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ESTATE PLANNING UPDATES

We always remind our clients not to forget about their estate planning documents once they have been signed. It is far too easy to take those newly signed documents, put them in a safe place, and forget about them. While establishing an estate plan is an important first step, it is equally important to revisit your plan to be sure that it still reflects your wishes, taking into consideration legal, tax, and family changes that happen from time to time.

We recommend reviewing your estate plan if (i) you have not reviewed your plan within the past 3 years; (ii) your circumstances or your beneficiaries' circumstances (i.e. health, wealth, family) have changed; (iii) you no longer wish for the person or entity named as your trustee/executor/agent to act on your behalf; or (iv) you have concerns about asset protection.

In addition, our clients with children should consider some of the changes that take place in the eyes of the law once a person reaches age 18. While many 18 year olds do not need a full estate plan, your children should consider signing an Advance Health Care Directive and HIPPA Authorization so that you can continue to receive medical information and make medical decisions on their behalf. Further, some 18 year olds may not be ready to handle their own finances. A Power of Attorney that allows you to intervene on their behalf may be appropriate.

Here are a few new developments for 2016 to consider when updating an existing estate plan or contemplating a new one:

EVALUATE YOUR BYPASS TRUST

If married, does your living trust divide into two or more trusts at the first spouse's death, creating a Bypass Trust to hold the deceased spouse's property? If so, is this still the best strategy, given the much higher estate tax exemptions ($5,450,000 per person in 2016) and portability (i.e., a law that allows the first spouse to give the surviving spouse his or her remaining estate tax exemption and pass both exemptions ($10,900,000 in 2016) to beneficiaries free of estate tax)?

Bypass Trusts should be designed to give the surviving spouse flexibility to eliminate capital gains taxes at the surviving spouse's death. There are, however, other reasons besides estate tax planning to have a Bypass Trust, such as asset protection and ensuring the deceased spouse's last wishes are fulfilled. While this division of a trust at the death of a first spouse may have been necessary at the time of drafting due to much lower estate tax exemption amounts, this may no longer be the most tax and cost efficient plan for your family.

PROTECTION OF YOUR DIGITAL ASSETS

"Digital Assets" broadly refers to such online assets as e-mail accounts, digital files, social networking accounts, online media and cloud accounts, usernames and passwords for these accounts, and so forth. We strongly recommend keeping a secure list of your user names and passwords so that your trustee or executor can readily access your accounts after your death.

It is also crucial that those in charge of your estate have the power and authority to manage those accounts on your behalf. In 2014, we began including digital asset provisions in all newly created estate plans. These provisions allow a successor trustee to fully access and control the digital assets of a deceased settlor, although the account's term of service agreement may ultimately determine access. **Please contact us if you wish to add Digital Asset provisions to your own estate planning documents, or if you'd like more information on this subject**

Additionally, we encourage our clients to explore the options made available by different sites for management of online accounts after death. For example, Facebook allows users to designate a "Legacy Contact," or someone who can manage your account after you pass away. In the alternative, you can instruct Facebook to delete your account once you've passed away. Each company or platform maintains their own "Terms and Conditions" which govern account management and are subject to change from time to time.

THE CALIFORNIA END OF LIFE OPTION ACT

While not necessarily impacting an estate plan, we feel it is important for our clients to be aware of a new California law regarding healthcare decisions. This past October, California Governor Jerry Brown signed the "End of Life Option Act," an act modeled after existing law in Oregon. This new law allows a terminally ill individual, under very specific circumstances, to make a request to his or her physician for a drug prescribed for the purpose of ending his or her life. This request can only be made by a terminally ill individual, as defined by the law, who has the capacity to make the decision for himself or herself. This is not a power that can be given to an agent acting on behalf of an individual.

REVOCABLE TRANSFER ON DEATH DEED

Effective January 1, 2016, California enacted provisions for a "revocable transfer on death deed". Essentially, this law provides that under specific circumstances, an individual may record a deed on certain pieces of property in order to designate a beneficiary to receive that property upon the transferor's death. The law is currently in effect but is set to expire on January 1, 2020 unless renewed by the California legislature.

The new law is complicated, and at this time there is a great deal of uncertainty as to how it will perform in practice. Due to the uncertainties surrounding this new law and the restrictions that come along with it, a revocable living trust is still the most trustworthy vehicle to pass real estate at death to loved ones and avoid probate. Unlike a revocable living trust, a revocable transfer on death deed does not come into effect until after your death and does not provide for management of your property during incapacity.

CONSIDER A TRUST PROTECTOR

We are finding that including provisions for a "Trust Protector" in our estate plans is a useful "just in case" tool that provides an extra layer of protection and peace of mind. The Trust Protector's role is to make sure that, if the laws have changed, your original wishes are still carried out in the most efficient way possible. We find the Trust Protector to be particularly useful in trusts that continue for many years after the death of the Settlor, in irrevocable trusts established during lifetime, or as part of a special needs trust.

The concept of a "Trust Protector" is relatively new within the realm of estate planning in the United States. The Trust Protector is an individual appointed at some point in the future, when the terms of the trust are no longer within the Settlor's control. Most often, the Trust Protector is given *limited* powers to modify the trust. For example, a Trust Protector may be given the power to modify the trust to correct any drafting errors, to reflect any tax or legal changes that would drastically effect administration of the trust, to terminate the trust for a beneficiary if the circumstances warrant, or to replace a corporate trustee. **Please contact us if you wish to add this Trust Protector provision to your own estate planning documents, or if you'd like more information on this subject**

TAX AND INTEREST RATE CHANGES
REGARDING FAMILY TRANSACTIONS

Last year, the IRS noticed us that they intended to issue proposed regulations that would limit valuation discounts in certain situations such as transfers of interests in family owned entities. While these proposed regulations did not come last year, the IRS has made an unofficial announcement that they intend to issue these regulations within the first quarter of 2016. We do not know the extent these proposed regulations will limit valuation discounts, nor whether the proposed regulations will be binding on the taxpayer on the day they are issued. Such proposed regulations must be subject to public notice and comment period. However, IRS has in the past issued proposed regulations that were retroactively effective. If you have been considering transferring interests in family owned entities, the best way to mitigate against such risks is to take action prior to the issuance of the proposed regulations.

For 2016, the annual gift tax exclusion amount for gifts remains at $14,000. Additionally, interest rates applicable to loans between family members and powerful wealth transfer techniques are very low. We anticipate, however, that these interest rates will increase in the near future. If you are considering lifetime asset transfers, we encourage you to take action sooner rather than later.

If you have questions about this newsletter or wish to review your estate plan, please call our office at (818) 338-3252 or email kdevore@trustplanner.net

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