July 22, 2015

Estate Planning Update - July 2015

ARE YOUR AFFAIRS IN ORDER?

Have you ever been asked, "are your affairs in order?" Have you wondered what that question really means? Have you considered what you can do to ease the burden on loved ones who will be tasked with handling your estate or providing support in the event of your incapacity? If you answered "yes" to any of these questions, here are 10 suggestions for organizing your affairs and easing burdens going forward.

1. **Estate Planning Documents:** When was the last time your documents had a tune-up? If it has been several years, request that we complete a quick review to confirm that your will and trusts reflect your current goals. Documents should keep pace with the changes in your life (births, deaths, marriages, divorces and significant changes in wealth) and with changes in the tax law. Updated documents will enable your executor or personal representative (and trustees) to carry out your wishes.

2. **Incapacity Documents:** With increasing frequency, financial institutions and health care providers are reluctant to accept and rely on "stale" powers of attorney and health care directives. Refreshing these documents at least every five years will help ensure that your attorney-in-fact and healthcare representative or proxy are able to assume their roles if necessary. We also recommend sharing a copy of your healthcare documents with your loved ones and your physician.

3. **Funding Trusts:** If you have a revocable trust, consider funding it with some or all of your assets now. This will facilitate handling of your finances if you become disabled and after your death. It will also avoid public scrutiny during probate administration in some states. Real estate not located in your home state is a top candidate for a lifetime transfer to your revocable trust. This is because keeping it titled in your individual name will trigger a second "ancillary" probate in the state where it is located, increasing the costs of estate settlement. Titling investment accounts in your revocable trust will help speed up and streamline access to investments after your death.

4. **Personal Property:** The division of belongings, such as jewelry, is often a source of conflict in families. Consider leaving a personal property memorandum to set forth your wishes regarding personal items. For example, if you are leaving all of your personal property to your three children under your will but would like a grandchild to receive your jewelry, prepare a memo to your children that says this. In some states, these memos are binding. In others, they simply express your wishes.

5. **Original Documents:** If Day Pitney does not hold your original documents, make sure that we know where they are located and that someone is able to access them when needed. a post-death court order may be necessary to open a safe deposit box if there is no joint owner. A delay in filing your original will slow the appointment of your executor or personal representative.

6. **Beneficiary Designations:** Review the primary and contingent beneficiary designations for your IRAs, 401(k)s, annuities and life insurance policies to confirm that they dovetail with your estate planning documents. Outdated designations directing property to a former spouse, a deceased parent or a revoked trust can torpedo an otherwise well-drafted estate plan. Consider whether any minor children or disabled family members could become beneficiaries, and speak to us about the possible repercussions.

7. **"Paperless" Assets:** The "greener" you become, the more challenging it may be for your executor to identify your assets. gone are the days when an executor can expect to find paper copies of all bank and investment statements to identify accounts and contacts at each financial institution. In addition, assets today include more than just bank accounts, with airline miles, credit card points and some social networking sites having real value. Consider making a list of all your accounts and keeping it in a sealed envelope in your home safe or safe deposit box and make sure access is available to a joint owner).

8. **Passwords:** If your asset information is only accessible electronically, it may be difficult for your attorney-in-fact to step in and immediately begin to manage your financial affairs in an emergency. Although your online passwords and login information should be kept confidential, consider leaving a complete list in a sealed envelope in your home safe or safe deposit box (to which access is available to a joint owner).

9. **Pets:** Make plans for the short-term emergency care of your pets if you are hospitalized, and for their long-term care after your death. Bequests of pets coupled with bequests of cash for their care or "pet trusts" are increasingly common.

10. **Share:** Only you can decide whether and when to share your estate plan with your loved ones. Even if you choose not to disclose the plan's terms, providing loved ones with a list of key contacts (including your attorney) can significantly reduce stress levels in times of crisis.

NEW CONNECTICUT LEGISLATION

Among the legislation that Connecticut Gov. Dannel P. Malloy signed on June 30, following a special session of the Connecticut legislature, were three changes that may be of interest. These include an increase to the probate court settlement fees for estates; an increase to income tax rates for individuals, trusts and estates; and a new cap on a taxpayer's gift and estate tax liability.

Increased Probate Fees for the Settlement of Estates

The probate fee for the settlement of an estate applies to all Connecticut estates regardless of whether probate proceedings are required. Under the new legislation, which is effective for estates of decedents who die (or died) on or after January 1, 2015, the top rate has been increased to .5 percent for estates greater than $2,000,000 (from a prior top rate of .25 percent). In addition, the previous $12,500 cap on the probate fee has been eliminated.

These changes will have no effect on the probate fee for estates under $2,000,000. However, for larger estates, particularly those over $4,754,000 that would have benefited from the cap under the previous law, the increase in probate fees may be significant. For example, under the new law, an estate of $10,000,000 will now pay a probate court fee of $45,615; an estate of $50,000,000 will now pay $245,615.

Increased Income Tax Rates for Individual Taxpayers and Estates and Trusts

The new legislation increased the income tax rates applicable to individuals earning $250,000 or more ($400,000 for head of household and $500,000 for married filing jointly) from 6.7 percent to 6.9 percent and created a new 6.99 percent tax rate for individuals earning $500,000 or more ($800,000 for head of household and $1,000,000 for married filing jointly). Likewise, the flat tax rate on trust and estate income was increased from 6.7 percent to 6.99 percent. The rate increases are retroactive to January 1, 2015.

Cap on Maximum Estate and Gift Tax Liability

Connecticut imposes both an estate tax and gift tax under a unified structure. Under the previous law, the total tax that could be imposed was uncapped. The new law now caps the maximum estate and gift tax liability for each taxpayer at $20,000,000, effective for gifts made on or after January 1, 2016, and for estates of decedents who die on or after January 1, 2016.

PENDING LIMITATIONS ON FAMILY ENTITY DISCOUNTS?

You may have heard about, or perhaps even created, a family entity such as a family limited partnership or a limited liability company. Despite growing IRS challenges and scrutiny of intra-family transfers of family entities, under current law it is possible to structure a family entity so that the value of a gift of a minority interest in the family entity is discounted. The premise is that a 10 percent interest in a family entity is worth less than the value of 10 percent of the assets in the entity. The most common discounts are due to lack of control and lack of marketability. Officials at the Treasury Department and the IRS recently indicated that they may issue new regulations that further limit or disallow these and other types of discounts, and that these new regulations may be issued before mid-September of this year and may be effective immediately upon issuance.

The primary focus of the IRS in years past has been on family entities that do not operate an active business - or in other words, on entities that own passive assets, such as marketable securities. although the scope of the new regulations is unknown, estate planning practitioners hope that any new regulations will contain safe harbors such that active, operating family businesses are not adversely affected by such regulations. Business succession planning is obviously an important component of estate planning.

The takeaway is that if you have a family entity of any type - whether it is an active family business or an entity holding passive assets for purposes of centralized family management - and you are considering transferring additional interests to family members, we recommend that you contact us to discuss the possible impact of the pending regulations and to perhaps proceed with any contemplated transfers before the new rules take effect.

U.S. SUPREME COURT LEGALIZES SAME-SEX MARRIAGE

In June, the U.S. Supreme Court's decision in *Obergefell v. Hodges* legalized same-sex marriage nationwide. The Court concluded that the right of gay couples to be married is enshrined in both the Due process and equal protection clauses of the Constitution and that a marriage performed in one state must be recognized in all others.

Although the Court's 2013 decision in *United States v. Windsor* confirmed that a same-sex marriage performed in a "recognition" state would be honored at the federal level regardless of where the couple resided, it left some state-level tax and estate planning questions for LGBT couples unresolved. The advent of marriage equality across the United States presents a prime occasion to revisit estate planning and gift strategies. please contact us if you would like to review your planning.