Slicing Your Estate Planning Pi(e)

What? You didn't know that March 14 (3/14) is National Pi Day? We didn't either until recently, but now we know this celebratory day was established (you guessed it!) by a physicist (Larry Shaw) to recognize the mathematical constant (**π**) whose first three digits are 3.14—probably as an excuse to devour lots of pie. National Pi Day is a great occasion to come to our office and discuss how you would like to slice your financial pie when you pass your wealth on to your children and loved ones. No complicated mathematical formulas are necessary to determine whom you would like to leave your money and property to, but it is an important subject that requires some serious thought.

How Should You Slice Your Pie?

With only a few possible exceptions, you are free to use your estate plan to slice up your wealth for the benefit of anyone you choose. Some common beneficiaries you may choose are spouses or other significant others—such as your boyfriend, girlfriend, or partner—and children. More and more people are also leaving money in trust to be used for the care of their pets. Others want to provide a gift to one or more close friends when they pass away. You may choose to include institutions as well as people or pets in your estate plan: if you have a strong relationship with a favorite alma mater, charity, or church, you may choose to leave money or property for its benefit.

It is crucial for you to create an estate plan to ensure that each person or institution gets the slice you intend. Without an estate plan, your money and property will be divided up according to state law, which may not provide the result you would have wanted. The state's intestacy statute typically provides that if you die without a will, your surviving spouse will inherit everything, but if you had children from a prior relationship, the estate will be divided between them and your surviving spouse. If you do not have a surviving spouse or children, the estate may go to your parents or siblings. In the absence of any surviving family members specified in the statute, your money and property go to the state. This means that if you had stepchildren or foster children who were beloved but not adopted, or a significant other who was not a spouse, they will receive nothing. In addition, without an estate plan, you will lose out on the opportunity to leave your wealth to a nonfamilial loved one or charitable organization of your choice; instead, your wealth will go into the state's coffers.

By creating an estate plan, you can specify not only to whom you want to leave a slice of your pie, but also the size of that slice. For example, you may want each of your children to receive an equal inheritance, or you may choose to divide up your wealth among your children based upon what you think each one needs. Children who are disabled and unable to provide for themselves may need more than other children who are able bodied or independently wealthy. There is no right answer: it is up to you to determine those to whom you want to leave your money and property and the size of each gift.

Depending on state law, there may be a couple of exceptions that have at least some impact on your ability to specify the size of the slices of your pie:

- **Spouse's elective share.** Nearly every state has a statute that protects a surviving spouse from complete disinheritance by allowing them to elect to take a certain portion, such as one-third or one-half, of their deceased spouse's estate. In some states, the size of the elective share may depend on whether the deceased spouse left behind children, grandchildren, or parents in addition to their spouse. The surviving spouse's elective share may be smaller if there are other surviving relatives who would benefit from the deceased spouse's estate.

  Some states' elective share statute applies only to the probate estate, that is, accounts and property that are held in the deceased spouse's individual name. However, other statutes also subject money and property the deceased spouse had transferred to a revocable living trust during their lifetime to the surviving spouse's elective share. Elective share statutes are generally a default rule, so a surviving spouse may contractually waive or modify their right to an elective share if they sign a premarital or postmarital agreement to that effect.

- **Family allowance.** Under state law, the surviving spouse, minor children, and adult children with special needs may be entitled to an amount from the deceased person's estate necessary for their maintenance if they are able to demonstrate their need to the probate court. The money and property considered in determining the amount to which the spouse or children may be entitled vary depending on state law. Often, if the family allowance is determined to be available, it will be paid to the spouse or children before gifts are made to other beneficiaries named in the deceased person's estate plan or most other claims against the estate, and if there are insufficient funds in the estate to cover the family allowance, the court may order the sale of estate property.

We Can Help You Slice Your Pie How You Want

Celebrate National Pi(e) Day by setting up an appointment to create or update your estate plan. We can help you design a plan to ensure that your pie is divided up in a way that achieves your goals. Give us a call today!