Protect your estate (I don't mean taxes)

Estate-Plan Edge
By CURT FERGUSON

AFTER a lawsuit and medical bills threatened Mary into bankruptcy, she learned her assets were actually protected.

Key Points

- Estate planning applies to modest-sized estates, too.
- Estate taxes can take about half, but a lawsuit can take it all.
- Proactive planning provides permanent protection.

A year ago, Mary's husband, Bill, died. Mary was left with a small farm worth about $1.2 million, savings of $150,000, Bill's life insurance of $200,000 and modest personal effects. Mary had inherited the farm from her parents.

Mary had been through so much with Bill's illness, which lasted almost a year. As if the death wasn't enough, she got into a car accident shortly after the funeral. The other driver's injuries seemed to be his own fault. Then, a lawsuit convinced a jury that Mary's turn signals were not working properly, shifting legal liability to her.

Facing bankruptcy

The resulting claim far exceeded her auto insurance limits. After her insurance paid $1 million to the injured driver, she was still staring at a court judgment of more than $800,000. According to her lawyer, her savings and Bill's life insurance proceeds were going to be wiped out, and a lien would be placed against any real estate she owned.

Adding to her agony, Mary learned the health insurance provider denied coverage for experimental treatments Bill had pursued at the advice of his doctor. As a result, she owed $650,000 for the treatments.

The accident lawyer ruefully explained, "Under Illinois law, a spouse is legally liable for medical expenses incurred by the other spouse, even when the treated spouse dies. Even separate property, like the farm you inherited, can be taken by this claim."

Mary was now facing bankruptcy.

Several years back, Bill and Mary sought legal advice when Bill found out he was sick. A lawyer said they did not need estate planning, because their estate was worth less than the estate tax exemption. He told them to put everything in joint tenancy, because "it's simple and avoids probate."

They weren't comfortable with the advice, so they sought advice from a counseling-oriented attorney. He took time to learn more about them, their estate and their goals.

Protecting money and assets

One of Bill's key objectives was to protect whatever he could for Mary after his death. When Mary went to wrap up Bill's affairs, she came to realize Bill had set up their estate so the savings and life insurance would not come directly to Mary in her own name, but would be paid to Mary in trust. That trust would be under Mary's control, and it is protected from claims made against Mary after his death. Now Bill's foresight would pay off.

Mary's parents also thought ahead when they gave her the 240-acre farm all those years ago. At the time, Bill and Mary had only been married a couple of years. Mary's parents gave her the farm in trust to prevent it from becoming marital property, in the event Bill's name was added to the deed. As marital property, the land could be split in a divorce. Also, it protected the land from being separate property, which would be vulnerable to settle debts.

Now, the trust would protect the farm from medical liability and the lawsuit.

Ferguson is an attorney from Salem who helps families accomplish estate-planning goals.

■ **If you have questions for Ferguson, e-mail *curt@tlcplanning.com* or visit *www.tlcplanning.com.***