ESTATE PLANNING REVIEW

Here is a quick review of the major laws and tax rule changes affecting estate plans made during the last decade. As you review this article consider whether your current plan may be affected by these changes.

<u>Healthcare Directives.</u>
Revisions to Health Care Directives (also known as Living Wills) were brought on by the Healthcare Protection and Accountability Act (HIPAA) enacted in 2003. For Health Care Directives prepared prior to this year consider adding a provision consenting to the release of your medical information to your health care agents.

<u>Medical Assistance Rules.</u>
Sweeping changes in the Medical Assistance Rules, both the Federal and State levels have placed far greater restrictions on gifting and transferring assets for those seeking to qualify for financial assistance. For individuals concerned about the possibility of needing assistance to pay for nursing home or assisted living costs in the future, reviewing the rules would be important before making any gifts or transferring any assets, unless 5 years will pass before needing to apply for such assistance.

<u>Transfer on Death Deeds.</u>
Transfer on death deeds, approved by the Minnesota Legislature in 2008; now offer individuals an alternative method to transfer Minnesota real estate at death without the need for probate. This new alternative may offer an inexpensive way to avoid probate upon their death without establishing a revocable living trust.

<u>Changes in estate taxes.</u> On December 17, 2010, Congress approved and President Obama signed into law tax legislation which extends the Bush income tax cuts for two years and also raises the exemption from Federal estate tax to $5 million per person ($10 Million for a married couple) for 2011 and 2012. The good news is that for at least the next two years, far fewer people will be affected by the Federal Estate tax. The bad news is that many states (21 in 2011) like Minnesota have state estate or inheritance taxes with typical exemptions of $1 million or less. As a result clients still need to properly plan their estate to avoid the state estate taxes, which can claim as much as 40% of values in excess of the exemption amount.

Beginning January 1, 2011 married couples and single persons who die with estates exceeding $5 million (including insurance death benefits) need to be aware that their estate may, without careful planning, be subject to a Federal Estate Tax which will claim 55% of the value of all assets exceeding the $5 million exemption. In addition, Minnesota also claims an estate tax on amounts over $1 million. Married couples can protect their estate from up to two times this exemption, ($2 million) with proper estate planning. Because of numerous changes to the estate tax exclusion over the past decade, couples affected by the estate tax should review their plan, especially if it was drafted prior to the year 2000 and has not been reviewed or updated since then.

Changes in the tax laws also have created special problems for certain plans typically established for married couples with a taxable estate and children from prior relationships. These clients often have plans which direct that certain assets are to be held in trust for a surviving spouse for their life, and then distribute those assets to their children following the death of the surviving spouse. If this sounds like your situation a review may be in order.

If you think your plan may be affected by any of the above changes, if it has been more than 5 years since you have reviewed your plan, or if you have other changes or concerns about your plan, please feel free to contact us for a free "quick review" of your concerns over the phone to determine whether a more detailed review is in order.