

# Estate taxes and estate planning: your priority for 2013



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**E**lder law, estate planning, probate and other legal issues for seniors have been the focus of this column since 1989. This month there is no reader's question, so I've selected two important topics.

**First, a federal estate tax update.** You may recall that the estate tax has been in flux since year 2000 when Congress reduced the estate tax burden. Back in 1999, only \$675,000 was exempt from estate tax; assets over that amount were subject to a 50 percent tax. By 2009, the exemption had increased to \$3.5 million. Congress temporarily raised the exemption to \$5 million for 2011-2012, with uncertainty whether it would fall to \$1 million in 2013. Congress later voted to permanently keep the \$5 million per-person exemption.

Such a high exemption sounds liberating. Most people no longer have to worry about losing a large part of their hard-earned savings to the estate tax. However, there is a catch. Under the old, lower tax exemption, many married

couples created tax shelter trusts in their Wills or in their living trusts. Although those tax shelters are no longer necessary, if your estate is below \$10 million for a married couple, the tax shelters may still be activated under the terms of your outdated Will or trust.

You may no longer need the tax shelter trust, but it may be forced on you due to the wording of your outdated estate plan. The unnecessary tax shelter trust will be inconvenient, expensive to administer, confusing and require additional tax returns. You should consult with an experienced, licensed, certified elder law attorney immediately to see whether your plan should be modified to eliminate the tax shelter trust.

**Second, why do you need estate planning if you'll have no estate tax?** Because the plan the state has for your assets is not the plan you want for your assets. An estate plan — whether in a Will or in a trust — allows you to maintain control. If you die without a proper estate plan, the Texas intestacy laws decide the identity of your heirs, and those heirs are exposed to complex and expensive legal procedures. With a proper estate plan, you select your heirs, you select who will administer your estate, you reduce costs, and you pave the way for an easier transition for your family when you die (which, despite popular fiction,



Do not use form websites for estate planning. Though the low prices are tempting, you should avoid them because: **(1) They are not licensed to practice law.** Look closely at the website disclaimers, which say that, even if you use their service, you should consult an attorney. **(2) They are not private.** Websites may sell your data, but lawyers must keep your personal information confidential. **(3) They prepare inadequate, cookie-cutter forms that, at best, cover bare statutory requirements.** It costs far more to unravel a website's mistakes than it does to do it right from the beginning. Work with an experienced, licensed and certified Texas attorney.

will happen to each and every one of us).

Responsible adults, of any age, especially those who own a home or have children, need to make estate plans. A Will is the most traditional approach, but a trust may be right for you. Estate planning should also include a plan for disability. Someone must be empowered to continue your financial tasks and to manage your medical care. At minimum, you need a

Durable Power of Attorney and a Medical Power of Attorney.

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