planning matters

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INSIDE FOR WINTER 2019

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the potential confusion over joint accounts

by James K. Estabrook, Esq.

As our clients age they often tell us they do not feel comfortable with their ability to continue to manage their financial affairs. They also express the unfounded fear that upon their death all their bank accounts will be frozen for months on end with no ability for anyone to access their funds to satisfy their obligations after death for the care of their home or loved ones.

Convenience miscalculated

The common step taken by many is to put a family member or trusted friend on their accounts as joint owner so that in the case of a disability or death, funds will be readily accessible to satisfy the client's obligations without interference. Such accounts are referred to as "convenience" accounts.

Unfortunately, this step, although well-intentioned, has sometimes resulted in significant confusion, litigation and costs to the client's estate because the creation of the joint account and the transfer of those assets to the surviving joint owner at death were not clearly understood by the elderly client or were not properly explained to her by the custodian of the account.

Convenience account vs. joint account

This miscalculation was recently demonstrated in an Appellate Division case, In the Matter of the Estate of Jones, No. A-2557-16T2, 2018 WL 4471686 (N.J. Super. Ct. App. Div. Sept. 19, 2018). Subsequent to the death of her husband, Erna M. Jones visited her investment broker with her middle daughter, Barbara, to open a new account distinct from the one she held jointly with her husband. Mrs. Jones executed a new account application that identified her daughter Barbara as a second party, and the box was checked that the account was "Joint Tenants with Right of Survivorship." Subsequent to this account opening, Mrs. Jones managed the account, paid her bills and handled her investments with the representative of the brokerage company. At her death in 2015, her daughter Barbara claimed the account as hers as the surviving joint tenant. Barbara's older brother, David, objected and filed a Complaint under New Jersey's Multi-Party Deposit Account Act ("MPDAA") alleging that the account was not held with right of survivorship but was merely a "convenience account," and that all money in the account was to be distributed equally amongst Mrs. Jones' surviving three children. Mrs. Jones' Last Will and Testament provided that her estate was to be divided equally amongst her children and throughout her life, David stated, she had always treated her three children equally. David further alleged that Barbara had utilized undue influence in getting her mother to name her as a joint owner on the account.

The Trial Court found that Barbara did not exercise undue influence at the time the account was opened. The Court further found that Erna Jones did not open the account as a convenience account, but that Barbara was a rightful joint owner and was entitled to all funds in the account upon the decedent's death. David appealed the Trial Court's decision, but the Appellate Division affirmed.

The Appeals Court found that the account was a joint account, not a convenience account. The Court relied on that portion of the MPDAA which provides, in part, that "sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created." N.J.S.A. 17:161-5(a). The Appellate Division found there was sufficient evidence, corroborated by the testimony of Barbara and the representative of the investment brokerage company, that there was no different intention at the time the account was created, i.e., that it was not created for the mere convenience of the decedent. The Appellate Division also agreed with the Trial Court that there was no undue influence. Barbara was able to show that even though she had a confidential relationship with her mother, she did not exercise any undue influence at the time the account was created. As noted, the decedent continued to make her own financial and investment decisions, remained independent of her daughter and handled all her own expenses. Barbara was able to present clear and convincing evidence that she did not exercise undue influence over the decedent regarding the account.

Avoiding costs & delays

This is an object lesson for anyone who seeks to add a party to one of their accounts. If it is the intention of the account holder to have the added party be the sole owner of all assets in the account at the account holder's death, then it is perfectly appropriate to name that party as a joint owner. But if the intention is to name someone to assist during a period of the account owner's disability, the party should not be named a joint owner on the account but instead should be given power of attorney over the account. In that way, the assets in the account will pass through the account owner's estate to the intended beneficiaries under the will.

To avoid family strife and the unnecessary costs and delay of litigation over this sensitive issue, it is essential that these conversations be had at the time the account is opened and continuing thereafter in order that family members are aware of the intentions of the account owner.

tax updates FROM WASHINGTON

by Elizabeth Candido Petite, Esq.

1 Increased exemptions for 2019

The IRS has announced that the gift and estate exemption has increased to $11.4 million per person in 2019. The exemption amount in 2018 was $11.18 million. This means that in 2019, an individual can make gifts during life or at death totaling $11.4 million without incurring gift or estate tax. In addition, a married couple can now transfer $22.8 million worth of assets during life or at death tax-free. The annual gift tax exclusion amount remains at $15,000 per recipient ($30,000 if spouses elect gift-splitting).

2 IRS addresses estate & gift tax exemption "clawback"

The Tax Cuts and Jobs Act ("TCJA"), which was signed into law in December 2017, increased the gift and estate tax exemption from $5 million to $10 million, indexed for inflation (see current rates above). The TCJA also provides that the exemption amount will revert to $5 million in 2026. This led many practitioners to wonder: *what happens if an individual makes a gift in excess of $5 million now, and dies in or after 2026 when the exemption amount is only $5 million?* Because the gift and estate tax exemption is unified, this could mean that estate tax would be due since the individual's gross estate, which includes the prior gift made, would exceed the applicable exemption at the time of death.

However, in November 2018, the Treasury issued proposed Regulations addressing this "clawback" of the exemption amount (Prop. Reg. Sec. 20.2010-1(c)). The Regulations provide that in the situation described above, the applicable estate tax credit will be based on the greater of the two amounts. For example, if an individual makes a gift of $9 million in 2019 when the exemption amount is $11.4 million and then dies in 2026 when the exemption is $5 million, the individual's estate may use the higher exemption of $11.4 million to ensure that tax will not be due on the amount in excess of $5 million. Thus, if you are considering make a large gift (or a series of gifts), now is the time to do it, when the exemption amount is the greatest it has ever been.

beware the New Jersey inheritance tax

by Anne Marie Robbins, Esq.

The New Jersey estate tax was repealed effective January 1, 2018. Coupled with the significant increase in the federal estate and gift tax exemption ($11.4 million in 2019), the repeal has reduced the need for transfer tax planning by many New Jersey residents. However, because the New Jersey inheritance tax remains in place, clients must still consider the effect of the inheritance tax upon their estate plans.

Inheritance tax facts

- NJ is one of six states that have an inheritance tax (the others being Iowa, Kentucky, Maryland, Nebraska and Pennsylvania)
- Rates begin at 11% and rise to 16%. N.J.S.A. 54:34-2.
- Inheritance tax applies to gifts at death, or within 3 years of death, to beneficiaries who are separated into different classes based upon the relationship of the decedent to the beneficiary. N.J.S.A. 54:34-1 and 54:34-2.
    - Class A beneficiaries (spouses, civil union partners, direct descendants, direct ancestors, and stepchildren) are exempt from the tax
    - Class B was eliminated as a category in 1963
    - Class C beneficiaries (siblings, sons- and daughters-in-law, and civil union partners of children) receive a $25,000 exemption and are taxed at rates ranging from 11% to 16%
    - Class D beneficiaries (everyone else) are taxed at 15% on bequests up to $700,000, with a rate of 16% for amounts above $700,000
    - Class E beneficiaries (qualified charities) are exempt from the application of the tax
- There is no exemption from inheritance tax based upon the size of one's estate. Even transfers from very modest estates will be taxed if recipients are in a taxable category.
- Inheritance tax is assessed against the recipients unless the will directs otherwise. Executors are charged with deducting the tax from bequests before distributing to beneficiaries. N.J.S.A 54:35-6.

Inheritance tax vs. estate tax

When the New Jersey estate tax was in effect, if an estate was subject to inheritance tax and estate tax, the result was that the higher of the two taxes was due because the estate received a credit for taxes paid. Estates usually were in the position of paying New Jersey estate tax rather than inheritance tax. Thus for estates in excess of the New Jersey estate tax exemption amount ($2 million in 2017), if a will primarily benefited a decedent's children but included small gifts to non-Class A beneficiaries such as cousins, nieces and nephews, and friends, the inheritance tax often was less than the estate tax and therefore did not increase the total transfer taxes owed by the estate.

What to expect now

Now that there is no New Jersey estate tax, small bequests[1] that are subject to New Jersey inheritance tax can incur a tax, which result is often unexpected. If a decedent dies with a $3 million estate bequeathed outright mostly to his children, and the will includes bequests of $20,000 to each of 5 nieces and nephews, the inheritance tax will be $15,000. This necessitates the preparation and filing of a New Jersey inheritance tax return that would have been avoided if all bequests were to Class A recipients. The need to prepare the tax return can add to the expense of the estate administration as well as lengthen its duration.

Step-families can present special challenges. While stepchildren are Class A beneficiaries and therefore transfers to them avoid the tax, step-grandchildren are Class D beneficiaries. A bequest in a will to a step-grandchild will incur inheritance tax.

Planning ahead

Appropriate planning may allow gifts to desired recipients in a way that avoids inheritance tax. There are several types of assets that are not subject to the tax, such as federal civil service retirement benefits and life insurance payable to a named beneficiary. N.J.S.A. 54:34-4. Because the inheritance tax is not applicable to insurance proceeds payable to an individual beneficiary,[2] it is possible to use life insurance to transfer assets to non-Class A beneficiaries without incurring an inheritance tax. Another possibility is to establish an irrevocable trust during life and make transfers to the beneficiaries from the trust rather than from the estate. N.J.S.A. 54:34-4.c.

If you have questions about the applicability of the New Jersey inheritance tax to your estate plan, attorneys at Lindabury, McCormick, Estabrook & Cooper are always happy to speak to you about your estate planning concerns.

1. Note that the tax is imposed on the transfer of property with a value of $500.00 or more. N.J.S.A. 54:34-1.

2. Insurance proceeds payable to an estate, rather than to an individual, are subject to New Jersey inheritance tax. N.J.S.A 54:34-4.f.

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