Ep88: Issues to Consider Before Updating an Estate Plan

January 14, 2022

PATTI BRENNAN: Hi, everybody. Welcome to the "Patti Brennan Show," whether you have $20 or $20 million, this show is for those of you who want to protect, grow, and use your assets to live your very best lives.

As you all know, at the end of every podcast, I usually end by saying, if you have any questions, please feel free to reach out to us. Send us an email, go to our website, keyfinancialinc.com, and ask us your questions.

We've been gathering these questions and I've started this series called "Ask Patti Brennan."

Today, I'm going to spend about 10 minutes answering one of the questions that I get a lot, especially now given Biden's tax proposal. That is, "What things should I consider when I'm thinking about updating my estate plan?"

First and foremost, let me say to all of you, as I record this in May of 2021, that Biden's tax proposal does not have anything relating to estate taxes in it. At the very last minute, they removed all of it.

Biden's proposal, or should we say Bernie Sanders proposal, is that they want to reduce the amount that you can leave to the next generation from $11.7 million to $3.5 million.

However, at the last minute, they left it out because due to something called the sunset provision, they already know that it's going to go to $5.5 million in 2026. When it was all said and done, they said, "Why are we going to fight that battle? It's already going to go down because of the Sunset. Let's add something else in there that'll give us a lot of revenue right away."

For those of you who are interested, listen to my podcast with Bill Cass. That's where we really dig into a lot of the provisions that are in the Biden plan, and what you need to be worried about and what you don't need to be worried about.

Today, I'm going to focus on your estate plan. What do I need to consider?

Now that that's off the table, at least temporarily, I would encourage you to at least understand where you are today and have a conversation with your estate planning attorney to say, "When this thing goes through in 2026, should we be concerned? Is there anything that we need to be thinking about today?" Because there are some things that you can do to avoid that tax for your children or the people that you love. That's number one.

Number two, as you think about your estate plan, understand what it covers. It covers anything that is in your names, even in joint names. Joint titling on property or investments.

It doesn't get controlled by your will. It goes by operation of law, which means the titling is more important than what you put in your will. I could say, "Gee, I want my such and such account to go to my four children." It doesn't matter. If I have it jointly held with my husband, he's getting all of it.

The titling is more important as are the beneficiary designations. Make sure that that is congruent with the wishes as you have them in your will.

Also, look at who you've named as executor, who you've named as perhaps a trustee. Have there been any marriages or divorces?

The other thing to think about is, is there anybody in your life that has special needs? Are special needs trust something that you might want to be thinking about?

Also speaking of trust, trusts are not only for wealthy people. Trusts could be wonderful tools to protect your family or the people that you love against predators or somebody that might sue them for some unknown reason. If that happens to let's say one of your children, the assets that are held in trust for their benefit cannot be attached.

If they go through a divorce, and this, by the way, is one of the things that I hear more than anything. What if my son were to get divorced? Those assets, if he were to inherit this money outright, certainly the growth of the assets would be included as part of the discussion in the divorce. If the assets are owned by a trust, it is not. A Trust could be a very wonderful tool and you don't have to be wealthy to have one.

Do you have a second home or a vacation home? If so, that might be subject to something called ancillary probate.

In English, all that means is if you have a property in New Jersey or Florida, that needs to be probated in those states. It gets a little glitchy. That's an easy thing to avoid using something called the revocable living trust.

You don't need a revocable living trust in every state because probate is not a big deal in a lot of states. Pennsylvania is one of them. If you have property in several states, or even just another state, that might make sense to add that extra paragraph or two, that will allow that to be titled in the name of your revocable trust.

How does that work? A revocable trust is literally exactly that. It's completely revocable and changeable. It doesn't even have a separate tax ID. It uses your social security number. Whatever you own, personally, your revocable trust can own. You're the trustee. It's not that much different.

What makes it powerful in certain states is that the trust has a beneficiary, so it goes according to whatever that trust says. If you own it personally, it must go through your will based on what your will says. That is a probateable asset. Is probate a big deal? Is it a hassle? By the way, who's the executor that's going to have to do it?

There are also other things to think about. We all know that you need a power of attorney, a financial power of attorney and a healthcare power of attorney. If you have a child 18 years or older, in most states, that is the age of majority. If they are in an accident, guess what? They're an adult.

The hospital, subject to HIPAA, cannot give you any information. Only if you have a power of attorney, can you authorize treatment for that child. The same thing goes for financial power of attorney. Wills and financial powers of attorney are probably not as important as the healthcare power of attorney.

Again, it's not that big of a deal, if you're doing yours, get it for them as well. I think that the only other thing that I would add is, and this is something that a lot of people don't realize, are your digital assets.

We are hearing more and more stories about people who became disabled. Someone may have had a stroke or died unexpectedly, and they've got a computer, they've got accounts, and they're paperless. Nobody knows what they have or don't have, and it's not coming in the mail anymore.

How's anybody going to settle the estate? How are they even going to know what's involved? Your digital assets, your passwords, your usernames, where are they located? Where are your accounts? Please do someone a favor, make a list of them.

I know, people like me. We always tell you don't write down your usernames and your passwords. We all say it and you probably shouldn't do that, right? At the very least, get one of these password protector programs like a LastPass or something like that. That's really nice.

I've got probably 60 different websites that I have usernames and passwords. There's no way I would ever remember them all. I just log on, go to the website and LastPass remembers everything for me. I only have to remember one username and one password.

Really think about that and make a list of where everything is – where accounts might be, where you bank etc. Try to make it a little bit easier for the people that you're leaving behind.

Those are just a few of the things that I wanted to go over with you. Again, a lot of people are already thinking about their estate plan because of a potential change in tax law. I would not necessarily feel the urgency to do that because in Biden's proposal it's not included.

Now, there's talk about Sanders, Van Hollen, and Gillibrand, and everybody's got their ideas of what they want to change, but it hasn't been proposed. They're not even talking about it yet. There are unintended consequences for pretty much everything that we do in the estate planning area.

Just be aware of them, run the numbers, and make sure this is a problem that needs solving.

Thank you so much for tuning in. I hope that was helpful. I am Patti Brennan. Thank you so much for joining me today.

If you have any questions, again, send us an email. Go onto our website at keyfinancialinc.com. Take care and have a great day.