

**QUESTION: How do I know if my estate planning documents are up-to-date?**

ANSWER: I always tell my clients that estate planning is a process. It only becomes a destination on death or disability. Select a lawyer who is a collaborative team player, one who implements a client maintenance program that keeps you informed and whom you want to call with questions.

QUESTION: My husband and I have assets below the combined federal estate tax exemption. Do we still need tax planning or other irrevocable trusts arising on death in our will or revocable trust?

ANSWER: Yes.

Under the "Tax Cuts and Jobs Act," a piece of federal estate tax legislation from 2018, each individual has a \$10,000,000 estate tax exclusion, adjusted annually for inflation. For 2020, the applicable exclusion amount is approximately \$11,580,000. Under the 2018 law, this estate tax exclusion amount will revert back to the lower exclusion amount of \$5,000,000 in 2026.

A married couple can utilize their combined individual estate tax exemptions under certain circumstances. The ability for a married couple to combine their exemptions is called "portability" of the first exemption. When a married couple has a combined taxable estate between \$15,000,000 and \$20,000,000, one planning goal is to determine whether reliance on the portability of any unused federal estate tax exemption of the first spouse to die will be a benefit to the estate on the second death. There are restrictions on the application of portability that you should discuss with your lawyer before relying on it as your primary estate tax planning tool. Another planning goal is to weigh the income tax versus estate tax consequences of that reliance. Your estate planning documents should be sufficiently flexible to withstand regular changes in the federal tax law.

Also, in many states, including Oregon and Washington, there is a state estate tax. Despite changes in federal law, Oregon's exemption remains \$1,000,000, and Washington's exemption is \$2,000,000, adjusted for inflation. Neither state provides for portability of the spouse's unused exemption, so it is critical to include a trust provision to ensure that a taxpayer does not lose their separate state exemption.

Finally, there are many, many important non-tax reasons for putting your spouse's and children's inheritance in an irrevocable trust. Doing so protects against creditors and predators. Young beneficiaries, acting under the influence of a spouse or friend, are susceptible to spend or give away their inheritance. Surviving spouses may remarry and share unrestricted assets with a new family. A well-written trust ensures that in the hands of an experienced Trustee your legacy is directed as you want.

