

A friend of mine retired from a multi state law firm about 8 years ago. His wife died in August of 2011. He returned to his former law firm to share his observations with the partners. Following are his notes that he used for the discussion.

### **Spousal Preparedness for Financial and Estate Planning Arrangements**

My comments are intended to be educational and helpful to couples, whether married or not, regardless of age. Because of the recent death of my wife, I will share some personal observations, which could be helpful to you, or your parents, grandparents, siblings, friends or even clients. At the outset, let me say that not every couple may be interested in implementing all of my suggested guidelines. For simplicity, I will assume the couple is married. The goal is to create an attitude between spouses which enables each spouse to be FULLY informed about all aspects of the couple's financial and estate planning arrangements. I repeat the prior sentence. These guidelines consist of ten separate points.

1. No one knows the order of death, who will be the surviving spouse, the age of the surviving spouse or the health of the survivor.
2. It is not relevant how wealthy each spouse is, whether there is a premarital agreement or whether this is a second marriage for either or both spouses. Both spouses must have full knowledge of the couple's financial information, a clear understanding of the estate planning documents of both spouses, a comfortable relationship with the family attorney, CPA and financial adviser, and be competent using the washer and dryer, and caring for the family pets.
3. It is essential that a current summary of the couple's financial assets and estate planning documents be discussed and reviewed annually. Annually is important because you never know when your spouse will die. Typically, financial information is available annually as of December 31. Ideally, by the next March 31, one or two meetings should be held between the spouses to review and discuss the current financial and estate planning summaries.
4. Both spouses should participate in all financial, estate planning and investment decisions, including the allocation of retirement account investments among growth funds, value funds, international funds, bond funds and other investment options. It may be necessary for both spouses to attend classes to learn about basic investment principles (even though the more knowledgeable spouse already has a good understanding of basic investment principles). Thus, both spouses must have at least a basic understanding of the investment principles of asset allocation, diversification and investment risk.
5. Another aspect of dual spousal participation relates to tax return preparation, regardless of whether tax returns are prepared by a CPA or a spouse. Both spouses should understand the SOURCE of all entries on the Form 1040: whether from the checkbook, credit card records, the computer, or Forms 1099, K-1 or W-2. I am not suggesting that each spouse should be able to prepare the tax returns. God forbid! Instead, each spouse should know the source of all information needed to prepare the tax returns.
6. To complete the picture of both spouses being informed, each spouse should also know where all financial records are stored. Not merely downstairs or in the garage or at the office. I am suggesting the specific location for all current and prior years financial records, including current and prior year's tax returns, check books, the original of all estate planning documents, titles to cars and all real estate, annual financial asset summaries and paid invoices (including computer confirmation of paid invoices).
7. All password and user name information stored in all home computers must be written down in a legible format and placed in a location known by each spouse.

8. With respect to retirement accounts in the form of IRAs, or with Employers for either spouse, there is a complex set of IRC rules relating to spousal rollovers and commencement of benefits. There may be a

knowledgeable professional who works at the investment advisory firm, although I doubt it. Every married couple has a unique financial situation. Therefore, (upon the death of the first spouse) I suggest that all relevant retirement account and income information be presented to an attorney or CPA who has expertise in this area, so that the surviving spouse, prior to the commencement of benefits, can make informed decisions with respect to the commencement of benefits payable to the surviving spouse.

9. The distribution of retirement benefits from Social Security, IRAs and employer plans must commence when you attain age 70. If financially practical, both spouses should delay taking any retirement benefits as late as possible. This will maximize the likelihood that your surviving spouse will have sufficient lifetime retirement income, and avoid having your adult children being called upon to support you and/or your spouse. The weekend WSJ (Nov 19/20, 2011) had an excellent article about how to plan the withdrawal of retirement savings. (kelly.greene @waj.com).
10. My final guideline is to accumulate adequate retirement benefits for the joint lives of both spouses, assuming that at least one spouse will live to at least age 90. In order to be successful, follow the same approach to prefund college expenses for your children: start early, live below your means and give this goal a priority status.

### Summary

The motto of the Boy Scouts “Be Prepared” refers to being ready to handle all situations you face during your lifetime. In the context of my comments today, the spousal motto for Financial and Estate Planning is “Be Prepared for Death.” In summary, I will briefly repeat the ten steps necessary to assure that both spouses are prepared upon the death of the first spouse:

1. Accept the basic fact that no one knows which spouse will be the first to die or when such death will occur.
2. Your goal MUST be for both spouses to be fully informed as to all financial and estate planning arrangements, including being comfortable with your family attorney, CPA and investment adviser.
3. A current summary of financial and estate planning arrangements should be fully reviewed ANNUALLY.
4. Both spouses should participate in the decision-making process to creating and revising financial, estate planning and investment decisions. Both spouses should have a good understanding of the three basic principles of investing: asset allocation, diversification and investment risk.
5. With respect to tax return preparation, both spouses must be informed as to the sources of all entries on the tax returns, including checkbooks, Forms 1099, K-1 and W-2.
6. Both spouses should know the SPECIFIC location of all current and prior years’ financial records, including tax returns, checkbooks, titles to cars and the residence, paid invoices and the original of estate planning documents for both spouses.
7. All password and user name information for data stored in home computers MUST be written down in a legible format and placed in a location known to both spouses.
8. With respect to the options available to the distribution of retirement accounts, upon the death of the first spouse, the surviving spouse should consult with an attorney or CPA who has expertise with this complex subject matter.

9. If financially practical, the distribution of Social Security benefits and from IRAs and other retirement accounts should be deferred until each spouse attains age 70. Such deferral will likely enable both spouses to avoid having adult children provide support for either or both of them.
10. Accumulate sufficient retirement benefits for the joint lives of both spouses, assuming that at least one spouse will live to at least age 90.

In addition to these ten guidelines, I also note that the annual federal income tax rate schedule for a married couple is lower than for a single person with the same taxable income. In addition, the deceased spouse's monthly social security benefit will terminate, as well as the decedent's exemption deduction. On balance, there could be an overall federal and Ohio income tax increase for the surviving spouse in future years.

It is not necessary to be an attorney or CPA to be informed on these subjects. The only requirement is that both spouses be committed to being informed. (REPEAT) To not give it a serious effort as a couple is not (in my opinion) acceptable. Since you will not know the order of death, it is possible the surviving spouse will become the spouse who refused to put forth a reasonable effort to be informed on these important subjects.

In summary, my wife and I did all of the suggestions I have shared with you. Although I will never know if my spouse would have been a prepared surviving spouse, I am confident she would have been because she was a smart, organized and informed spouse.

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