DAY PITNEY LLP

Estate Planning Update
Winter 2021-2022

The following is a summary of some estate planning developments and opportunities that may be of interest to you. We hope you find this helpful and look forward to hearing from you with any questions.

IN THIS ISSUE

UPDATE ON PROPOSED LEGISLATION

At the time of our September *Estate Planning Update* (go to bit.ly/EPUSEPT2021), the House Ways and Means Committee's proposed language for the Build Back Better Act included several changes that impacted estate planning, including a reduction in the federal lifetime gift and estate tax exemption to be effective in 2022 and changes impacting grantor trusts.

Those provisions were removed from the House bill in late October. As we go to press in early December, it appears that this year's budget reconciliation bill will not contain provisions affecting the gift and estate tax exemption or rates or changing the treatment of grantor trusts. Things could always change, of course.

Please contact your Day Pitney estate planning attorney if you have questions about how the proposed legislation may impact your planning. ■

*You can access the online version of this issue of the *Estate Planning Update*, with links to other articles, at bit.ly/EPUWNTR2021. Or, to access a particular article mentioned in this *Update*, type in the web address shown–for example, to see the article, "Proposed Legislation May Affect Gifting Plans," from the special September issue of our *Estate Planning Update*, which is mentioned above, type "bit.ly/EPUSEPT2021" into your internet browser.

2022 INFLATION ADJUSTMENTS

Each year, certain federal gift, estate and generation-skipping transfer (GST) tax figures are subject to inflation adjustments:

- For 2022, the annual exclusion amount for gifts increases to $16,000 (from $15,000). The annual exclusion amount for gifts made to a noncitizen spouse in 2022 increases to $164,000 (from $159,000).
- The federal gift, estate and GST tax exemption amount for gifts made in 2022 and decedents dying in 2022 increases to $12,060,000 (from $11,700,000 in 2021). These exemption amounts apply to U.S. citizens and those domiciled in the United States.

There are changes to exemptions in three of our footprint states as well:

- The Connecticut gift and estate tax exemption for gifts made in 2022 and decedents dying in 2022 increases, to $9,100,000 (from $7,100,000).
- The New York state estate tax exemption increases with inflation each year. As this newsletter goes to press, the 2022 exemption has not been announced—it was $5,930,000 in 2021.
- The Rhode Island estate tax credit amount increases to $70,490 in 2022, which effectively increases the estate tax threshold to $1,654,688 (from $69,515 and $1,595,156, respectively).

Also note some changes to retirement plan contribution limits:

- The contribution limit for 401(k) plans will increase in 2022 to $20,500 (from $19,500). The limit for catch-up contributions to such plans for people over age 50 remains unchanged at $6,500.
- The limit on annual contributions to IRAs remains unchanged at $6,000, with the IRA catch-up contribution limit remaining at $1,000.
- For further information on retirement plan contribution limits, see our alert, "IRS Publishes 2022 Pension Plan Limitations" (go to bit.ly/2022PensionLimits).

An individual who relinquishes U.S. citizenship or long-term residence status may be subject to a mark-to-market tax on the deemed sale of all assets and other adverse tax consequences if the individual's net worth is more than $2 million or the individual's average annual income tax liability is above certain thresholds. A certain amount of gain is excluded from the mark-to-market tax. Note these changes:

- The income tax threshold for triggering covered expatriate status increases to $178,000 in 2022 (from $172,000).
- The excluded gain under the mark-to-market tax increases to $767,000 (from $744,000). ■

IMPORTANT PLANNING CONSIDERATIONS FOR SPECIAL NEEDS BENEFICIARIES

Parents enjoy a certain expectation that, at some point, their children will assume responsibility for themselves. This expectation transforms when a child has special needs. The future care and well-being of a differently abled child can be an overwhelming concern for parents, particularly when coupled with the very real day-to-day anxieties of managing the child's special diet treatment protocols, therapies and specialists and advocating for educational, living and vocational needs.

These future care concerns fall into two linked but distinct general areas: physical and emotional care on the one hand and financial security on the other. Physical and emotional care concerns elicit questions, such as: Who will assume the role of primary caregiver after my disability or death? Is it appropriate to place this responsibility (and burden) on a sibling or another family member? How will the successor caregiver know my special needs child's likes, dislikes, wants and hopes? Where will my child live and with whom? Concern for financial stability leads to questions, such as: Will government programs be available to assist with my child's care after my death or disability? Would these programs be suitable or sufficient? Should there be some type of funding through an estate plan or special needs trust to supplement government programs? How much is enough, and who should be the trustee?

Notwithstanding these anxieties, with proactive and mindful planning, parents can create and provide a more certain future for their child (as well as meet their planning goals for the rest of their family). The first step is to engage the services of an attorney whose practice has a strong focus on special needs planning.

Special needs planning is a subset of traditional estate planning. The notion that estate planning is essential only to families with significant wealth is a common misperception. In fact, organizing an efficient and appropriate allocation of family assets that meets the needs of all members—especially when one child has special needs—is a goal that should be shared by all, regardless of the size of the estate.

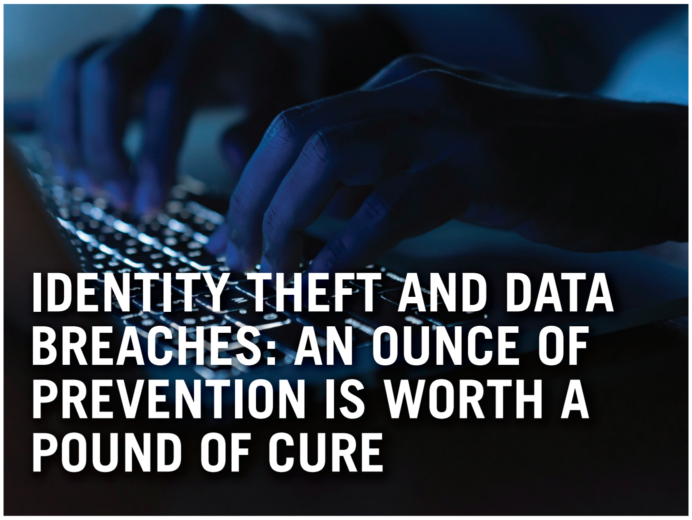
Too often, parents of a child with special needs mistakenly believe they can resolve special needs planning issues by simply leaving their estates to their other children, reasoning that the special needs child should not receive property because of his or her inability to manage it, that public benefits will adequately provide for the child or, most unrealistically, that their other children will assume full financial responsibility for their sibling.

This informal approach can create more problems than it solves, the most troubling of which is the inability to ensure that the money will be used to benefit the special needs child when the designated recipient receives the property outright. No matter how principled and purposeful the intent may be to benefit the special needs child, the funds could be subject to that recipient's creditors or other beneficiaries. For example, the premature death of a recipient could result in the property passing to the recipient's heirs to the complete exclusion of the special needs child. Worse, the property could pass to the recipient's spouse in the event of a divorce. Moreover, the devastating consequence of disqualification for public assistance benefits can occur if it is deemed that the special needs child's legally enforceable interest in property was intentionally circumvented through disinheritance. Unfortunately, there is no legal recourse for the special needs child in these unintended circumstances.

For all these reasons, the special needs trust (SNT) has become a very important estate planning tool to resolve these concerns. The SNT fulfills two primary functions. First, the SNT is a mechanism to manage property for someone who may not be able to do so for himself or herself due to a disability. Second, and often more importantly, the SNT preserves the beneficiary's eligibility for public assistance, such as Medicaid, Supplemental Security Income (SSI), public housing, and food and energy assistance, to name a few, and allows those benefits to be supplemented with the assets held in the SNT.

Public assistance benefits programs have become the financial and healthcare safety net for most of our country's individuals with special needs. A troubling dilemma is created as healthcare costs continue to rise, sweeping changes are proposed to curb the growth of the government programs that pay for them, and individuals continue to live and require care longer than ever before. Notwithstanding the importance of these benefits for many disabled individuals, there are certainly situations, particularly among wealthier families, where they may choose not to consider or access such programs. There are also circumstances in which disabled individuals may not meet the cognitive or physical eligibility requirements.

Each family has its own facts, and each public benefit program has its own rules, all of which may affect the drafting, funding and administration of SNTs, should an SNT be appropriate for a particular family. Collecting counsel and advice from a skilled legal practitioner will help avoid unnecessary pitfalls with future eligibility for these programs and minimize potential crises for successor caregivers. Raising a special needs child can test the very depths of personal tenacity and grit. And, when thinking and worrying about the future of that child, parents can find no substitute for proactive and mindful planning led by the empathetic hand of a skillful special needs planning practitioner. ■



IDENTITY THEFT AND DATA BREACHES: AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

Undertaking sound estate planning involves the disclosure of sensitive personal and financial information to trusted advisors. Protection of that information has become a significant concern in a world where information is transmitted and stored electronically and illegal breaches make the headlines seemingly daily. These concerns grow where an estate includes digital assets that never existed only a few decades ago. As a result, being mindful of the risks of data breaches and understanding the need for protection of your electronic information have become important issues for all our clients.

Earlier this year, in its annual Consumer Sentinel Network report for 2020, the Federal Trade Commission (FTC) announced that cases of identity theft skyrocketed during the COVID-19 pandemic, with reported incidents increasing 100 percent since 2019. Unfortunately, in 2021, a new surge in phishing, ransomware and supply chain attacks points to another record-breaking year for data compromises. According to the Identity Theft Resource Center, the number of publicly reported data compromises through September 30, 2021, already has exceeded the total number of events in full-year 2020 by 17 percent.

Identity theft or identity fraud happens when a thief gains access to personal information—such as name, address, credit card or bank account numbers, Social Security number, phone or utility account numbers, passwords, or medical insurance numbers—and uses that information for their economic gain. COVID-19 appears to have provided new fuel for cybercriminals, who have been preying upon the public's concern about this global crisis. Recent scams are designed to trick people into sending money, to disclose personal information or to click on emails and websites that deliver computer malware onto the recipients' computer or network.

Over the past 24 months, our clients have been affected by criminals seeking personal information by:

- impersonating a representative of a bank or other financial institution providing or requesting information about our client's account;
- seeking donations for purported charitable causes related to COVID-19;
- taking advantage of the recent increase in work-at-home arrangements by impersonating legitimate business correspondence; and
- posing as a government organization claiming to provide information about COVID-19, such as through heat maps or infographics.

Others have experienced significant actual or potential loss through:

- extortion by threats to disclose embarrassing or extremely personal information or pictures stolen from a personal computer;
- ransom demands in exchange for passwords to decrypt information stored on a personal computer or home network;
- redirected wire transfers arising from man-in-the-middle attacks;
- fraudulent claims for unemployment insurance filed in multiple states using stolen personal information; and
- the opening of fraudulent bank accounts and lines of credit using stolen personal information.

These and other types of incidents have the potential to cause tremendous financial, emotional, physical and social harm to the victims. In the event our clients are affected by identity theft or fraud, we encourage them to react quickly by promptly reaching out for expert assistance. Some homeowners insurance and other service providers offer a range of identity restoration services and indemnity coverage to address the immediate potential for financial harm. In most instances, relying on guidance from your insurer's panel of experts or an identity restoration service provider can be cost-effective and efficient. For more complex situations, however, you may need a more customized approach. Your attorney or financial advisor will likely be able to point you in the right direction.

For our clients, depending on the situation, we offer a self-help guide or a bespoke hands-on service to address each client's specific situation. For those identity theft victims who are prepared to act on their own, we recommend visiting the FTC identity theft website for a step-by-step reporting and recovery guide to help them cope with the many challenges they may face. Our bespoke service includes providing an interface with private investigators, law enforcement authorities and others to address victims' immediate and long-term concerns.

Of course, the best way to reduce the risk of being affected by identity theft or fraud is to apply an ounce of prevention. We offer a few preventive tips:

- **Freeze your credit.** Freeze your credit files for free with Equifax, Experian, Innovis, TransUnion and the National Consumer Telecommunications and Utilities Exchange. Credit freezes prevent someone from applying for and getting approval for a credit account or utility services in your name.
- **Secure your Social Security number (SSN).** Don't carry your Social Security card in your wallet. Only give out your SSN when truly necessary.
- **Protect your personal information.** Don't share personal information (birthdate, Social Security number or bank account number) just because someone asks for it.
- **Collect mail every day.** Place a hold on your mail when you are away from home for several days.
- **Pay attention to your billing cycles.** If bills or financial statements are late, contact the sender.
- **Review your credit card and bank account statements.** Compare receipts with account statements. Watch for unauthorized transactions.
- **Review your credit reports once a year.** Be certain that they don't include accounts that you have not opened. You can order reports for free from AnnualCreditReport.com.
- **Watch for impersonators.** Avoid clicking links in emails without hovering over them to see the destination first. Hang up and call a customer service line to verify a caller's identity. Don't trust caller ID on your smartphone.
- **Use the security features on your mobile phone.**
- **Maintain password security.** Create complex passwords that identity thieves cannot guess. Change your passwords if a company that you do business with experiences a breach of its databases. And use different passwords for each of your online accounts.
- **Use MFA.** For important online accounts (e.g., bank accounts, email accounts), implement multifactor authentication (MFA).
- **Protect yourself on public Wi-Fi networks.** Update sharing and firewall settings when you're on a public Wi-Fi network. Use a virtual private network if you use public Wi-Fi.
- **Secure your home Wi-Fi network.** Configure your home Wi-Fi network with encryption and a secure password.
- **Protect against dumpster divers.** Shred receipts, credit offers, account statements and expired credit cards.
- **Store personal information in a safe place.**
- **Secure your personal devices.** Install firewalls and virus-detection software on your home computer, tablets and other devices.

ARTICLE RESOURCES

Please use your mobile device camera to scan the QR code below. Then, click on the notification, usually appears at top of the screen, to visit the web version of this article, "Identity Theft and Data Breaches: An Ounce of Prevention Is Worth a Pound of Cure." It is enriched with hyperlinks to a number of useful online resources.

SCAN ME

Finally, we note that tax identity theft has proven to be a perennial issue for the IRS , especially during tax season, including due to cybercriminals committing tax refund fraud by filing taxes in the victim's name. In an effort to battle various flavors of tax fraud and tax-related identity theft, the IRS announced that, as of January 2021, it has expanded its Identity Protection PIN Opt-In Program to all taxpayers, assuming they can properly verify their identities. An Identity Protection PIN (IP PIN) is a six-digit number that prevents someone else from filing a tax return using your Social Security number or Individual Taxpayer Identification Number. The IP PIN is known only to you and the IRS. It helps the IRS verify your identity when you file your electronic or paper tax return. We encourage all our clients to take advantage of this IP PIN program. The fastest way to receive an IP PIN is by using the online Get an IP PIN tool.

Your best protection against identity theft or fraud is to remain vigilant. And if you are a victim of identity theft, you should reach out for assistance quickly. ■

DAY PITNEY DEEPENS SPECIAL NEEDS PLANNING PRACTICE WITH NEW BOSTON PARTNER MEREDITH H. GREENE

Meredith H. Greene has joined Day Pitney as a partner in the firm's Individual Clients Department and Trusts and Estates practice with a focus on special needs planning. She was previously a principal at Fletcher Tilton PC, where she was the chair of the Special Needs Practice Group. She will be based in the firm's Boston office.

"Meredith has significant trusts and estates experience, especially in the special needs and disability planning area, and a proven track record and reputation," said B. Dane Dudley, chair of Day Pitney's Individual Clients Department. "We look forward to working with her and building upon our already strong presence in Boston and further enhancing our capabilities in the special needs planning area."

Greene's practice focuses on special needs planning, estate planning, guardianships, conservatorships, adult services advocacy, and government benefits advocacy. Please visit our website to read the full press release at bit.ly/BOSGreene. ■

TOP RANKED
Chambers
High Net Worth
2021
Day Pitney LLP

CHAMBERS HIGH NET WORTH RECOGNIZES 20 ATTORNEYS FOR PRIVATE WEALTH LAW

Day Pitney is pleased to announce that the firm and 20 attorneys in its Trusts and Estates and Individual Clients Department have been ranked in the 2021 *Chambers High Net Worth (HNW) Guide*,* a Chambers and Partners publication specifically aimed at the international private wealth market. The guide covers private wealth management work and related areas around the world, featuring in-depth editorials about the leading professional advisers to wealthy individuals and families in each market.

The firm again ranked in the *Chambers HNW Guide for Private Wealth Law* in the Nationwide Eastern Region, as well as in Connecticut, Massachusetts, New Jersey, New York and for the first time in Rhode Island (under the name of Howland Evangelista Kohlenberg, which completed its merger with Day Pitney on July 1st). Day Pitney was recognized with Band 1 rankings for their practices in Connecticut, Massachusetts and Rhode Island.

Day Pitney is "particularly strong on the East Coast," according to Chambers sources. "They have a combination of pure high net worth estate planners and pure tax lawyers. They do a very nice job for clients," commented one interviewee. "They are an intelligent group of people who are very thoughtful. I think very highly of them," noted another market commentator.

With nearly 80 lawyers in the firm's Individual Clients practice, Day Pitney offers private clients one of the deepest and most experienced practices in the country. The attorneys have hundreds of years of combined experience advising individuals and their families on the full spectrum of matters related to trusts and estates and family offices. In addition, 16 attorneys are elected fellows of the American College of Trust and Estate Counsel (ACTEC), a group of peer-elected trust and estate attorneys across the United States and abroad with more than 10 years of experience in the active practice of probate and trust law or estate planning.

Twenty attorneys were ranked for Private Wealth Law or Family/Matrimonial for High Net Worth in their respective states, including 7 attorneys who received Band 1 rankings. Four attorneys were also ranked for Private Wealth Law in the Nationwide Eastern Region category.

Please visit our website for our complete 2021 rankings at bit.ly/DPChambersHNW2021.

**Chambers High New Worth* results are issued by *Chambers and Partners*. A description of the selection methodology can be found at bit.ly/AwardsMethodology. No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome. ■

DAY PITNEY RELOCATES BOCA RATON OFFICE

Day Pitney announced that it has relocated its Boca Raton office from the Mizner Park Office Tower to Boca Village Corporate Center located at 4855 Technology Way. Additionally, the attorneys and staff from the firm's Delray Beach office will relocate to Boca Raton. The firm has a total of 13 offices in the United States, three of which are in Florida, the other locations being in Coral Gables and West Palm Beach.

"Our new office building is a more conveniently located and modern facility that will allow us to better serve the needs of all our clients and friends. The new office space better accommodates our growing team and enables us to hire additional talent to continue to provide outstanding client service," said Manuel Garcia-Linares, managing partner of the firm's Florida offices. "We look forward to continuing to serve our clients' needs in the Sunshine State."

"With the ever increasing influx of clients moving south, Day Pitney's Boca Raton office serves as an important hub for the firm's trusts and estates, family office, commercial and residential real estate, tax, and litigation practices," added James A. Ballerano, Jr., managing partner of the firm's Boca Raton office.

The firm services clients in the United States and internationally through its core departments: Corporate and Business Law, Litigation, and Trusts and Estates and Individual Clients.

The new space is located at the Boca Village Corporate Center, which is a Silver LEED-certified building with more than 105,000 square feet of space for lease, and one of the newest, large-scale office buildings in Boca Raton. The Class A building is a highly visible midrise and is easily accessible from I-95 at Yamato Road. The property's amenities include covered parking, onsite Tri-Rail Station and a courtesy shuttle. ■

COVID-19 RESOURCE CENTER

For Day Pitney articles and alerts related to the impact of COVID-19, as well as information from other reliable sources, please visit our website for our COVID-19 Resource Center at bit.ly/DPCOVID19.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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Mary Katherine Andrews and Matthew Moore are candidates for the Massachusetts and New Jersey bars, respectively.

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