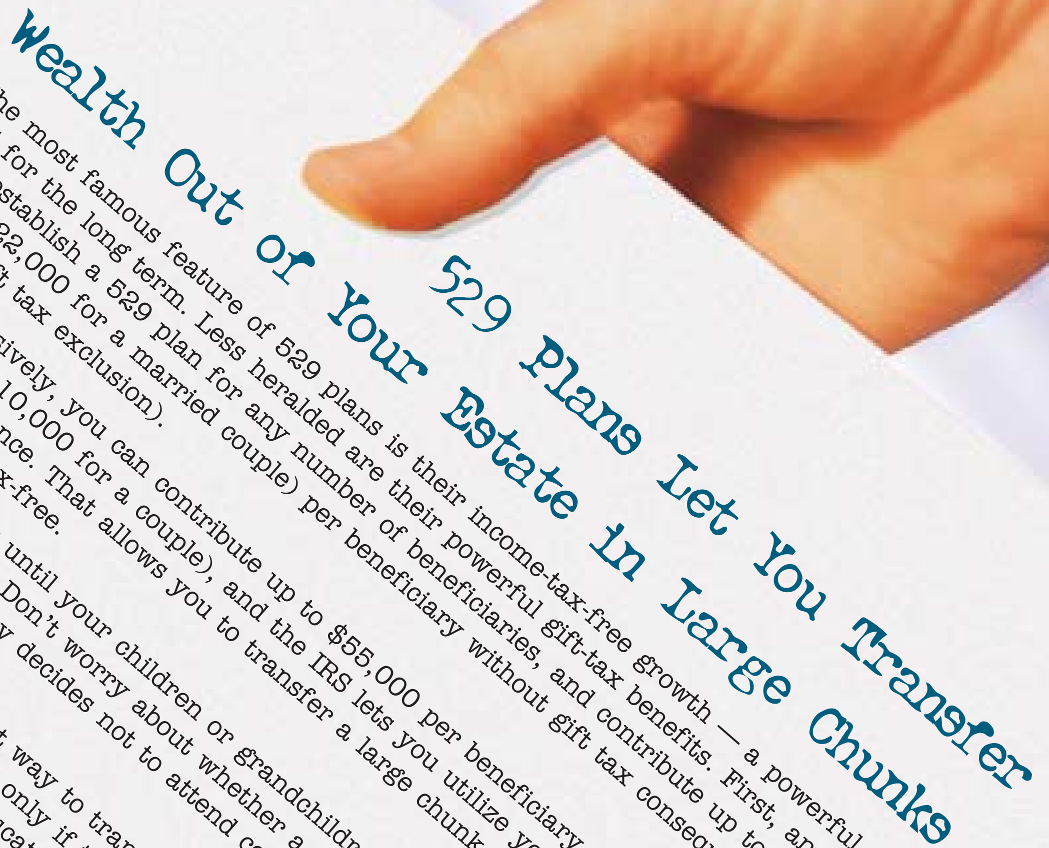
The court maintains oversight of the guardian to ensure the ward's proper care, such as the right to approve an accounting of all expenditures made on behalf of the ward, including the guardian's fees and expenses. In addition, it may require the

guardian to file yearly reports detailing the ward's (and his or her estate's) care.

Planning Ahead

Optimally, relatives will retain all of their faculties until they peacefully die of old age. None of us can bank on that, of course. If your family members are still with us and still competent, now is the perfect time to ensure they have solid estate plans, such as durable powers of attorney for property and healthcare.

Good planning can prevent the anguish and expense of guardianship disputes. If intervention becomes necessary, don't go it alone. Be sure to seek the advice of experienced legal and financial advisors. Please give us a call to discuss the best options for you and your family.



529 Plans Let You Transfer Wealth Out of Your Estate In Large Chunks

The most famous feature of 529 plans is their income-tax-free growth — a powerful savings tool for the long term. Less heralded are their powerful gift-tax benefits. First, any individual may establish a 529 plan for any number of beneficiaries, and contribute up to $11,000 per year ($22,000 for a married couple) per beneficiary without gift tax consequences (using the annual gift tax exclusion).

More impressively, you can contribute up to $55,000 per beneficiary to a savings plan in a single year ($110,000 for a couple), and the IRS lets you utilize your gift tax exclusion for up to five years at once. That allows you to transfer a large chunk of assets out of your estate immediately, gift-tax-free.

You don't have to wait until your children or grandchildren approach college age. You can start as soon as they're born. Don't worry about whether a particular youngster is actually college bound — if your beneficiary decides not to attend college (or becomes disabled or dies), you can change beneficiaries.

A 529 plan isn't always the best way to transfer money to future generations. The tax advantages apply only if the beneficiary uses the funds for qualified post-secondary education expenses, such as tuition, room and board, books and supplies. If used for another purpose — to make a down payment on a house, for example — your beneficiary will have to pay income tax on the withdrawal, plus a penalty. So if you want to pass along a chunk of money to your child or grandchild so he or she can buy a house, a 529 plan is not the way to make the transfer.

But if you want to instill the value of education and encourage your children or grandchildren to attend college, and reduce your estate immediately free of gift taxes, contributing to a 529 savings plan is an excellent beginning.

Keep It in the Family

Safely Transferring Business Assets to Succeeding Generations

If you own a family business, you likely take great pride in the wealth your company has enabled you to earn over the years. And, like many family business owners, you may wish to keep your business in the family long after you're gone. But this rather simple desire is fraught with dangers in the form of potentially high transfer taxes. Here are some ways to give your business assets to succeeding generations without giving too much to the federal government.

The Taxing Problem

The apparent simplicity of family business transfers has fooled many parents and grandparents. They often assume that a successful transfer is assured as long as their wills specify how assets should be split among their children and grandchildren. But these heirs have later been shocked to learn that the tax bill on an estate can reach as much as 49% (in 2003) of the estate's total assets.

If you fall prey to this pitfall, your heirs will face a difficult choice. To cover the unforeseen estate tax burden, they may be forced to either sell the business or borrow a substantial sum to keep your company going. The first option isn't really an option at all, but rather an admission of defeat. And the second one isn't much better — the debt burden may prevent your heirs from investing in improvements needed for the business to remain competitive and grow. And this could trigger a drop in profits and business value that leave them no alternative but to sell anyway.

Although your family members could use other estate assets (such as life insurance proceeds) to pay future taxes or take advantage of special estate tax breaks for closely held businesses, your best bet is still to minimize the value of your estate. One good way to do so is gifting stock to family members, thus using your annual gift tax exclusion ($11,000 per donee in 2003) as well as your lifetime gift tax exemption ($1 million) to transfer interests currently, before they increase in value further. You might also give away other assets during your lifetime, which still reduces the overall estate tax, or look to special strategies such as family

The More the Merrier: Splitting Up Your Business

Many family businesses concentrate their ownership among older members who are likely subject to higher estate tax rates than their younger kin. Therefore, one effective estate planning strategy is to create multiple family businesses. In other words, rather than having your children remain in the family business, you may want to split it up by having them start a complementary or even competing company.

For instance, if you're considering an additional business location, it may be tax advantageous for your child to open the new location instead. Or he or she could establish a business that leases equipment or buildings to your company. True, a child in a competing company may take away some business from you — but he or she will remove transfer taxes as well.

Of course, the loss of control associated with such a bold strategy may worry you. But you can maintain control and shift money-making opportunities to children through the use of various entities — including limited partnerships, limited liability companies and corporations. You may even be able to issue voting and nonvoting ownership interests for this purpose. Ultimately, the use of multiple entities may increase the complexity of business planning, but it can also provide protection where each entity is insulated from the others' liabilities.

limited partnerships, grantor retained annuity trusts and charitable trusts.

Your Best Defense

Your first step toward considering a family business transfer should be a realistic assessment of your future estate tax burden. Then you can move on to choosing the strategies that will allow you to pass the business to your heirs without forcing them to incur unnecessary debt or suffer a forced sale to pay taxes. Please call us for help with these critical tasks. ▌

Unmarried Couples and Estate Planning Challenges

Couples without marriage licenses aren't automatically granted the same legal rights regarding their relationship as married couples are. Nevertheless, many ways exist for them to protect themselves economically and ensure their wishes are honored. If you're in this situation, here's a closer look at how to begin achieving your estate planning goals.

3 Tools To Consider

Just like anyone else, married or otherwise, you need to ensure your assets are distributed as you wish. Here are three fundamental estate planning tools that can help you do just that:

1. A will. Without one of these, state law will determine how your assets are divided. In most states, if you have no children, your assets will be distributed to your closest relatives — your parents, siblings, nieces and nephews. If your parents predecease you, a sibling to whom you never were close could inherit your entire estate and leave your partner with nothing. By executing a will, you and your partner can specify how you want your assets distributed.

2. A living trust. This option may be desirable if you wish to keep the nature and value of your estate private. And if your estate is large or your relatives hostile toward your partner, you may especially want to create a living trust. It will not only avoid probate when you die, but also hinder court challenges. When leaving money to minors, such as your children or nieces and nephews, a trust can make distributions on their behalf according to your wishes. You may also set up a trust so that your partner has the use of your estate funds during his or her lifetime. When your partner dies, the funds pass to your family members, your partner's family, or both, as you choose.

3. A joint tenancy arrangement or pay-on-death account. Unmarried couples sometimes overlook these two options. You can own bank accounts jointly, or if you wish to keep control of the asset, you can make a pay-on-death designation to ensure the balance of the account is paid to your designated beneficiary when you die. These assets will pass directly to the joint tenant or named beneficiary at death. Probate is not required on the first partner's death but will be necessary on the survivor's death.

Other Important Measures

As your life goes on, your estate plan should reflect your changing needs. For instance, if you're unmarried but the beneficiary of your partner's retirement plan, you may experience a larger tax bite than a surviving spouse. Unlike a spouse, a surviving partner does not enjoy special tax advantages by being named as sole beneficiary of a partner's retirement plan. If your partner's total assets exceed the estate tax exemption, the combined income and estate tax rate in 2003 could be 84%. Although the total tax bite is high, deferring payment of a portion of the tax may be possible.

And beyond retirement, medical challenges become far more likely. The problem: A nonrelative generally has no legal rights with respect to a patient's medical treatment and may even be denied visitation rights. But by appointing your partner as your agent under a healthcare power of attorney, you authorize that person to make medical decisions on your behalf if you are unable to make them yourself.

In addition, a power of attorney for property allows you to name someone to handle your financial affairs in the event of disability. Again, naming your partner to this role is even more important if ill will exists between your family and him or her.

A Critical Opportunity

You may encounter some difficult questions when planning your and your partner's estate. But view this process as a critical opportunity to protect your assets and plan for the future. For more information about your options, please call us. ▮

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Personal Legal Services Group

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