Estate and Long-Term Care Plans: The Dangers of Doing Nothing

Plus! Find Out What the New Tax Law Means

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Overview

- Planning for disability and for death is essential
  - Approximately 25% of all individuals will suffer a disability
  - 1 in 9 individuals who reach 65 will develop dementia, 1 in 3 who reach 85 will develop dementia
  - 100% will die at some point

- Planning does not just consist of drafting documents
  - Need integrated plan that includes legal and financial planning

- Tools exist for each individual to properly plan

- The law provides alternatives if the individual does not properly plan or does not have capacity

- **The default under the law may *NOT be what you intend***

Overview of provisions of the TCJA affecting individuals

- The recently enacted Tax Cuts and Jobs Act (TCJA) is a sweeping tax package. Virtually all taxpayers are impacted by the changes in the new tax reform. Here's a look at some of the more important elements of the new that have an impact on individuals:
  - New tax rate structure
  - Standard deduction increased
  - Exemptions suspended
  - Changes to itemized deductions

Tax Rates

- Applies to tax years beginning after 12/31/17 and before 1/1/2026. (2019 filing season)

- The new law imposes a new tax rate structure with seven brackets: 10%, 12%, 22%, 24%, 32%, 35% and 37%.

Tax Brackets for 2018

Rate	Single	Married, Joint	Married, Separate	Head of Household
10%	$0 to $9,525	$0 to $19,050	$0 to $9,525	$0 - $13,600
12%	$9,526 to $38,700	$19,051 to $77,400	$9,526 to $38,700	$13,601 to $51,800
22%	$38,701 to $82,500	$77,401 to $165,000	$38,701 to $82,500	$51,801 to $82,500
24%	$82,501 to $157,500	$165,501 to $315,000	$82,501 to $157,500	$82,501 - $157,500
32%	$157,501 to $200,000	$315,001 to $400,000	$157,501 to $200,000	$157,501 to $200,000
35%	$200,001 to $500,000	$400,001 to $600,000	$200,001 to $300,000	$200,001 to $500,000
37%	Over $500,000	Over $600,000	Over $300,000	Over $500,000

For Comparison, here's how 2018 brackets would have looked under the old tax code

Rate	Single	Married, Joint	Head of Household
10%	$0 to $9,525	$0 to $19,050	$0 to $13,600
15%	$9,526 to $38,700	$19,051 to $77,400	$13,601 to $51,850
25%	$38,701 to $93,700	$77,401 to $156,150	$51,851 to $133,850
28%	$93,701 to $195,450	$156,151 to $237,950	$133,851 to $216,700
33%	$195,451 to $424,950	$237,951 to $424,950	$216,701 to $424,950
35%	$424,951 to $426,700	$424,951 to $480,050	$424,951 to $453,350
39.6%	Over $426,700	Over $480,050	Over $453,350

Observation...

- Lower rates and higher tax brackets mean that a given amount of taxable income will generally attract a lower effective tax rate. However, since the calculation of taxable income will also change, not all taxpayers will experience a lower tax liability.

Increase in Standard Deduction

- The new law increases the standard deduction to:

Single	MFJ	MFS	HOH
$12,000	$24,000	$12,000	$18,000

- Blind or over 65: add $1,600 if single or head of household and $1,300 if married
- Under pre-Act law, the standard deduction amounts were to be:

Single	MFJ	MFS	HOH
$6,500	$13,000	$6,500	$9,550

Personal Exemptions Suspended

- The new law suspends the deduction for personal exemptions. Thus, starting in 2018, taxpayers can no longer claim personal or dependency exemptions.
- Under pre-Act law, personal exemptions were generally allowed for the taxpayer, taxpayer's spouse, and any dependents.
- Under pre-Act law, the amount deductible for each personal exemption was scheduled to be $4,150 for 2018.

Example: Married couple with no dependents

Under Pre-Act Law

- Std. deduction $13,000
- + Personal exemptions $8,300
- Total deductions $21,300

New Law

- Std. deduction $24,000
- No personal exemption
- Total deduction $24,000

Example: Married couple with 1 dependent

Under Pre-Act Law

- Std. deduction $13,000
- + Personal exemptions $12,450
- Total deductions $25,450

New Law

- Std. deduction $24,000
- No personal exemption
- Total deduction $24,000

Filing Requirements

- Under pre-TCJA law, an unmarried individual had to file a tax return if, in that year, income equaled or exceeded the personal exemption plus the standard deduction.
- For tax years beginning after 12/31/17 and before 1/1/26, individuals will be required to file an income tax return if his/her gross income exceeds the standard deduction.
  - i.e. Single - $12,000 or MFJ $24,000

Child and Family Tax Credit

- The new law increases the credit for qualifying children (i.e. children under age 17) to $2,000 from $1,000.
- Also increases to $1,400 the refundable portion of the credit.
  - This means that taxpayers who do not owe tax can still claim a credit.
- New (nonrefundable) $500 credit for a taxpayer’s dependents who are not qualifying children.
- Adjusted gross income level at which the credits begin to phase out has been increased to $200,000 or $400,000 for MFJ.

Education Benefits

- Taxpayers can continue to claim the American Opportunity Credit.
  - Credit of up to $2,500 p/year for the first 4 years of college education.
- Lifetime learning credit
  - Credit of up to $2,000 p/year for qualifying educational expenses. Not limited to first 4 years.
- 529 plans can now be used for K-12 expenses.
  - Plans can distribute up to $10,000 each year for tuition for enrollment or attendance at a public, private, or religious elementary or secondary school.
  - $10,000 limit is applied on a per student basis.

Limited - State and Local Taxes

- The itemized deduction for state and local income and property taxes is limited to a total of $10,000 starting in 2018.
- Also, prepayment of 2018 state or local income tax paid in tax year 2017 cannot be claimed as an itemized deduction.

Limited - Mortgage Interest

- Under the new law, mortgage interest on loans used to acquire a principal residence and a second home is only deductible on debt up to $750,000 for married and $375,000 for married filing separate (down from $1 million), starting with loans taken out before 12/15/17.
- *Refinancing* – The $1 million limitations continue to apply to taxpayers who refinance existing qualified residence indebtedness that was incurred before 12/15/17.
- No longer any deduction for interest on home equity loans, regardless of when the debt was incurred.

Eliminated - Misc. Itemized Deductions

- Beginning after 12/31/17, there is no longer a deduction for misc. itemized deductions were formerly deductible to the extent they exceeded 2% of AGI.
- This category includes items such as tax preparation costs, investment fees, union dues, and unreimbursed employee expenses.

Modified - Medical Expenses

- Under the new law, for 2017 and 2018, medical expenses are deductible to the extent they exceed 7.5% of AGI for <u>all</u> taxpayers.
- Previously the AGI "floor" was 10% for most taxpayers.

Alimony

- For post-2018 divorce decrees and separation agreements, alimony will <u>not</u> be <u>deductible</u> by the paying spouse and will <u>not</u> be <u>taxable</u> to the receiving spouse.

Health Care “Individual Mandate”

- Starting in 2019, there is no longer a penalty for individuals who fail to obtain minimum essential health care coverage.
- Taxpayers who did not have coverage in 2017 and 2018 will continue to owe a penalty for those years, unless they qualify for an exemption.

The Tools

- Durable Power of Attorney
- Advance Medical Directive
- Joint Ownership
- Revocable Living Trust
- Will

Durable Power of Attorney

- First choice for surrogate decision-making for financial decisions
- Written instrument appointing an agent
- Creates fiduciary relationship between the principal and agent
- Survives principal's incapacity

Financial decisions with no POA

- Conservatorship
- Ability to make financial decisions for an incapacitated person
- Ability is limited in Virginia without approval from a judge
  - Cannot transfer assets between spouses or use income for incapacitated spouse
  - Cannot sell real property
  - Cannot plan for asset protection
  - Cannot change beneficiaries

Advance Medical Directive

- First choice for surrogate decision-making for medical decisions
- Recommend AMD be prepared in state where client currently lives; can have multiple AMDs
- Living Will
  - Concerns end of life care only
  - Terminal condition
  - Persistent vegetative state
  - No extraordinary means
- Medical Power of Attorney Appointment of agents
  - Make medical decisions
  - Only if you are unable to make the decisions for yourself

Healthcare decisions with no Medical POA

- Ability to make decisions for an incapacitated person
  - Residential
  - Medical
- Guardianship

Representative Payee

- Person appointed to act on behalf of another with respect to the Social Security Administration (SSA)
- SSA usually does not accept a Durable Power of Attorney
- Proposed Representative Payee must apply in person at a Social Security office
- www.ssa.gov has a handbook for Representative Payees

Joint Ownership

- Tool to manage financial assets
- Joint ownership can be with or without survivorship
- Each owner acts as principal for their own assets in the joint account
- The joint owner acts as agent for the other joint owner's assets
- Fiduciary relationship is the same as under the Durable Power of Attorney
- Doesn't give the ability to manage any other assets

Revocable Living Trust

- Trust – a contract
- Gives ownership of property to a trustee (normally client during his or her lifetime)
- Trustee required to manage and distribute property according to the terms of the trust
- Includes provisions for management of trust assets if client is incapacitated
- Provides for disposition of trust assets upon death

Will

- Tool to dispose of property at death
- Default rule is intestate succession in state of domicile
- Default rule may not be acceptable option
- Wills not best option for all situations – revocable living trust may be better option in some circumstances
  - Estate tax planning
  - Second marriages

What happens when there is no Will/Trust

- 1/3 to spouse, 2/3 to children of prior relationship
  - What about protection for children
  - What if children are minors
- If none, then to parents/siblings (goes down the family tree)
- If no next of kin, then to the Commonwealth of Virginia

What is Long-term Care Planning?

- Continuum of care consisting of a wide range of services including public, private, and community-based
- Delivered in:
  - The home
  - Adult day care center
  - Continuing or life care communities
  - Assisted Living Facilities: average of 50% to 80% cognitively impaired and require assistance with 2.8 of 6 Activities of Daily Living (ADL)
  - Nursing Home: average of 80% of residents have cognitive impairments and require assistance with 4.7 out of 6 ADLs
- Services delivered at skilled, intermediate, or custodial level
- The largest part of long-term care is custodial care; providing assistance with activities of daily living required as a result of an illness, an injury, or cognitive impairment

Cost of Long-term Care in Virginia

- In-home care:
  $17 per hour or $148,920 per year for 24/7 care

- Nursing home care:
  $248 per day or $90,500 per year

- Assisted living facility:
  $30,000 to $40,000 per year

- Adult day care:
  $50 per day

Sources of Funds to Pay for Long-Term Care

- There are five sources of funds to pay for long-term care:
  - Medicare and Medicare Supplements: 16%
  - Veterans and other public benefits: 3%
  - Income, savings & life insurance: 26%
  - Long-term care insurance: 11%
  - Medicaid: 44%

Source: Centers for Medicare & Medicaid Services, Office of the Actuary, National Expenditures Tables, 2003.

Medicare Facts

- Medicare was not designed to address custodial, long-term care needs and does not do so
- Medicare only pays for short-term medical treatment, such as hospital and doctor bills
- Medicare only covers skilled care and under limited circumstances
- For Medicare to pay for nursing home care:
  - Care must be provided in a skilled nursing facility
  - Care must be provided within 30 days after a prior hospital stay of at least 3 consecutive days
  - Care must be restorative in nature—must be designed to make patient well. Any type of intermediate or custodial care (99.5% of care provided in a nursing home) is not covered

Veterans Benefits

- Service-Connected Benefits:
  - Veterans Administration (VA) provides nursing home care to veterans who:
    - Need such care for a service connected disability
    - Need such care and have a service connected disability rated at 70% or more
- Non-Service Connected Benefits:
  - Veteran must have served 90 days of active duty (more for recent veterans) with at least one day during wartime and have an honorable discharge
  - Veteran must require care or assistance on a regular basis
  - Needs based:
    - Assets based on life expectancy, income, and out of pocket medical expenses
    - Income based on
  - Increased pension benefit called Aid and Attendance and free medication from VA pharmacy

Income and Savings

- Good financial planning can help you pay for long-term care costs

Cost of Nursing Home:	$90,000
Income:	$20,000
Savings	$500,000
Withdrawal rate	14%
Annual withdrawal	$70,000
Total contribution to cost of care	$90,000

- Enough to last for approximately 7 years

Before You Purchase LTCI

To make an intelligent decision about long-term care insurance, four questions must be answered:

- Do you need it?
- Can you afford it?
- Which combination of benefits is best for your specific needs?
- Which of the many plans available makes the most sense for you?

Medicaid

- Medicaid eligibility and asset transfer rules are extremely complicated.
- Rules vary substantially from state to state, and they change constantly.
- Don’t rely on advice from friends, family, or even someone that had the same experience in the past.
- Medicaid is a term given to any number of programs – all with different eligibility requirements.

Basic Criteria for Eligibility

- Proof of Citizenship
- State residency
- Membership in covered group
- Functional and medical criteria
- Income eligibility rules
- Resource eligibility rules
- Asset transfer rules

Word to the Wise

- Don’t try this at home. Seek the advice of an experienced elder law attorney.
  - Laws are constantly changing.
  - Every circumstance is different, so don’t rely on what worked for someone else.
  - There are many options that should be considered, so don’t look to single solutions.
  - What you need is a comprehensive plan that has considered the effects on the family’s financial, estate planning, tax, and public benefits.
  - There is no easy answer or cure. Planning for long-term care due to a chronic illness is a complex issue that many of us will be forced to face.

What to Avoid

- Avoid procrastination! It is never too early, nor too late, to start planning.
- You need a planning partner who:
  - Understands your family circumstances and dynamics.
  - Is experienced in all areas of planning.
  - Can implement all planning options.
- You need a comprehensive plan that incorporates all the planning opportunities.

What Can You Do

- Work with an experienced elder law firm and implement a comprehensive plan:
  - Estate planning and legal documents
  - Financial services and investments
  - Insurance and annuities
  - Tax planning and preparation
  - Care management and coordination of services
  - Public benefits (SSA, Medicare, & Medicaid)
- Regularly review your personal circumstances with an experienced elder law firm.

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