

AUGUST 2012 NEWSLETTER

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ESTATE PLANNING- HOW TO APPOINT AN EXECUTOR AND TRUSTEE

NEWS ALERT:

1. NEWSLETTERS

DURING THE PAST MONTH, MANY OF OUR PAST NEWSLETTERS HAVE BEEN REPUBLISHED BY MANY NATIONAL AND INTERNATIONAL PUBLICATIONS SUCH AS: FoxSportsNews.com; USATODAY.com; wwwabc12.com; USLawyerspages.com; businesstopnewstoday.com; PRbusinessnews.com; legalnewsfindlaw.com; yahoo.com; KLTV; lifestyle.topnewstoday.com; fox28.com; freebenefitsadministration.com; emiliaromagac.italy; news88.com; mail cenas; IRAnews.

All past Estate Planning and Corporate Law articles are available at:
http://www.pozzuolo.com/Pubs_Newsletters.shtml

2. OMG! MY PARENTS ARE GETTING OLD!

Pozzuolo Rodden, P.C. are pleased to announce that Joseph R. Pozzuolo, Esquire, Jeffrey S. Pozzuolo, Esquire, and Stephen P. Taylor, Esquire have been retained to write two chapters of Faye Levow's new book titled OMG! My Parents Are Getting Old! This book is intended to be the definitive resource for families on what to do when you are caught up in the whirlwind of dealing with unprepared, aging parents. It is written to be very user friendly. Ms. Levow is targeting an October 2012 release date and the temporary website is: www.OMGMYPARENTSAREGETTINGOLD.com. Joseph R. Pozzuolo and Jeffrey S. Pozzuolo wrote the chapter titled: Estate Planning for Pet Owners. Joseph R. Pozzuolo and Stephen P. Taylor wrote the chapter titled: Same Sex Couple Estate Planning. Pre-publication drafts are available by emailing Chrissy at: chrissy@pozzuolo.com

3. QUESTION OF THE MONTH:

Should I Make a Gift to My Children to Take Advantage of the Elevated 2012 Unified Credit Amount and If So, How Do I Protect Against Future Uncertainties Among My Children?

If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.

ESTATE PLANNING - How to Appoint an Executor and Trustee

Who you appoint as executor of your will or as trustee of your trust is an important decision because the positions carry significant responsibility. Executors and trustees ("fiduciary" or "fiduciaries") must efficiently administer your estate or trust, respectively, and your fiduciary will have responsibility for the financial well-being of your current and future beneficiaries. You may appoint as executor or trustee individuals or certain financial institutions, like banks or trust companies, or a combination of the two. There are benefits to choosing each,

and who you should choose will depend on your desires, needs, and financial circumstances.

1. **Corporate Fiduciaries**

You may appoint a corporate executor and corporate trustee. Generally, the choices for corporate fiduciaries are banks, specifically their trust or wealth management department, or trust companies.

Experience. In cases where the estate or trust is complex and will require significant time and effort to oversee, a corporate trustee is normally recommended. Corporate fiduciaries generally will have experience, having provided such services countless times before. Most likely, your fiduciary will have to manage the investment of trust or estate assets. Corporate fiduciaries can provide an investment platform for you the client – they can tailor your investment goals to your needs, and the needs of your beneficiaries, whether they be to maintain principal or generate income or a combination of the two. Ultimately, your fiduciary must be comfortable making investment decisions or choosing and monitoring investment professionals, weighing and evaluating distribution requests, and making other important decisions. Corporate fiduciaries do this on a regular basis and will have the resources and contacts to necessary to make the important investment decisions your trust or estate may require.

Recordkeeping. Your fiduciary must be willing to accept significant recordkeeping responsibilities. Your fiduciary will have to account for the receipt and disbursement of income and principal from the estate or trust assets. It will have to prepare and file tax returns. On top of all the standard recordkeeping that must be completed, your fiduciary will have to keep up with all the changes in tax and other estate/trust laws and regulations. A corporate fiduciary will have access to accountants, lawyers, and other professionals who will assist in the administration and preparation of these records.

Continuity. Corporate fiduciaries are generally permanent in existence. Permanence is important because you may establish a trust with administration that lasts for decades. If you appoint an individual as trustee, he/she may die, become ill, or otherwise be unavailable to perform the services required through the duration of the trust's existence. Rather, you want a presence in that position to be able to adapt and last through your family's changing and continuing situation.

Objectivity. Families will often fight amongst themselves and corporate trustees are generally impartial. Families fight especially when emotions run high, such as after the death of a loved one and/or head of a family. Thus, it may be wise to appoint an outsider to oversee the administration of your trust or estate. A corporate fiduciary will make decisions free from bias and considerations of family dynamics, and will not succumb to pressure from a beneficiary who wants inappropriate distributions to be made. A corporate fiduciary will treat all beneficiaries as they are supposed to be treated under the terms of the document.

The bottom line is that corporate fiduciaries provide professionalism and they generally have years of experience administering estates and trusts. They know the problems that will arise during administration.

2. **Individuals**

You may appoint any individual as your fiduciary. Generally, you should appoint family members or close, trusted, long-term personal advisors because you want to appoint someone with personal knowledge of your desires, needs, and expectations as to how and when your estate or money should be distributed. These individuals can provide an important personal voice in the management and distributions of your assets. By appointing an individual close to you, you will be able to have someone who can speak for you when you are not there. An individual fiduciary will know whether a certain beneficiary should receive a distribution under certain circumstances, such as whether money should be withheld from a beneficiary who may want go to “another” school or start a business but ultimately will not follow through no matter how much money he or she receives.

3. **Co-Trustees**

The most prudent decision in choosing a fiduciary may be to appoint a corporate fiduciary and a close individual as co-fiduciaries. In this scenario, you will obtain all the benefits of the corporate fiduciary discussed above. You will ensure that your assets are invested wisely and administration is taken care of professionally. You will also have the personal touch of appointing a close individual. This person will have a greater sense of your personal wishes and feelings than a bank or trust company would.

By appointing corporate and individual co-fiduciaries, you may set up a checks and balances dynamic. You may give the individual co-fiduciary power to resolve disagreements. For example, if a disagreement arises over whether a business should be retained or sold, or whether a distribution should be made, you may direct that the individual co-fiduciary’s decision control. You may stipulate in the document that the individual co-fiduciary will have the power to negotiate the corporate fiduciary’s fees. This way, you’ll have an insider in place who will control costs. You may authorize the individual co-fiduciary to remove the corporate fiduciary and appoint a new corporate fiduciary. Thus, if the corporate fiduciary is not performing its duties to par, a better one can be put in its place.

On the other hand, you may draft the document so that the corporate trustee will have sole decision making power on certain distributions and use of assets in the case where the beneficiary in question is also the co-fiduciary. This way, you prevent the individual co-fiduciary from inappropriately benefiting himself to the exclusion of other beneficiaries.

Perhaps as part of appointing three co-fiduciaries you may direct that the co-fiduciaries act by majority rule, with two or more co-fiduciaries having to agree in the trust or estate

administration. If an individual and a bank are named as co-fiduciaries, the individual may oversee the actions of the corporate fiduciary and the corporate fiduciary may ensure that the individual cannot mismanage the administration by acting alone.

Appointing a fiduciary to manage your estate or trust is an important estate planning decision. The appointment should not be made lightly. Consider appointing a corporate fiduciary for the all of the benefits that come from professional administration of your estate or trust. Furthermore, consider appointing corporate and individual co-fiduciaries so that you gain all of the professional benefits, plus the individual personal touch and decision-making from someone who knows you and your wishes best.

QUESTION OF THE MONTH:

Should I Make a Gift to My Children to Take Advantage of the Elevated 2012 Unified Credit Amount and If So, How Do I Protect Against Unforeseen Uncertainties Among My Children?

Yes, you should make a gift to take advantage of the elevated 2012 United Credit Amount. The window is closing. Unless Congress acts by December 31, 2012, the opportunity to lock in the current Estate and Gift Tax Exemption of \$5 million will disappear and shrink to a \$1 million exemption on January 1, 2013. Gifting this year allows someone to remove up to \$5 million from his Gross Estate and potentially avoid in excess of \$2 million of additional Federal Estate Taxes. Thus, it is highly beneficial to gift in 2012.

However, many times the potential beneficiaries are younger generations including minor children and minor grandchildren. At the time when they are toddlers, children, and teenagers, how can a person make a gift in trust now, but help ensure the funds go where needed? Simply splitting funds equally among five children is equal. However, there is a difference between equal and equitable as equal is the same dollar amount whereas equitable simply means what is fair and just. A simple equal split may not be equitable when one child has a greater legitimate need due to medical problems, humanitarian choice of career, or a sudden tragic life altering events. A sprinkle trust is the solution to this by providing the trustee with an absolute discretion to “sprinkle” the funds among the various beneficiaries as he believes equitable, but no obligation to make any payments to any particular beneficiary.

For example, even if the children are not minor, if funds are split between the five children equally, it may be equal but not equitable. Child A may be a Wall St. banker or own a large factory with earnings in excess of \$1 million a year; Child B may be a doctor or an attorney earning \$500,000 a year; Child C may have a drug addiction/risky lifestyle; Child D may be a high school teacher making a lesser income with a large family of exceptionally bright grandchildren; and, Child E may have lost a limb while fighting in Iraq. The use of a sprinkle trust allows the trustee to distribute the funds more equitably. For example Child A and Child B may not need the funds whereas the other children have more genuine needs for education,

medical care, or drug rehab. Further, a sixth Child F may be born after the gift was made and the sprinkle trust allows this child to receive benefits.

Thus, a sprinkle trust allows for a donor to make a 2012 gift to utilize the higher exemption amount without worrying if the allocation of funds will not be used as he desires to meet the particular needs of any individual child beneficiary. It provides optimal estate tax planning allowing by allowing the gift to avoid millions of dollars of additional Federal Estate Taxes and the flexibility to adapt to future distributions.

Further, many clients may use the same sprinkle trust to provide flexible discretionary benefits when he/she has minor children and the funds are held for all children in a single “pot” until his/her youngest child attains the specified age of 21, 23, 25 or any other variation.

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Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax

Design Buy-Sell Agreements For Maximum Utility

Deferred Compensation Rewards And Retains Key Employees

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

Estate Planning

Estate Planning For Pet Owners

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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