planning matters

PRACTICAL INSIGHTS INTO ESTATE PLANNING & WEALTH PRESERVATION

Compliments of Lindabury's Wills, Trusts & Estates Group

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Attorneys at Law

Lindabury has advised clients on…

estate planning, wealth preservation and tax matters for decades. We represent couples, individuals, closely-held businesses, professional practices, estates and family trusts.

Regardless of the particular situation, attorneys in Lindabury's Wills, Trusts & Estates group possess the substantive knowledge and experience to provide clients with outstanding and compassionate counsel.

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alert!

time to review estate plans

by Anne Marie Robbins, Esq.

In view of the repeal of the New Jersey estate tax as of January 1, 2018, as well as the recent significant increases in the federal estate, gift and generation-skipping transfer tax ("GST") exemptions to $11,180,000 per person, also effective January 1, 2018, many clients should review their estate plans.

A. Formula Gifts in Wills & Trust Agreements.

For example, if the estate plan bases the disposition of the estate on the available estate tax exemption and divides the estate into shares, with one share for the spouse and the other share for the family, that plan could now result in over-funding the amount passing to family members other than the spouse, thereby reducing or eliminating the spousal share. In short, if the estate plan is based on a formula gift, whether outright or in trust, or if the plan creates a marital trust and a "credit shelter trust" or "family trust" (sometimes called an "AB trust plan"), the estate plan and documents should be reviewed.

B. GST Exemption Gifts.

Similarly, if an estate plan includes a gift based on the amount of the GST exemption, for example, a bequest of the GST exempt amount outright to grandchildren, or to a trust for the benefit of children for life and then for grandchildren, this too could significantly reduce the amount a client may wish to provide for his or her spouse or other beneficiaries.

C. Modification/Termination of Trusts That No Longer Save Estate Taxes.

Finally, because of the large federal exemptions, estate taxation at death is now less of a concern for many people. Clients may benefit by shifting their focus to income tax planning, specifically, obtaining the "step-up" in basis at death on appreciated assets, which reduces or eliminates capital gains tax on a subsequent sale. If a trust has been established under a parent's will or trust agreement, or by a predeceased spouse, and that trust holds appreciated assets, there is an opportunity for income tax savings if the assets are included in the beneficiary's estate. Assuming the trust meets certain requirements, it is possible to accomplish this result by modifying or terminating the trust pursuant to the New Jersey Uniform Trust Code. The effect would be to save taxes overall for the family.

If any of these situations applies to you, we suggest you reach out to your estate planning attorney for a review of the effect of recent changes to New Jersey and federal tax law on your estate plan.

POLST vs. advance directive

what's the difference?

An advance directive for health care ("Advance Directive") is a legal document that expresses an individual's wishes regarding end of life medical treatment, and can include a designation of another person as his or her health care representative.

In contrast, a POLST, Practitioner Orders for Life-Sustaining Treatment, is a health care document that sets forth medical treatment orders. A POLST allows individuals to work with their medical teams regarding treatment decisions in connection with serious illness. The POLST form is completed jointly by an individual and a physician or advance practice nurse, expressing the individual's goals of care and medical preferences.

Unlike an Advance Directive, a completed POLST form is an actual medical order that becomes a part of the individual's medical record.

avoiding litigation after death

Pay Attention to Red Flags in Estate Planning During Life & Prevent Conflict Down the Line

by James K. Estabrook, Esq. & Elizabeth Candido Petite, Esq.

Years of experience in administering estates have taught us that the best way to avoid litigation after death is to plan during life. We have come to identify several "red flags" that, when not addressed during estate planning, are more often than not resolved in a courtroom. Not only does this mean that a judge, rather than the client, is ultimately deciding how the client's property is disposed of, but the process can be lengthy, emotional, and expensive. With the possibility that attorney's fees will be paid before any property is distributed to the family members, the lawyers may become beneficiaries of the estate when it is contested.

Unequal distribution of assets amongst children.

Clients who want to distribute their property to their children unequally are almost always asking for a fight. They may want to do this because they are estranged from a child or because they believe that one child "needs" more than another. The slighted child, however, may not agree with mom or dad's decision. When this comes as a surprise to a child after the client's death – and the parent is no longer here to explain the thought process and to act as mediator amongst the children – the slighted child feels like his or her only recourse is to hire an attorney.

While every situation is different, it can be helpful for the client to talk to his or her children, either separately or together, explaining why he or she has decided to treat the children differently. Doing so forces the family to come to terms with the proposed plan while the parent is still able to explain his or her reasoning and act as mediator between the children, or for the parent to perhaps rethink his or her decision and ultimately revise the plan so that each child is treated equally.

Tension between a spouse and children from a prior marriage.

Married clients with children from a prior marriage should recognize that their current spouse and children may not be on the same page after the client's death. If a client leaves all of his property to the spouse, the children feel slighted ("That's our inheritance!"). Or, if the client leaves his property to his children, the spouse may be legally entitled to bring suit to receive an elective share of the property (generally 1/3 of the estate). Sometimes the biggest fight does not involve dollar amounts at all, but instead questions over tangible property, such as who receives certain household items that may have been in the family for generations.

Assuming there is not a prenuptial agreement that will have addressed the distribution of each spouse's estate, these issues may arise in second marriage situations. Careful planning can help forestall litigation. For example, real estate and other assets can be left in trust for the spouse's benefit (with as many or as few restrictions as the client deems appropriate), with the remainder passing to the children upon the spouse's subsequent death. If a trust is to be established for a spouse much younger than the client, the client may wish to consider making some provision for his or her children at death, so that the children need not wait years before receiving an inheritance. The client should also make explicit provisions for the disposition of all tangible property, especially those items that are valuable or to which family members may have sentimental attachment.

> **The importance of careful planning cannot be overstated. But even when the best laid plans cannot prevent a fight, a judge or other arbitrator can better implement the testator's wishes when those wishes are clearly indicated in the Last Will and Testament and other estate planning documents.**

Disposition of a family business.

Many clients have amassed considerable wealth through family-owned businesses, and family members have different and varied involvement with and emotions towards the business. Failing to carefully, and objectively, create a succession plan for the business is practically asking for a fight.

Each family and each business is different, but usually the following issues should always be addressed: (i) will the business continue or be sold? (ii) who will be in charge of the day-to-day operations? (iii) how will the ownership interests be divided? (iv) if any children are involved in running the business, will they still have an interest in the company? (v) how will the rest of the client's property be divided?

The most successful business succession plan is created long before the client passes away, and all of the family members should know, and agree with, the contents of that plan to ensure a smooth transition after death.

Selection of fiduciaries.

Who is chosen to serve as executor and trustee often creates problems. For example, if a client wants both of his children to serve as fiduciaries but the children detest each other, it should come as no surprise when they can't agree on anything during the administration of the estate or trust. Similarly, if the client chooses only one of those children, the other one may be resentful and hinder the sibling's ability to perform his or her job.

The court will show great deference to the testator's selection of an executor and trustee and remove a fiduciary only in limited situations. Further, most testators do not want other beneficiaries challenging every decision made by the fiduciary, which only creates delays in the administration of the estate or trust and ultimately depletes assets. Thus, choosing a fiduciary should be given careful consideration. Depending on the circumstances, it may be appropriate to name a close friend, bank or trust company over an immediate family member.

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