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in this issue:

Assigning Your Life
Insurance Policy

Perk Up Your
Employees with
Fringe Benefits

Estate Planning for Lifetime Partners

There have been some distinct changes in the American cultural and sociological landscape in recent decades. Among them is the increasing number of unmarried couples living together as lifetime partners. This trend has created estate planning challenges for the individuals involved.

Here are a few of the more common estate planning issues that may affect unmarried couples:

Family Ties

In general, the rules governing the ultimate disposition of assets are not as favorable for individuals who are not legally married as they are for those who are married. If an individual dies without a **will (intestate)**, state intestacy law will determine the disposition of the decedent's assets. Although these rules vary from state to state, they typically dispose of assets through bloodlines or marriage. So, in the case of unmarried lifetime partners, assets may not be distributed according to the decedent's wishes.

A last will and testament is designed to protect against the undesirable effects of intestacy by allowing an individual to specify who is to receive probate assets upon death. However, a will may not be immune to challenges made by the decedent's family members who may have benefited from intestacy law if a will was not accepted by the local probate court. Therefore, it is essential that a will be drafted and executed when an individual is fully competent; it may also be important that the individual's partner does not serve as a witness to the execution of the will. In addition, if certain family members or relatives are to be disinherited, it may be advisable to include a list and an explanation of why such decisions were made in the will.

Although a will can express a lifetime partner's wishes for the disposition of assets upon death, it does not provide any contingency arrangement for the management of assets or medical decisions if the individual becomes *incapacitated* due to an accident or illness. But, a general **durable power of attorney** and a **health care proxy** can allow an individual to *determine* who will make such decisions. Due to varying state laws, it may be necessary to specify powers in detail. Even then, some third parties may not accept a durable power of attorney and may require the use of their own forms. In the

continued on page four

Assigning Your Life Insurance Policy

Getting approval for a loan can sometimes depend on one very important concern. For example, a lender may ask a borrower, “How will this loan be repaid in the event of your death?” Your answer may be to **assign** your **life insurance** policy. This useful feature in a life insurance contract can help provide necessary security for a lender.

You can freely assign your life insurance policy unless some limitation is specified in your contract (your insurance company can furnish the required assignment forms). Through an assignment, you can transfer your rights to all or a portion of the policy proceeds to an **assignee**. The extent to which these rights are transferable depends on the assignment provisions in the policy, the intention of the parties as expressed in the assignment form, and the actual circumstances of the assignment.

Types of Assignments

There are two types of conventional insurance policy assignments:

1. An **absolute assignment** is typically intended to transfer all your interests, rights and ownership in the policy to an assignee. When the transaction is completed, you have no further financial interest in the policy.

The terminology of absolute assignments differs from contract to contract. It may state that you transfer all rights, title, and interest in the policy to the assignee. Some insurance companies use an “ownership clause” to accomplish this transfer.

2. A **collateral assignment** is a more limited type of transfer. It is a



security arrangement to protect the assignee (lender) by using the policy as security for repayment. After the debt is repaid, the assignee releases his or her interest in the policy, and all rights to the policy revert to the owner.

Under the usual procedure, if the collateral assignment is still in force at the time of your death, the assignee informs the insurance company of the remaining debt, including interest, and receives that amount in a lump sum. Any excess proceeds are then payable to your named **beneficiary** in accordance with the beneficiary designation in your policy.

To fully protect the assignee, notice must be given to the life insurance company that the assignment has been made. If a company without notice of assignment pays the proceeds to another assignee or to a named beneficiary, the insurance company cannot be forced to pay a second time.

Policy Provisions

Some typical policy provisions regarding assignments may include the following:

1. The assignment will not be binding until the original, or a duplicate thereof, is filed at the insurance company's home office.
2. The insurance company assumes no obligation as to the effect, sufficiency, or validity of the assignment.
3. The assignment is subject to any indebtedness to the insurance company on the policy.

Therefore, it is important to ensure that an assignment is made properly, regardless of whether it is absolute or collateral. Be sure to consult your qualified professional advisors for specific guidance. ■

Perk Up Your Employees with Fringe Benefits

Employers are looking for more ways to promote employee productivity and provide incentives for working toward company growth. As an employer, you may spend a lot of time focusing on salary, benefit plans, a positive work environment, and vacation schedules to perk up your employees. However, you may want to motivate your workforce by offering a menu of fringe benefits that can make a significant difference in the workplace environment and employee morale.

Here are five options that you may want to consider:

1. Qualified transportation fringes. Travel expenses can really add up, especially in heavily congested urban areas. Your employees may live near a transit line and commute to work, or they may drive to work and pay for parking. As an employer, you can provide cash reimbursement to your employees for transportation and parking, and your employees can exclude the payments from their gross income. Through 2011, the amount that may be excluded for qualified mass transit, van pools, and parking is \$230 per month. In 2012, the amount rises to \$240.

2. Working condition fringes. Not all fringes involve reimbursements or advances. Suppose your company sells products or provides services that require significant automobile travel. As a perk, you can provide a company vehicle (even with a driver) for business use. Consequently, your employee's car is spared the wear and tear. In addition, you can pay for an employee's business travel by airplane or train. Another fringe may be to offer employees the opportunity to work from home, when possible.

3. No-additional-cost services. If your business offers services to customers, you may be able to offer those same services to your employees. As long as there is no loss of income or additional cost to your business, you may offer the services to your employees free of charge. For example, an airline may offer a flight attendant the perk of flying for free on a "stand-by" basis. The flight is at no cost, and the employee is flying in an otherwise vacant seat. These types of fringe benefits may also apply to certain employees of hotels, cruise ships, and communication companies.

4. Qualified employee discount. For businesses that sell products or provide services to customers, why not provide an employee discount? If you sell a product, your employee discount would be the current sale price multiplied by your "gross profit percentage." If your business provides services, the maximum discount is limited to 20% of the current price for services offered to your customers.

5. De minimis fringes. Even some smaller perks may boost employee

morale, reinforce productivity, or recognize special occasions. For instance, you may provide tickets to a theatre or sporting event, organize a dinner at a restaurant, or give out flowers or fruit baskets for outstanding service, an employee's illness, or family crisis. Your employees may appreciate your thoughtful gestures, as well as the positive recognition or compassion you have taken the time to express.

Smaller fringes may also involve occasional perks *within* the workplace. For example, if you ask an employee to work overtime, you may provide money for meals and local transportation fare. Be creative and come up with other perks that your employees may appreciate.

Fringe benefits can play an important role in creating a positive work environment. They can help create a bond between you and your employees and increase employee loyalty. Would one or more of these fringes be appropriate for *your* business? A thorough review can help you find out. ■



estate planning for lifetime partners

continued from page one

case of a health care proxy, a physician may be hesitant to follow the decisions of an agent who is not legally related, especially if family members object. Therefore, it may be prudent for an individual to provide additional proof of his or her intentions (i.e., in the form of a written letter accompanying the health care proxy).

The addition of a **revocable trust** can further solidify an estate plan and help protect individuals from some of the planning problems related to wills and powers of attorney. Privacy and the ability to transfer assets associated with revocable trusts can be attractive estate planning components for lifetime partners. A revocable trust allows the **grantor** to make him or herself the **trustee** and elect his or her partner as the **successor trustee**. In the event of death, the successor trustee has control over assets held in trust. However, even with a revocable trust, it may be advisable to provide a written confirmation of the grantor's wishes to be made part of the trust document, so any potential challenges by family members may be avoided.

Federal Transfer and Estate Taxes

Another challenge facing unmarried couples is the possibility of Federal **transfer taxes**. Lifetime partners do not qualify for the

unlimited marital deduction, which allows spouses to pass an unlimited amount of assets between them without incurring a tax. The value of the transferred assets that exceeds the **gift tax exclusion** and the lifetime gift exemption is therefore subject to gift taxes. Also, the retitling of assets in **joint tenancy** with rights of **survivorship** could create taxable situations.



For some individuals, estate taxation may be a concern due to having substantial assets. Usually, if one partner has more assets than the other, or is much older than his or her partner, the use of the annual gift tax exclusion (\$13,000 for single filers in 2012) may assist in the gradual transfer of assets to a lifetime partner. However, the annual gift tax exclusion may not be a sufficient mechanism for the timely transfer of large assets. In this

respect, planning for the use of the \$5.12 million lifetime gift exemption (sometimes called the applicable exclusion amount) may serve as an opportunity to gift substantial assets, such as real estate or investments, to a lifetime partner. Note that the \$5.12 million lifetime gift exemption will drop to \$1 million in 2013 unless the law is changed.

For planning purposes, the use of **life insurance** may be a valuable tool for helping to protect the financial future of the surviving lifetime partner. Life insurance may help the insured partner circumvent any potential future family contestation by possibly providing the surviving partner with a **death benefit** equal to the size of the insured's estate. In addition, life insurance can play an instrumental role in helping to pay for any estate tax liability. Normally, the life insurance policy is purchased by the lifetime partner or by an **irrevocable life insurance trust (ILIT)** that is for the benefit of the lifetime partner.

Final Thoughts

While estate planning for lifetime partners can be complicated, unmarried couples need to carefully consider the potential familial and tax issues. It is important to consult with qualified tax, legal, and financial professionals before taking action to help ensure that overall estate planning objectives will be met. ■

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