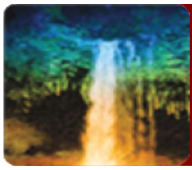

Unintentionally Disinheriting Your Spouse

When is the last time you reviewed your will? Do you remember your attorney discussing a concept known as the unified credit? Did your attorney discuss an amount that was exempt from estate taxes? Not that long ago, this exemption amount was $3,500,000. As a result of the American Taxpayer Relief Act of 2012, the exemption amount is $5,000,000 (indexed for inflation annually). With that increase, and with a recession reducing asset values, many individuals who formerly were concerned about estate taxes, may no longer think they should be concerned. The problem, however, is that many people believe that if they don't have a federal estate tax problem, they don't need to review their wills. That is always incorrect, and one specific problem, unfortunately, is that this kind of inaction may result in a surviving spouse being disinherited.

Many estate plans for married couples are set up so that when the first spouse dies, a certain amount of money and property is allocated to a family trust equal to the exemption amount. The balance of the estate is usually left outright to the surviving spouse or to a marital trust for his or her benefit. The purpose of this common estate plan design used to be for a married couple to shelter as much assets as possible from estate taxes. This was once a great estate plan when any unused portion of the exemption amount of the first spouse to die was "wasted." Now, however, that unused amount is "portable": it can be used by the surviving spouse in addition to his or her own exemption. Just as importantly, the exemption is now $5,000,000 (indexed for inflation annually), not $3,500,000 as it was in 2009, or $2,000,000 as it was in 2006 through 2008. Now, an estate plan set up a few years ago could be disastrous.

Let's take a simple example. Bill and Mary are married. Bill has an estate of $5,000,000 (the same amount it was worth in 2009) and dies in the current year. His will was drafted in 2009 and directs his executor to fund a family trust with property equal to the exemption equivalent. When Bill drafted the will, the exemption amount was $3.5 million, and many people believed it would stay that way, so he believed his surviving spouse would receive an outright bequest of $1.5 million. Now, however, upon Bill's death, the family trust will receive the entire estate, and Mary will receive nothing outright.

Bill undoubtedly did not intend to disinherit his surviving spouse. Yet Mary now only has the assets in her own name, and probably an income interest from the assets held in Bill's family trust. It is probably safe to say that Mary is not at all happy with this result.

To complicate matters, a surviving spouse may have the option of contesting a will or trust if he or she is not provided a certain amount of money. States that are considered "separate property" states (as opposed to "community property" states) usually have "right of election" laws that prevent an individual from disinheriting a spouse - intentionally or unintentionally. Even with this right of election, however, the result for the surviving spouse may not be what was intended.

For this reason and others, especially in view of the many changes to the estate tax laws over the last few years, individuals like Bill should review their estate planning documents with their attorneys and financial professionals to determine the impact of the changed exemption amount. Indeed, estate planning is an evolving process. In fact, all individuals should have their estate planning documents reviewed periodically, and certainly whenever there are tax law changes or major life or economic events. In this way, your attorney can have the documents updated to reflect the changes in the tax laws, financial environment, or changes in intent.

Please consult with your Guardian Financial Representative if you have any questions concerning this document.

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Guardian Financial Representatives may call the Business Resource Center for Advanced Markets, at 1.800.871.7780, Option 3, for additional information.