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How changes in the estate tax might affect you

THOMAS C. MORRISON

A mere 400 families hold as much wealth as the bottom one-half of all Americans (160 million-plus). A mere one-tenth of 1 percent of Americans are worth more than the remaining 99 percent. Thus, it would have been political suicide for the new Trump tax law to eliminate the estate and gift tax. But starting in 2018, the new Trump tax act did double the federal estate/gift tax exemption to $11,200,000 per person. In spite of these generous changes, this article describes estate planning issues that may still need attention.

1. Estate planning-dealing with a moving target

The estate/gift tax imposes a 40 percent federal tax on the total of all gifts made during one's life and on death. The tax is not imposed on qualified marital gifts, not imposed on qualified charitable gifts, and not imposed on exempt gifts (now $11,200,000, or $22,400,000 if "portability" is used). Also in 2018, a taxpayer can make "excludable" gifts up to $15,000 per person to an infinite number of persons every year without diminishing the $11,200,000 lifetime exemption.

In 2026, the new $11,200,000 exemption will revert back to $5,100,000. President Obama wanted to lower the $5,100,000 exemption back to $3,500,000, as it had been in 2009. More than likely, future Presidents and Congresses will continue to make changes; possibly decreasing the exemption and/or limiting charitable gifts (as is the case with charitable income tax deductions). No one knows if he/she will die before 2026 or what Congress will do. Proper estate plans should provide fallback provisions to deal with these potential uncertainties.

2. Portability and valuation freezing

Before portability, many estate plans placed limitations on funds passing to a surviving spouse. These limitations prevented overfunding the surviving spouse's estate and thus minimized exposure to needless estates taxes on the second spouse's death. By electing "portability," this overfunding problem was eliminated by allowing a surviving spouse to capture a deceased spouse's unused exemption. This requires the filing of an estate tax return, when the first spouse dies. With portability, a married couple can exempt up to $22,400,000 from the estate tax.

Thus, for most, the estate tax is not a threat. However, if a married couple's combined estate could potentially approach $22,400,000 ($11,200,000 after 2025), a proper estate plan should provide fallback provisions to avoid a deceased

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It's not too early to start preparing for the future of you and your loved ones. The first step you'll need to take is to evaluate your situation and then develop a strategy that helps meet your needs.

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THOM BRIDGE, INDEPENDENT RECORD

The sun rises on downtown Helena in this Independent Record file photo.

The 2018 Helena Endowment Challenge Fund

Are there nonprofits in Helena you love, that you'd like to see become more financially secure? Endowments are an invaluable tool for long-term sustainability, but many nonprofits have felt that building an endowment was too complicated, and way beyond their reach.

Let's change this.

Big Sky Institute for the Advancement of Nonprofits (BSI) is conducting a series of endowment development seminars to provide training and hands-on assistance to Helena-based nonprofits to help them establish endowments, and start building assets. The seminars are being offered in response to BSI's survey last summer of nearly 100 Helena nonprofits. The impressive 65 percent response rate was very revealing about what nonprofits believe they needed.

At the top of this list of survey respondents are terrific nonprofits that feel stuck; they want help in starting their endowments. Of equal concern are the forward-thinking nonprofits that have established endowments, but unfortunately have negligible assets. They are feeling woefully stuck because they don't know how to cost-effectively begin building their endowments' assets.

Help these wonderful nonprofits to get unstuck.

Acquiring knowledge about endowments is an essential building block, but it's not enough. Endowment development is a different kind of fundraising. It's a lot easier to do story telling about great programs being conducted in the here and now. It's a lot easier to talk about genuine stories of infants, children, families and elders who benefit from stellar programs and high-quality services. It's a far, far more daunting proposition, however, to ask for donations for needs and opportunities that are somewhere off in the future.

Challenge grants that require a match are a time-proven booster shot to help any fundraiser be more confident, and more effective in raising funds, including donations to endowments. BSI has committed to raise at least $5,000 to be used as challenge grants with 2 to 1 match requirements. This will leverage an additional $10,000 for the endowments for a total of $15,000 in new endowment assets. $10,000 for challenge grants will result in $30,000 in new endowment assets.

Donate to help these nonprofits.

Donations to BSI's 2018 Helena Endowment Challenge Fund will be used in their entirety to provide endowment building challenge grants. With your help, we can assist as many as 20 Helena-based nonprofits get unstuck, and get on a roll. $5,000 in donations will result in $250 challenge grants; $10,000 in donations will result in $500 challenge grants. Obviously, more is better, and BSI welcomes investments both large and small.

BSI was established in 1999 with a mission to build Montana's communities through strengthening nonprofits and expanding philanthropy. In anticipation of challenging conditions for nonprofits, BSI created the Helena Development Initiative in 2013 to provide professional development seminars, training programs and associated resources to help Helena area nonprofits with skill development to increase the effectiveness of their fundraising. Launched in 2018, BSI's endowment development seminar series is the newest component of its Helena Development Initiative.

Provided by Mike Schectman, executive director of Big Sky Institute for the Advancement of Nonprofits.

Making health care directives

When preparing your final will, an important section will cover health care directives. This section provides legal instructions about the type of care you want in case you face a medical condition that leaves you unable to declare these wishes yourself.

There are typically two documents that need to be completed before your medical wishes can become official in case you become incapacitated.

You may have heard the first one called a living will, an advanced directive or a patient advocate designation. Regardless what name it goes by, it is a crucial document. A second important document lists who you have chosen to be your power of attorney.

Creating a living will

Your living will is created to explain how you wish to be treated during a medical emergency that leaves you unable to direct treatment on your own. This document covers important answers to questions regarding resuscitation, your desired quality of life and end-of-life treatments that you may either approve or reject.

When drafting your living will document, discuss its terms with your doctors, as they will likely be in on the decision about how treatment should be facilitated. Provide detailed instructions to your doctor on the treatment you prefer; he may be able to suggest other possible additions. Be as thorough as possible to take some of the weight off your power of attorney's shoulders.

Durable power of attorney

There are different types of power of attorney, but when creating your document, you should appoint a reputable power of attorney. This gives your chosen agent power to control your finances and medical decisions if you are ever incapacitated.

The process of choosing a trustworthy power of attorney demands extreme consideration and trust, as you will be putting your medical wishes solely on them. The AARP has some useful tips on factors to consider:

- Choose a loved one who you feel can handle the responsibility;
- Meet with an attorney to ensure your document meets state requirements;
- Give your choice access to your bank account to handle your finances. She will only have access to funds in order to benefit you;
- Discuss the person's financial situation to be sure he is in good standing in managing his own money before you commit to him managing yours.

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Inventory your belongings

No one likes to talk about their own death, but having a solid last will and testament will ease the amount of stress on your family at the time of your passing. A detailed list of your physical and financial belongings is an important part of this legal document.

Creating a physical list of your belongings will give you a visual guide for how you want to divide them among beneficiaries. It also will ensure that you didn't leave out anything.

Physical belongings

Taking inventory of belongings that you own will give you a good idea of your estate's overall worth. Begin in one room and jot down the items you feel are valuable and their estimated worth.

Indoor household staples you should include are typically televisions, furniture, jewelry and other expensive items. Typically, you should only list items that are worth more than $100, but an item that you plan to give as a gift must be listed no matter the value.

Taking inventory outdoors is another part of the process. List vehicles, lawn equipment and any power tools you may have in your garage. These may seem like minor details, but you can alleviate a lot of the burden on your family by taking these steps.

If you are a collector of any special items such as stamps or autographed memorabilia, you may need to find an expert to give you an accurate appraisal of your collection's value. For instance, values of antique items can vary greatly. You may even find out you have an antique of significant value during appraisal.

Financial belongings

The next step of inventorying your belongings is to list your non-physical assets. List your bank accounts (joint or separate), 401(k) plans, IRAs, life insurance policies and every other type of insurance policies you have. These may include homeowners, health and auto.

You can't have a solid plan for how your financial assets will be doled out without first knowing exactly what makes up your portfolio. Start working with an advisor today to define and inventory the worth of your resources.

Don't forget debts

Even after our death, our debts remain and can become the responsibility of whoever you choose as executor. This person will be charged with using the assets of your estate to cover your debts.

Here you should list any money you owe for your home, vehicles, credit cards or medical bills.

It's a good idea to acquire a credit report to make sure there are not any lingering credit card or other debts you may have forgotten about.

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The legal system: How to avoid a lengthy probate

Probate is a sometimes lengthy process that happens after a death. It can take months to a year before your belongings are divided as you wished. This tedious process may cause unnecessary stress on your loved ones as they wait for the courts to decide on their inheritance.

There are different ways you can prevent probate and ensure your property passes directly to your beneficiaries without the hassle of court. Probate is easy to avoid and usually only takes a visit to your financial institution and instructions in your final will.

Pay-on-death registration

You can easily change your bank and retirement accounts into payable-on-death accounts. There is a simple form to fill out which gives you the opportunity to list a beneficiary. Ask your bank where you can find this form.

In some states you can even register your vehicles and home for the same type of transfers. This is possible by creating titles and deeds that are not allowed to be transferred until death.

Joint ownership

If your state does not offer a way to make your home transferable at the time of death, consider making the beneficiary a joint owner. This can be completed by simply adding your loved one's name to your mortgage title.

If you intend to leave your home to a spouse, you may become familiar with the term "tenancy by the entirety."

This type of joint ownership that can only be used by married people and is an effective way to avoid probate after death.

If you choose to leave your home to someone other than a spouse, you will need to jointly own your property as joint tenancy. In the occurrence of death, the other owner automatically receives the property, avoiding probate.

Gifting property

Sometimes the easiest way to avoid probate is to give your belongings away before death occurs. Obviously, it may be more difficult to give away large items such as homes or vehicles, but consider giving heirlooms or other small items away to the beneficiary you intend.

As an added bonus, you also will be rewarded by being able to see the recipient's gratitude for the gift.

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Local organizations benefit from planned gifts

St. Peter's Health was founded more than 130 years ago, and since that time has been a place of both new and renewed life for the Helena area. The Foundation raises private funds to help St. Peter's Health overcome the challenges of our ever changing world and maintain affordable health care. Philanthropy allows us to serve those who cannot afford all of their health care needs, as well as build local programs and services that wouldn't otherwise be possible – such as an expansion of our surgical services. Endowment funds help offset declining reimbursements and provide funding into perpetuity through the interest earned on those funds.

Why a planned gift?

Planned gifts provide creative and flexible strategies as you pursue your charitable and financial goals. Among the financial benefits you may receive are life income for yourself or others and substantial tax savings. Philanthropy is inherently optimistic, reflecting the deeply held belief that we can have a positive impact on the lives of others. Through philanthropy, individuals can make a difference, and improve health and wellness in their communities.

Planned gift strategies often make it possible for individuals to lead a more fruitful economic life in their retirement years, as well as, having the knowledge the community will benefit in a major way at the end of life. Planned gift strategies are not only for "senior citizens" because they can often be used to increase retirement assets. St. Peter's Health Foundation can help individuals plan their charitable gifts with an understanding of the benefits received from a charitable income tax deduction and various charitable gift techniques.

Have you updated your estate plan?

The beginning of a new year is the perfect time for you to look over your estate planning documents and make sure everything is according to your wishes, particularly as affected by the previous year's events. Some changes that may have occurred:

- The individuals you have named are deceased
- New people should be named in your will (e.g. birth, adoption)
- Divorce or marriage
- New state laws. Check to see whether Montana has enacted new laws that impact your estate planning documents. More importantly, if you have moved from a different state, don't assume that your will made in your previous state conforms to the requirements of Montana.
- Change in guardians, personal representatives, or trustees
- Children reach the age of 18
- A substantial increase or decrease in the value of your estate
- The acquisition or disposition of a significant asset

You should see an attorney about reviewing and updating your estate plans prior to reaching 70½ years of age if you have an IRA, 401(k), or other qualified plan that requires you to begin to take distributions at age 70½. The beneficiary that you designated will have an irrevocable impact on both you and your beneficiary's required distributions.

It has been a while since you have reviewed your will and estate plans. You should review every three to five years.

For more information, please contact: Karin Olsen, Executive Vice President, St. Peter's Health Foundation, kolsen@sphealth.org, 406-444-2102.

– Provided by St. Peter's Health Foundation

Plan for your digital assets

Traditionally, estate planning required a will, power of attorney and documents supporting life insurance and financial accounts. In the modern day, there is another crucial piece to the puzzle. You also should have a plan in mind to manage your digital estate.

The American Bar Association defines digital assets as, "any online account you own or any file you store on your computer or in the cloud." For most of us, that's a lot of content. For this reason, it is important to administer a clear plan for your digital assets after you're gone.

Making a list

The best way to begin assessing the number of digital assets you own is to create a physical list. This list should contain any computer hardware, social media accounts or any account you use to manage your online finances. Here are some examples:

Hardware includes computers, hard drives, tablets, smartphones, e-reader or any other digital device.

Information that is stored electronically. This includes email accounts, domains you own, online banking accounts or shopping accounts.

What should be done upon death?

Now that you have a complete list of your digital assets, it's time to determine how you want an executor to handle them. A digital executor is someone you choose to be responsible for your digital assets after death. Share your plans with them on how you want your digital assets managed.

You can give this executor instruction and permission to do many different tasks in order to manage your digital estate. Some of these include:

Closing accounts that require a monthly premium for service. This could be online television streaming or music streaming services.

Transferring any credits or money from online payment accounts to your heirs.

Informing online communities that you may have frequented of your passing.

Is it necessary?

While some states don't legally recognize digital estate plans, it is still a good plan to have.

Your loved ones should know about any website that may store important financial information, like credit cards or banking numbers. This way they can terminate the accounts and stop payment from being deducted.

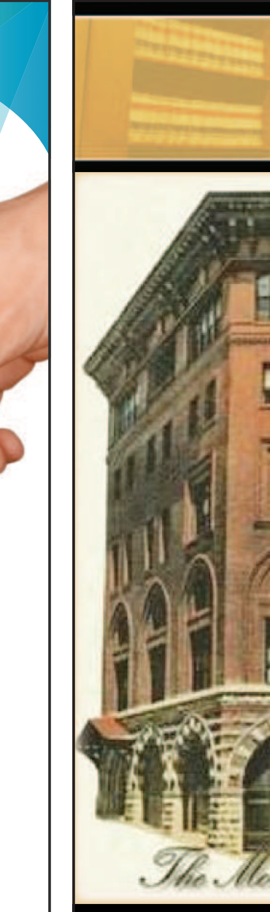
Discuss with an estate attorney how you can legally name a digital executor. He should be familiar with the necessary language.

IS YOUR ESTATE PLAN
UP TO DATE?

The beginning of a new year is the perfect time to look over your estate plan to make sure everything is in check, particularly as affected by the previous year's events. St. Peter's Health Foundation can help you plan a charitable gift that can benefit the hospital and you through various charitable gift techniques.

TO LEARN MORE ABOUT PLANNED GIFT STRATEGIES, CONTACT:

KARIN OLSEN
406-444-2102



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Estate planning is more than will drafting

DARANNE DUNNING

Many people think of "estate planning" as simply having an attorney draft a will or trust. In fact, thorough estate planning requires more than just a will or trust to manage your affairs while you are alive and ensure all your assets pass to your heirs as you have planned.

Who will make decisions while I am alive?

A power of attorney gives the person you designate the power to act on your behalf while you are alive.

A financial power of attorney covers a broad range of tasks, like selling real property, accessing financial accounts, and paying bills. Generally, a financial power of attorney is drafted to go into effect immediately.

A health care power of attorney covers all health care decisions, and goes into effect if you are not able to make or communicate your own health care wishes to your doctor. Along with a health care power of attorney, you can specify medical wishes in a "living will" or a "medical directive."

Many people do not realize that powers of attorney expire upon death, and the people named lose the power to make decisions about your estate. For instance, the person that you name in a financial power of attorney will not be able to access your bank accounts after your death.

If you become incapacitated without a power of attorney in place, asking a court to appoint a legal guardian and conservator may be the only way to give someone else the power to handle your affairs. Going to court is far more expensive than preparing a basic power of attorney. In addition, by executing powers of attorney, you specify whom you want to make decisions for you, which helps prevent fighting as to who makes decisions and what your wishes would be.

How is my property titled?

For married couples who want the surviving spouse to inherit all property, we can often avoid the legal expense of two probates by making sure all property is owned as "joint tenants with rights of survivorship."

For real property, this means the deed to the property should clearly state that it is owned by "joint tenants with rights of survivorship" and not "tenants in common." If the deed does not clearly list the owners as "joint tenants with rights of survivorship," the property may not automatically go to the surviving spouse.

For bank or investment accounts, it is important to check if the account is owned by only one spouse, by both spouses, or if "transfer on death" or "payable on death" beneficiaries are named on the account.

While joint ownership may be fine for married couples, naming a non-spouse as a joint owner of real property or bank accounts can be risky, and it is rarely the best option. Always talk to an estate planning attorney before naming a joint owner on any property.

Do I need to update beneficiary designations?

These days, the largest assets of an estate are often retirement accounts, investment accounts, or life insurance policies. Many people believe their will controls how all of their assets will be divided, without realizing that a beneficiary designation trumps any will language.

Whenever you prepare or update your will, you should also check your beneficiary designations to see if they need to be updated and discuss with your attorney how to best name beneficiaries to ensure your assets pass appropriately.

What will happen to my business?

If you own a farm, ranch, or other business, it is important to consider how the business will continue to run after you are gone. Once you identify your succession plan, you may need to review and update your business documents and coordinate them with your will.

What will happen to minor or disabled heirs?

If you have young children or grandchildren, or disabled heirs (especially if receiving SSI or Medicaid), you need to be careful about how those heirs receive any property you leave them.

It may be best to set up a trust to hold the property until the child reaches a certain age. A "Special Needs Trust" is particularly important if you have disabled beneficiaries in order to preserve their eligibility for certain government benefits.

If you have minor children, you can also specify a person to act as your child's guardian, which can avoid tough arguments between family members after you are gone.

Where do I start?

Everyone's situation is unique. While these are important questions to consider, a conversation with your attorney is the first step toward putting your estate plan in place and making sure you have not left out any details.

Provided by DarAnne Dunning, Luxan & Murfitt, PLLP

How to benefit your favorite charity forever

RALPH YAEGER

It is unfortunate that something as essential as estate planning seems to involve such a high level of complexity that many individuals simply never get around to putting their affairs in order. And this misconception carries over into all aspects of estate planning — including legacy giving. In fact, many people who have both the financial capacity and the desire to make a significant legacy gift fail to do so simply because it seems you must either be rich or dead to be a philanthropist. Nothing could be further from the truth.

If you are like a lot of Montanans — folks who have worked hard, saved some money, and planned for the future — you may be encouraged to learn that there are some surprisingly simple ways to make very generous gifts to charity after you pass away.

Here at Intermountain, we frequently tell our supporters that, "in as little as five minutes, you can make a gift that will ensure your current level of annual giving… forever."

Designating even a small percentage of accumulated assets to the permanent endowment of your favorite charity can be as easy as adding a beneficiary to your life insurance policy or retirement savings account, or adding a one-sentence codicil to your existing will. And because the charity does not receive the gift until after you die, these assets will continue to generate income for you throughout your lifetime.

Here are a few easy ways to make a gift to benefit your favorite charity forever:

Beneficiary designation of a savings plan through a Transfer on Death (TOD) agreement. A TOD enables you to designate beneficiaries to receive your assets at the time of your death without having to go through probate. You simply specify the percentage of assets each beneficiary will receive. Your assets are automatically transferred to the designated beneficiaries upon your death. Investment firms typically charge a minimal fee for creating a TOD agreement.

Beneficiary designation of a retirement plan or life insurance policy. Like a TOD, employer-provided retirement plans offer tremendous opportunities to make meaningful gifts of accumulated assets. Designating a percentage to charity upon death can be accomplished in just minutes, and under many plans, at no cost to you.

If you are like a lot of Montanans — folks who have worked hard, saved some money, and planned for the future — you may be encouraged to learn that there are some surprisingly simple ways to make very generous gifts to charity after you pass away.

A simple bequest. Including a charity in your will can be accomplished by instructing your attorney to add a bequest for a specific amount, or a portion or the residual of your estate. If you already have a will, you can direct your attorney to prepare a codicil or amendment, without revising the entire document.

Again, each of these giving vehicles share a common benefit: None require an immediate contribution of income-generating assets that you may need during your lifetime.

And they are easy! Consider this scenario: You and your spouse are retired. You have two grown children who are gainfully employed and independent. A portion of your annual income is derived from earnings on a $200,000 savings plan you established during your working years. You make a $1,000 gift to your favorite charity annually. You want this to continue — even after you and your spouse pass away. So one day, you set aside five minutes — just five minutes — and complete a TOD for your savings plan that designates just 10 percent to the charity. It's that simple. During your lifetimes you and your spouse will receive the income you need. And after, in addition to leaving the bulk of your savings plan to your heirs, your favorite charity — reasonably assuming that it has a permanent endowment that is properly managed to stay ahead of inflation as well as provide a distribution of 5 percent annually — will continue to receive the value of your $1,000 annual lifetime gift in perpetuity.

It's that simple.

Ralph Yaeger, Senior Development Officer for Intermountain, was born in Lewistown and spent his early years on the ranch his great grandfather homesteaded in 1880. He is a graduate of Carroll College, and has lived in Helena for more than 40 years. Prior to joining Intermountain, he served as development director for the Montana Community Foundation and the Montana Wilderness Association.

Taxes

From 3

spouse's assets from increasing in value in the surviving spouse's estate (valuation freezing).

3. Gifting trap

With the generous $11,200,000 exemption, some may think that they should start making gifts to their children. Incometaxwise, pre-death gifts could be a mistake. This is because the recipient of a pre-death gift takes the same tax basis as the donor (the giver). In contrast, the recipient of inherited gifts takes a fresh fair market value as a tax basis (stepped-up basis). For example suppose Mary and Harry bought the family ranch for $100,000 and when they both died it was worth $4 million. Their child, Joe, can inherit the ranch and take a $4 million tax basis and later sell it for $4 million with no income tax gain. Instead, if after outliving Harry Mary gifts her ranch to Joe, Joe would be stuck with a $100,000 tax basis and suffer a $3,900,000 income tax gain, if decides to sell the ranch. The point: this step-up in basis only occurs with gifts made at death and not during one's life.

4. Impact of state estate and inheritance taxes

Washington has its own, separate estate tax, with a $2,193,000 exemption. Other states have similar estate taxes. Some other states have inheritance taxes (a tax on a beneficiary rather than an estate). Fortunately, Montana has neither. But if a person lives in or plans to move to a state with an inheritance or estate tax, a good estate plan should anticipate the imposition of these state death taxes.

5. Impact of formula clauses in old estate plans

Increased federal estate/gift tax exemptions may have made older estate plans obsolete, especially those with "credit shelter" trusts, which put limitations on gifts passing to a surviving spouse. Some husbands and wives will want to maximize the amount of property passing to the other without any limitations. If so, older estate plans with limitations on gifts passing to a surviving spouse may now be irrelevant and should be eliminated.

Now may be a good time to review your estate plan with a qualified estate planner.

Provided by Thomas C. Morrison, JD and LLM (in Taxation), Morrison Law Firm, mbtaxlaw.com, Helena

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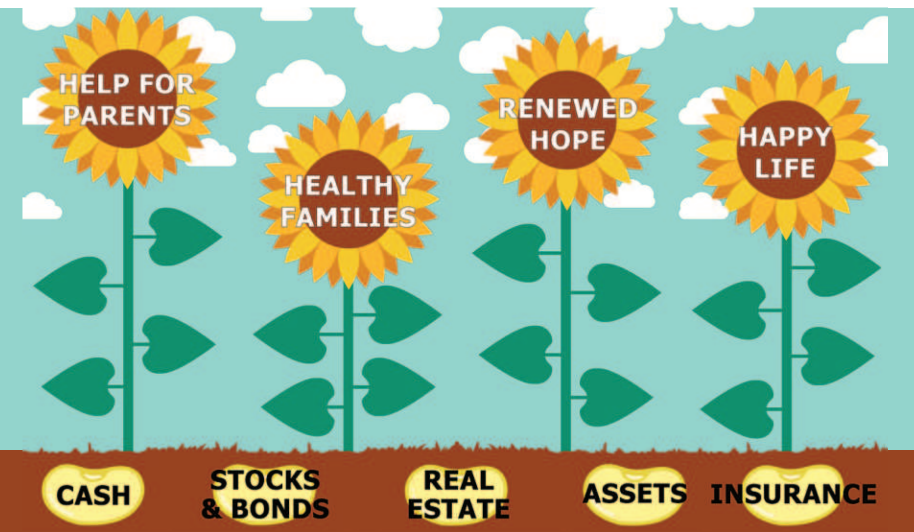

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