

William J. Kovatch, Jr.

Attorney at Law, PLLC

Estate Planning
Special Needs Planning

Newsletter



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Do We Need an Estate Plan Even if My Spouse and I Don't Have a Lot of Money?

Most of us do not like to face the inevitable. Thinking about our own death is uncomfortable. So we put it off, and put off planning for our loved ones. Even when we do some estate planning, many of us want to do it once, and never think about it again. That may not be the best way to handle your estate plan. But, if you only do your estate plan once, and don't do it right, you could miss the opportunity to save your loved ones from paying too much estate tax.

Under current law, you can pass any amount to your spouse without incurring estate tax liability. That is called the marital deduction. However, in 2008, you can leave up to \$2 million to anyone other than your spouse without incurring estate tax liability. This is called the estate tax exemption. Anything above \$2 million is taxed at a rate of 45%. In 2009, that amount of the exemption increases to \$3.5 million. In 2010, the estate tax is repealed. However, unless Congress does something before 2011, the estate tax returns and the exemption will fall to \$1 million. The tax rate will rise to 55%.

If a person with assets above this level leaves everything to his or her spouse, he or she wastes the estate tax exemption. If that person wants to provide for his or her spouse, but does not want to waste the estate tax exemption, the estate plan can use something called a by-pass trust. In its most simple form, a person can put assets worth up to the amount of the estate tax exemption in a by-pass trust, instruct that the trust is to be used to benefit the surviving spouse during his or her lifetime, and then pass to someone else when the surviving spouse dies. If drafted properly, this money will pass free of estate tax liability.

But what if you don't have enough money for a by-pass trust to be useful now? You can create something called a disclaimer trust. If you happen to earn enough money during your lifetime that the estate tax becomes an issue, and you don't update your will, a disclaimer trust allows your surviving

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

William J. Kovatch, Jr. is a member of the National Academy of Elder Law Attorneys, and admitted to practice law in:

- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

spouse to disclaim, or refuse to accept, a certain amount of the inheritance. If your spouse does so, the amount disclaimed would go into a trust which will act very similarly to a by-pass trust. Creating a disclaimer trust in your estate plan, even when you do not have enough assets to worry about the estate tax now, gives your spouse the flexibility to engage in a limited amount of estate planning for you, even after you die. That way, even if you don't get around to updating your will, you may still be able to save your family on the estate tax. ■

Why Young Couples Need a Will

A young couple with a child should have an estate plan, if for no other reason, than to make sure that they have nominated a person to serve as guardian for the child.

For many people, the concept of estate planning revolves around money. To whom should I leave my money? How do I save on taxes after I die? But that is not the only reason to have an estate plan. The most significant reason for an estate plan is to make sure that those who depend on us are taken care of. If a couple with children were to die, for example in a car accident, the most significant legal issue would be who would take care of the children. If the couple did not nominate someone through their wills, then the courts would be left to make this extremely important decision, with absolutely no guidance from the parents themselves.

While a nomination of whom the parents want to serve as guardians may not be completely binding on the courts, depending on your jurisdiction, the courts will give the nomination great weight, and it may serve to avoid difficult disputes among family members. ■

Key Cost of Living Adjustments for 2009

			2008	2009
IRS				
Personal Exemption			\$3,500	\$3,650
Standard Deduction for	Married filing jointly		\$10,900	\$11,400
	Single, or Married filing separately		\$5,450	\$5,700
	Head of Household		\$8,000	\$8,350
Annual Gift Tax Exclusion			\$12,000	\$13,000
SSA				
Social Security Disability Thresholds	Substantial Gainful Activity	Non-Blind	\$940/month	\$980/month
		Blind	\$1570/month	\$1640/month
	Trial Work Period		\$670/month	\$700/month
SSI Federal Payment Standard	Individual		\$637	\$674
	Couple		\$956	\$1,011
SSI Student Exclusion	Monthly Limit		\$1,550	\$1,640
	Annual Limit		\$6,240	\$6,600

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.