WILLMS, S.C.
LAW FIRM

Willms, S.C.
Client Newsletter

November 27, 2013

In this issue:

- A Look at the New Trust Code
- A Primer on Health Care Powers of Attorney
- Reminder to Consider Year-End Gifting

Contact us

- Our Website: www.willmslaw.com
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A Note to Clients and Friends:

The holidays are now upon us. For many of us, this time means spending time with family and friends over shared meals and football games. For others, it simply means a day or two off of work to enjoy what we have and to give thanks. However you choose to celebrate, we wish you and your loved ones good health and a relaxing holiday season.

The topics covered in this newsletter are intended to help you review the planning you have in place, and then take steps to ensure that your plan is tailored to fit your goals. These topics include a look at the new trust laws pending in Wisconsin, an overview of what your health care documents can do, and a reminder to consider the benefits of annual gifting on your estate plan.

Wisconsin Laws Governing Trusts to Undergo Major Revisions

Atty. Andrew J. Willms

For the first time since 1972, the rules governing trusts in the state of Wisconsin are on the verge of a major overhaul. The Wisconsin State Senate and State Assembly have both voted in favor of the new Wisconsin Uniform Trust Code, and Governor Walker has indicated that he plans to sign the legislation. If signed by the Governor, this law would then go into effect at some point in the summer of next year.

The new law is intended to modernize Wisconsin's Trust Code by updating the definitions of what a trust is, the roles of the trustees, the roles of the beneficiaries, and the rules governing how Wisconsin trusts are administered and distributed. It is based in large part on the national Uniform Trust Code, which was drafted by the National Conference of Commissioners on Uniform State Laws, and which has already been adopted in part or in whole by 27 states, including Florida.

If it becomes law, Wisconsin's new Uniform Trust Code will make several important changes to the laws governing the use, administration, and distribution of both revocable and irrevocable trusts in Wisconsin. Some of these changes are as follows.

1. The new Trust Code will allow the provisions governing the administration of an irrevocable trust to be changed by creating a new trust agreement and transferring the assets of the old trust into the new one, provided specified preconditions are satisfied.
2. The new Trust Code will allow people to create a trust to pay for expenses associated with the care of their pets after they die.
3. The new Trust Code will allow a trust agreement to divide responsibility for (i) administration of the Trust; (ii) investment of Trust assets, and (iii) decisions pertaining to trust distributions, between distinct trustees at the same time. Currently, trustees are responsible for all three areas at the same time.
4. The new Trust Code will provide that a testamentary trust is not subject to continuing judicial supervision unless so ordered by the court. Under current law, a trust established by a deceased person's Will (called a "testamentary trust") is subject to continuing court supervision.
5. The new Trust Code allows a trust agreement to grant a "Trust Protector" (who may or may not also be a Trustee) the authority to undertake a variety of acts, such as:
   - a) Amending the terms of an otherwise irrevocable trust agreement;
   - b) Approving distributions to trust beneficiaries before they are made;
   - c) Eliminating or modifying the interests of a beneficiary, and adding new beneficiaries;

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d) Removing, replacing, or appointing a trustee or successor trustee; and

e) Terminating the trust.

In sum, Wisconsin's new Trust Code significantly enhances the benefits associated with the establishment and funding of a trust for Wisconsinites. It also creates new opportunities to modify existing trusts that are otherwise irrevocable. If you would like to learn how you could take advantage of this important new law through either modifying your existing trust or creating a new trust, please call our office to schedule an appointment.

A Brief Primer on Health Care Powers of Attorney

Atty. Jessica A. Liebau

We frequently receive questions from our clients regarding health care documents. Most people understand they need them, but have questions regarding what the documents actually can or should do. This brief article points out some of the most frequently-asked questions we receive, and is part of an ongoing series on health care decision-making.

1. What is a health care power of attorney?

A health care power of attorney is a legal document by which a principal (the person creating the document) nominates a health care "agent," i.e. a person to act on his or her behalf in making health care decisions. The document includes what the agent is and is not allowed to do in making health care decisions for the principal.

2. Why do I need a health care agent?

While you are alive and well, and of sound mind, your health care agent generally does not make any decisions for you. However, it is likely during your lifetime that you will at some point experience an illness or injury. If an important medical decision needs to be made and you aren't able to make it because you are sick, injured, or otherwise incapacitated, someone needs to be able to act on your behalf and make important health care decisions.

If such a situation arises and you have not appointed a health care agent to make decisions for you, a guardian must be appointed for you by the courts. This means spending substantially more time and money than you would to create a power of attorney. Even more importantly, you lose the ability to nominate your own agent and say what they can and cannot do for you. In other words, you lose control.

3. What can my health care agent do?

In general, your health care agent is given the power to make medical decisions for you on your behalf. They must act in your best interest. They are given the power to consult with your health care providers, and to make an informed decision based on the information they receive.

There are also powers that you may or may not give your agent. For example, you can direct that your agent has the power to admit you to a nursing home for long-term care if that becomes necessary. If you do not specifically grant your agent this power, they cannot do so. Similarly, you can specify that your agent has the power to make end-of-life decisions for you in relation to artificial nutrition and hydration. If you do not specifically give your agent this power, they may not make such decisions. Many people, instead of granting their agent the sole authority to make end-of-life decisions, specifically state their end-of-life intentions in a Declaration to Physicians document.

4. How do I know that my health care agent and doctors will respect my wishes?

Executing a health care power of attorney where you specifically state your intentions is one step in taking control of your health care decisions. However, it is not the only step.

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Along with creating and executing a health care power of attorney, you need people to know it exists! That means distributing the document to your agents and health care professionals, or at least having a copy readily available in an emergency situation. It also means talking to the people you have appointed as agents, as well as anyone else such as doctors and family members who may be involved in the process, and explaining what your intentions are and how you want them carried out. These people need to know what they are being asked to do, and you need to know that they are willing and able to do it. If you have questions about this process, or are having trouble developing a proper way to communicate your health care intentions, please let us know. We would be happy to assist.

Annual Exclusion Gifting After ATRA

Atty. Maureen L. O'Leary

Have you considered whether you want to make any gifts before the end of the year? In 2013, the annual exclusion for gifts is $14,000. This means that everyone can give up to $14,000 in 2013 to as many people as they desire, without any gift tax consequences. For example, a married couple could give up to $28,000 ($14,000 x two donors) to each of their children in 2013. A married couple could also give up to $28,000 to each of their sons-in-law, daughters-in-law, grandchildren, etc. This allows for the possibility of significant gifts without gift tax and without the use of any of the donor's lifetime gift tax exclusion.

The lifetime gift tax exclusion in 2013 is $5,250,000 per person. This means that in addition to annual exclusion gifts, everyone can give away up to $5,250,000 over the course of their lifetime without gift tax. Unlike the annual exclusion, the $5,250,000 limit does not apply to each beneficiary, but rather is a $5,250,000 combined limit for all gifts made to all beneficiaries.

Although a $5,250,000 lifetime gift tax exclusion may seem high, there are numerous reasons why it is wise not to waste your lifetime gift tax exclusion. For example, every dollar you use of your lifetime gift tax exclusion reduces the amount of your estate tax exclusion that is available to shelter your assets from estate tax at the time of your death. Furthermore, it is possible that the lifetime gift tax exclusion and estate tax exclusion amounts may drop in the future. Therefore, annual exclusion gifting can be a valuable opportunity to transfer assets without using any of your lifetime exclusion.

There can be many benefits from making annual exclusion gifts up to $14,000 per person, such as:

1. If there is a possibility your estate may exceed the estate tax exclusion amount at the time of your death, annual exclusion gifting is an easy and tax-free way to slowly reduce the size of your estate.
2. Annual exclusion gifts may allow the recipients to contribute to an IRA, 401(k) or similar plan that provide various income tax benefits. The recipient may not have otherwise been in a position to contribute to such plans without the gift.
3. Annual exclusion gifts may allow the recipients to pay premiums on a life insurance policy they might not otherwise afford. The life insurance policy could prove to be a valuable investment, and the eventual death benefit is income tax free to the beneficiary.
4. Annual exclusion gifts consisting of a few shares of stock in the family business can be a good way to introduce younger family members to business ownership and allow for a smooth, steady and gradual transition of ownership.

Oftentimes, there is no need to file a gift tax return when gifts are within the annual exclusion amount.

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However, sometimes it is necessary or at least prudent to file a gift tax return even when gifts are limited to the annual exclusion amount, such as when gifts are made to trusts or the gifted assets are hard to value. We would be happy to advise you regarding whether we recommend a gift tax return be filed for your particular situation.

However, the landscape of annual exclusion gifting after the American Taxpayer Relief Act of 2012 is not the same as it was prior to the Act. The American Taxpayer Relief Act of 2012 was signed into law on January 2, 2013 and provides for a "permanent" combined estate and gift tax exclusion amount of $5,000,000 indexed for inflation (thus, $5,250,000 in 2013).

Prior to 2013, many families were in the practice of making annual exclusion gifts of family business interests, such as LLC Units and shares of stock, for the purpose of reducing the size of their estates. However, if the estate tax exclusion amount remains high, some families may no longer need to worry about estate tax. In that case, there may not be any estate tax benefits resulting from annual exclusion gifting. However, this is hard to determine because the exclusion amount is only "permanent" until Congress and the President decide to change it again.

If you are considering gifting assets such as LLC Units or shares of stock, the income tax basis of those business interests should first be considered. The income tax basis of an asset gifted during life is the same in the hands of the recipient as it was in the hands of the donor. As a result, if you gift a share of stock with an income tax basis of $10,000 but a fair market value of $50,000, the recipient's basis in the stock will also be $10,000. Accordingly, if the stock is sold, it will result in taxable gain for income tax purposes. In contrast, if you were to retain ownership of the stock until your death and then the same recipient inherited the stock at that time, the fair market value of the stock at the time of your death becomes its new income tax basis. For example, if the stock has a $10,000 basis and a fair market value of $50,000 at the time of your death, the recipient who inherits the stock receives a stepped up basis to $50,000. As a result, the recipient could sell the stock after your death without any income tax consequences.

We understand that the issues surrounding whether to make gifts, how much to gift and what assets to gift can be very complicated. Please do not hesitate to contact us if you are considering making gifts before year-end. We would be happy to talk to you about the pros and cons of making the gift and suggest ways to maximize the benefits of any gifts you make.

We hope you have found the information contained in this newsletter helpful. Please let us know how we can assist you.

Sincerely,

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