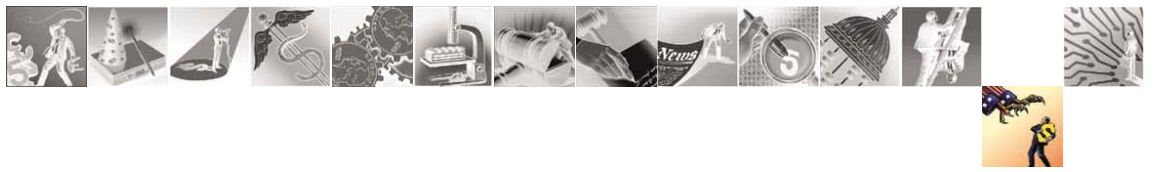

painting by Greg Spalenka

MOM AND POP CAN LEND A HAND IN YOUR ESTATE STRATEGIES, COUNTERINTUITIVE AS IT MAY SEEM. ALL IT TAKES IS A LITTLE TRUST

FAMILY PLANNING

As we approach the season of Mother's Day and Father's Day, it is worth considering the counterintuitive fact that mom and dad can play a substantial role in a child's estate planning. Of course, the object of bounty is always "my child" or "my children" with an interim role for "my spouse" and a "helping hand" for charity. And the ultimate enemy is always the creditor waiting in the wings, whether Uncle Sam, a brigade of shareholders or the greedy divorce lawyer.

But let's not overlook the role of mom and pop. They can help us fatten the objects of our bounty (who are, after all, their grandchildren) and stave off the slings and arrows of all sorts of creditors.

Parents may each make gifts of $11,000 per year (or together $22,000) to every grandchild free and clear of generation-skipping taxes and estate taxes. Of course, they may also make such gifts to you and your spouse, but if mom and pop have limitations, consider forgoing the gift to you and encouraging the gift to your children. Similarly, mom and pop may pay your child's tuition and medical expenses (thereby leaving you with more to make gifts to your children).

Mom and pop each have a GST exemption—an amount he or she may leave beyond your generation without the imposition of generation-skipping transfer taxes (and without any generation's estate or gift tax after mom and pop's generation). This year that amount is $1.5 million, but it is scheduled to increase to $2 million in 2006 and $3.5 million in 2009. That GST-exempt amount is now equal to the amount free of estate tax (but not gift tax).

So let's consider a mom and pop with $4 million, one child we'll call you and three grandchildren, all your children. Mom and pop might well conclude to "keep everything simple" and provide that, after appropriate planning as between the two of them on the death of the first to die, their estates all pass outright to you on the death of the survivor. They believe you should provide for your own children and grandchildren and you should worry about your own affairs.

You might well consider asking your parents to leave your share in a trust. As to the amount exempt from generation-skipping transfer taxes, that trust can save your estate tax simply and with no requirement that you give up access to the funds during your lifetime. And the more the trust grows during your lifetime, the more estate taxes are saved.

That trust can also serve as protection against creditors beyond Uncle Sam. You will not likely find any "asset protection plan" more effective than a trust set up for you by another (such as your parent) containing spendthrift protection, that is, the provision that a creditor cannot seize trust assets except if and as they are paid to you.

The corporate director, the lawyer, the doctor or any other person concerned about litigation frequently comes in with two questions: "Can I save estate taxes?" and "Can I protect assets from creditors?" To answer these questions it is best to start discussing the parent's estate plan. But approaching a parent head on to discuss his or her estate plan can be difficult. A reasonable approach is to let your parent know you are considering your own estate and for purposes of your own planning a parent-created trust makes sense: "I am not asking what you are doing in your wills. Instead I am merely requesting that if you plan to leave me any part of your estate, you leave it in trust for me and ultimately to my children."

You may want to help design the trust. You clearly want to remain a permissible beneficiary so the trustee should have the power to distribute funds for your "health, support and education." You want trustees who are responsible and know what they are doing. You want the power to direct how the trust passes among your descendants (and possibly your spouse or charities) at your death, and you may even want the power to direct distributions to others during your lifetime. All of this can be built into the trust without exposing you to estate taxes on the trust or to claims against the trust by your creditors.

Suppose you have a sibling who is less affluent than you, and your parents insist on dollar-for-dollar equality. A well-designed trust can even allow you to provide for the sibling without reaching into your own pocket (that is, without involvement of your spouse and children).

So this Mother's Day and Father's Day, take a moment to thank mom and pop for all they do—and then consider what more they can do for your estate planning and protection. ■

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