the Disciple's Legacy

Year-end Gifts

Planning with IRAs and other retirement plans

A hot tax planning topic is currently whether or not Congress will extend the IRA charitable rollover law that expired at the end of 2014. Past experience tells us early December is too early to tell, but we promise to keep you posted through parish bulletins and the Archdiocese of Detroit website, www.aod.org, if Congress finally acts.

In the meantime, you may want to consider IRAs and other qualified retirement plans, such as a 401k plan, to make legacy gifts to the Church through your estate plan.

These plans are subject to two possible taxes — income tax and estate tax — although changes made years ago in the estate tax law have softened the impact of that tax. In 2015, $5.43 million of property is exempt from estate tax and, with proper planning, the exemption in effect is $10.86 million for a married couple. The exemption will increase to $5.45 million in 2016. At those levels, most estates are exempt from the estate tax.

Naming the Church as beneficiary of some portion of your plan allows you to make a significant gift because it is not subject to income tax.

Regardless if the estate tax applies to your estate, distributions from your plans are subject to income tax, and after your death to the beneficiaries you name. Why? No income tax was applied when you or your employer deposited funds in these plans, so income tax is applied when funds are distributed out of your plan. If you name your family as plan beneficiaries, these individuals will have to pay income tax that could be as much as 40 percent on any plan distributions. These distributions are termed "income in respect of a decedent," which is Congressional lingo for, "We're going to tax this income whether you are alive or dead."

Because of how these distributions are taxed, they make ideal gifts to the Church, through your parish, the Archdiocese of Detroit Endowment Foundation, Sacred Heart Major Seminary, Catholic Charities of Southeast Michigan, or other archdiocesan institutions as a plan beneficiary. Naming the Church as beneficiary of some portion of your plan allows you to make a significant gift because it is not subject to income tax. Moreover, if your estate is subject to estate tax, it would be entitled to a charitable deduction for the present value of the plan distributions to the Church.

The tax rules for distributions out of these plans are far more complex than this overview allows. Before naming the Church as a beneficiary or other planning involving your retirement plans, you should consult with your legal counsel and financial and tax advisors. ✝

"... bear fruit and you will become my disciples."
John 15:8

LEAVE A LEGACY®
Make a difference in the lives that follow.

The Living Trust: A will's companion

In these newsletters, we encourage Christian stewards to make a will and other estate planning documents. The "living trust" is one of the most powerful of those "other estate planning documents" — and is useful in many ways in estate planning.

What is a living trust?
A living trust is an agreement between you as grantor — the person establishing the trust — and a trustee. The agreement provides for the management of the trust assets and the distribution of income and principal to beneficiaries. The trust gets the name "living" because you establish it during your lifetime, rather than at death through a will. Sometimes the term "revocable living trust" is used to more fully describe the fact that you can amend or revoke your trust at any time.

May I be trustee of my living trust?
Generally, the grantor of a living trust is also the trustee during his or her lifetime. This is referred to as a "self-trusteed" trust. Of course, you may also name someone else as trustee.

Who are the beneficiaries of my living trust?
During your lifetime, you are the beneficiary of your living trust. This means that when you establish the trust, you wear all three trust hats: grantor, trustee, and beneficiary. Your trust agreement also provides for the distribution of trust assets following your death to your family, your faith communion or other beneficiaries.

Must all the trust assets be distributed when I die?
No, which is one of the beauties of a living trust. At your death, your successor trustee will manage the trust assets according to the terms of the trust agreement. Depending on your family's circumstances, some assets may be distributed soon after your death, and others at a later time.

For example, specific bequests to your parish, the Archdiocese of Detroit Endowment Foundation, Sacred Heart Major Seminary, Catholic Charities of Southeast Michigan, or other Catholic charities may be distributed soon after your death. But distributions to your children may be deferred until they reach certain ages when they are more able to manage significant amounts of assets. Your living trust also is useful to manage assets for a family member who may have special medical needs or for children to complete their education.

Your living trust is a powerful asset management tool because the trust agreement can provide for your family's particular circumstances and needs as well as your charitable intentions.

Are there tax advantages to my having a living trust?
There can be. During your lifetime, your income tax status is unchanged because your trust is not treated as a separate taxpayer; the income from trust assets is included in your individual income tax return. At your death, all of the assets in the trust will be included in your estate since you had control of those assets during your lifetime.

The trust gets the name "living" because you establish it during your lifetime, rather than at death through a will.

If you are married and have a sizable estate, your living trust can provide a big estate tax advantage at your death due to the tax law interplay of the estate tax credit and the unlimited marital deduction. For example, the estate tax credit provides that in 2015 you can transfer property valued up to $5.43 million free of any estate tax; the expemption increases to $5.45 million in 2016. Further, under the unlimited marital deduction, any property distributed to your surviving spouse is not subject to tax in your estate, but will be taxed in your spouse's estate.

To take advantage of these tax rules, your trust agreement should provide that at your death the trust be divided into two parts. One part will receive property to qualify for the estate tax credit (here referred to as Family Trust). The other part will be distributed to your surviving spouse in some form to qualify for the marital deduction (Marital Trust). Under these provisions, there is no estate tax at your death. The provisions of the Family Trust can provide that your surviving spouse has access to the assets in the Family Trust if needed.

If your trust document is properly worded, the assets in the Family Trust will not be included in your surviving spouse's estate. Only the assets in the Marital Trust, plus other assets your surviving spouse owns, will be included in your spouse's estate. Those assets will be taxed only if they exceed the value of your spouse's transfer credit. Since the credit is adjusted for inflation, it may be greater than the $5.43 million today.

Is a living trust necessary if I am single or have only a small estate?

Perhaps not necessary, but a living trust has several advantages even in those circumstances.

A living trust:

- can be useful to hold assets for the benefit of minor children or beneficiaries with special needs.
- is a private matter, in contrast to a will, which is public. With a will, anyone can go to the probate court files to see what assets you owned and who gets them. You would especially want to avoid this if you own a business.
- avoids probate not only in your state of residence, but also in other states where you own property.
- provides for a successor trustee, not only upon your death, but also during your lifetime to manage your affairs if you are incapacitated through an accident or illness. In contrast, your personal representative under your will can act only upon your death.

Is signing my trust agreement enough to get all of these living trust advantages?

No, you must transfer your assets into the name of the trust. This includes changing the names on bank accounts, stocks and bonds, brokerage accounts, and real estate. If not, these assets may become part of your probate estate and many of the trust advantages lost. This is especially true for your successor trustee to act should you become incapacitated.

If I have a living trust do I still need a will?

Your will remains your basic estate planning document. Even though your trust agreement will control the specifics of the distribution of your estate, your will provides for matters such as the guardian of minor children. Also, any asset you overlook in lifetime transfers, or choose not to transfer to your trust, can be transferred to your trust through your will.

Do I need other estate planning documents in addition to my will and living trust?

In order to complete the estate planning package, you should execute a durable power of attorney for property to handle property matters for assets not in your trust. You should also execute a designation of patient advocate to empower someone to make medical decisions for you when you are unable to do so. ✝

Someone You Trust

Durable power of attorney for health care is an important element of estate planning

As Christ's disciples, putting our houses in order should be the overarching principle of our estate planning. After all, all that we are and all that we possess are gifts from a loving God. Good stewards are grateful caretakers of these gifts.

Most often, the emphasis of estate planning is on property but it is also important to focus on God's gift of "all that we are" — mainly, our health. This includes how we care for our bodies and, especially, our plans for our medical care. What happens when we are unable to make health care decisions for ourselves because of an accident or a serious illness?

A durable power of attorney for health care (DPOA) is the best way to provide direction on the medical care you want when you are unable to make medical decisions for yourself. A DPOA outlines your guidelines for your medical treatment as well as authorizes who will make health care decisions for you based on those guidelines. That person is referred to as a "patient advocate," and a DPOA is also called a designation of patient advocate.

Your guidelines should include treatments you do or do not want, such as life-sustaining measures and relief from pain. It should also provide wishes about body tissue and organ donations. Your patient advocate signs the DPOA, acknowledging your instructions and agreeing to follow them.

The adoption of privacy rules under the federal Health Insurance Portability

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and Accountability Act (HIPAA) brought some confusion on what medical information, if any, a health care provider may release, and to whom. To ensure your patient advocate has the necessary information to make medical decisions for you, your DPOA should provide specific authority for your advocate to receive information permitted under HIPAA.

You should choose your patient advocate carefully. After all, your patient advocate's decisions will literally be a "matter of life or death" — yours! Although you may name only one advocate at a time, your advocate may consult with family members, doctors or your pastor in making decisions. You should also name a successor advocate to act on your behalf if your first advocate is unable or unwilling to do so.

A DPOA can be changed or revoked entirely. As with all estate planning documents, you should review it periodically to ensure that it continues to reflect your wishes. Some DPOA forms include spaces for you to sign and date a statement to that effect after your review.

Of course, your DPOA should also reflect the teaching of the Catholic Church on the sanctity of life. The Michigan Catholic Conference (MCC) has produced *GUIDELINES For End of Life Decisions: Patient, Physician, and Family,* a booklet explaining Catholic teaching on medical treatment of terminal illness and describing the Durable Power of Attorney for Health Care document. The booklet also contains sample DPOA forms and can be downloaded at www.micatholic.org/advocacy/publications

A durable power of attorney for health care (DPOA) is the best way to provide direction on the medical care you want when you are unable to make medical decisions for yourself.

Because of the important issues involved in developing your DPOA and its relationship with your other estate planning documents — such as your will, trust and durable power of attorney for financial matters — you should consult your attorney for the proper drafting of your DPOA.

After you have executed your DPOA, you should furnish a copy to your patient advocate, any successor advocate, physician, pastor, and anyone else who may be involved in your medical care. These people will then have a clear understanding of your wishes and instructions about your treatment when you are unable to make medical decisions for yourself. Most important, your advocate will have the authority to make those decisions. ✝

For more information on the planning and charitable giving techniques discussed in this newsletter, please return the enclosed reply card or contact Tom Scholler in the Archdiocese of Detroit Department of Development and Stewardship at (313) 596-7408 or scholler.tom@aod.org.

You may also visit our website at www.aod.org/plannedgiving.