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HOT TOPICS IN WILLS AND ESTATE PLANNING

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AWARD:

Pozzuolo Rodden Pozzuolo, P.C., is pleased to announce that Joseph R. Pozzuolo has been awarded the 2023 and 2024 Martindale-Hubbel AV Preeminent rating for the Highest Level of Professional Excellence – the highest Peer Review Rating achievable recognizing lawyers for their strong legal ability and high ethical standards. These rating are used to identify, evaluate and select the most appropriate lawyers by attorneys seeking to refer colleagues as well as individuals looking for legal counsel. This designation is trusted worldwide by seekers of legal services and held only by 10 percent of all attorneys.

HOT TOPICS IN WILLS AND ESTATE PLANNING

I. Use of Memorandums For Leaving Tangible Personal Property With Sentimental Value for Loved Ones

If you have collections of jewelry, art, stamps, memorabilia, or other specific belongings with sentimental value, then an "incorporation by reference" of a memorandum specifically disposing these assets should be considered. An example would be if you own a signed 1980 and 2008 Phillies World Series baseball, a Mickey Mantle rookie baseball card, or a Babe Ruth baseball mitt and you intend to give the World Series baseball to your son, the Mickey Mantle card to your grandson, and the Babe Ruth mitt to the Baseball Hall of Fame. However, a few years later, you may change your mind and decide to give the World Series baseball to your grandson and the Mickey Mantle card to your nephew instead. An incorporation by reference of a memorandum will make it much easier to be able to change who and what's on the list without worrying about the formality required to sign a Codicil or Amendment.

If you decide to make a list of whom you want to receive your personal effects, then you'll need to consult with your estate planning attorney to determine the proper procedure under your state's laws to insure that the Memorandum of Tangible Personal Property will be legally binding on your beneficiaries. Some states require that the Memorandum be specifically mentioned in your Last Will and Testament or Revocable Living Trust for it to be binding, while other states simply won't recognize an "informal" list. Aside from this, be sure to update your list if you sell, lose, or give away an item or if a beneficiary you've named dies. Keep the list in a safe place along with your original estate planning documents, and if you make changes be sure to send them to your estate planning attorney.

While as mentioned above state laws will dictate whether your Memorandum of Personal Property will be legally binding on your beneficiaries, the reality of the situation is much different. What we have observed from personal experience is that when a list of personal effects, especially one that's in the decedent's own handwriting, is presented to the beneficiaries, there aren't any arguments about who gets what.

II. Plan Charitable Gifts with Retirement Accounts

If a charitable gift at death is desired, retirement accounts should be used first. Attracted to the tax-deductible contributions, many individuals have amassed significant wealth in their pension plans and individual retirement accounts. Income tax-deferred retirement accounts allow assets to grow on a tax-deferred basis. However, the owner is taxed on the withdrawals at his or her income tax bracket at the time when withdrawals begin.

If, after death, the retirement account benefits are paid to anyone but the account owner's spouse, those benefits are subject to estate taxation as well. This combined income tax and estate tax may be as high as 65 percent. If, however, you leave tax-deferred retirement accounts to a charitable

organization at death, you can transfer these assets without your estate or the charity incurring any estate and income taxation.

III. Transfer of the Family Business

If there is a family business, in a post 2023 Federal Estate Tax scheme, the IRS may be able to tax this asset at a marginal federal estate 40% tax rate forcing your estate to sell all or parts of the business after your death. A number of steps can be taken to avoid such a harsh result. These options should be reviewed now to avoid a forced sale to pay the Federal Estate Taxes.

First, stocks should be gifted every year at the $17,000 annual exclusion to each desired owner to reduce the tax burden.

Second, by transferring a minority interest (an interest less than 50%) the children can receive the interest at a 15 to 45% discount providing tremendous tax savings to maximize the 2023 $12.92 Million Federal Gift Tax Exemption. This avoids the 40% 2023 marginal tax on the extra shares transferred tax free.

Third, an outright sale can be made using a note with a low interest loan. This allows the children to pay for the business out of future profits, and the low interest loan saves them from paying a higher rate to banks.

Fourth, the business owner can sell the business to children through a private annuity. The children make annual payments for the life of the owner at an IRS statutory amount determined considering the owner's age and the current interest rates. If the owner passes before his/her life expectancy as defined under IRS tables, the assets are totally excluded from his/her gross estate. Thus, if the owner does not live to his/her life expectancy a significant amount of value may pass by payments that are significantly less than the value of the business plus all future appreciation is removed from the business owner's estate.

Fifth, an irrevocable trust set up by the owner could purchase life insurance contracts in the amount of the estimated Federal and State death taxes (or value of the business) so the family has sufficient liquid funds to pay any taxes due (or purchase the business). It is important that the owner or his/her estate is not the applicant, owner or beneficiary of the policies or the proceeds may be included in the decedent's estate. If established properly, the proceeds transfer tax free and create liquidity to saving the business from needing to be sold.

There are a number of additional advanced options in addition to these. The options should be reviewed to avoid a forced sale or break up of the business.

IV. Incapacity Planning

Incapacity planning is creating a plan for whom will manage your affairs and make decisions for you in the event you become incapacitated. There are two important documents for incapacity planning: 1) a power of attorney; and, 2) a living will. The power of attorney can either be a general power of attorney or a limited power of attorney. The general power of attorney gives someone a general power to manage all of your affairs such as pay your bills, or manage, sell and trade your stock

portfolio, or make other legal and financial decisions on your behalf. A limited power of attorney is when someone is given a specific power and nothing more. For example, a daughter could be given a limited power of attorney at your incapacity to sell your family home, but gives your daughter no other power. The general power is preferred if you have someone you can trust to manage your assets fairly, prudently and honestly. A limited power may be perfect if, for example, a spouse is given a general power, but you would like your trusted business advisor to manage your stock portfolio. Having these documents is important as in its absence, the court may be required to appoint a guardian to manage your affairs that may not be your ideal choice.

A living will is a document where you make decisions in advance as to what type of medical care you would like to receive. It is important to choose the proper "surrogate" who will make decisions on your behalf. This needs to be a trusted person that would act in your best interest and can make rational, calm decisions in stressful times. In addition, by this document you will make basic medical care decisions whether you would like blood transfusions, a feeding tube, antibiotics, to be an organ donor (and what organs)… or any other common medical procedure/practices.

Both of these documents are important to ensure that the proper decisions and care are taken for your person and your assets.

We hope this information is helpful. If you would like more details about these areas or any other aspects of wills and estate planning, please do not hesitate to contact us.

If anyone has any questions or inquiries concerning this subject matter, do not hesitate to contact us. Feel free to email us your questions or comments concerning this newsletter.

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