

STIER LAW OFFICES, P.A.

X.

VOLUME 4

FEBRUARY 2008

As in years past, we have waited to see the activity of Congress on tax questions before we put together our newsletter. As the current Congressional session approached the end of 2007, the Congress seemed to be tied up on debating the Omnibus spending bill. As the Congress adjourned we saw that they had done nothing which would affect our estate planning clients. But by then we were well into the holiday season and made the judgment that our annual newsletter should be sent after the holiday season rather than with the volume of greetings you probably receive during the holiday season.

IN THIS NEWSLETTER WE WILL BE DISCUSSING THE FOLLOWING TOPICS:

- I. DUAL REPRESENTATION
- II. HEALTH CARE DIRECTIVE ADDRESS
- III. BEWARE OF MISLEADING SEMINAR
ADs
- IV. GAP TAX REMINDER
- V. OWNERSHIP OF ASSETS BY LIVING
TRUST
- VI. LONG TERM CARE PROTECTION
- VII. STATUS: FEDERAL ESTATE TAX
EXEMPTIONS
- VIII. CHANGES TO YOUR TRUST
- IX. RETIREMENT ACCOUNT
BENEFICIARIES
- Y. OFFICE LOCATION



DUAL REPRESENTATION

Although we have mentioned this fact to all of our clients, we have seen the need to state to you in writing that we are representing both of you together when we complete an estate plan on your behalf.

While this may seem obvious, it is important for you to understand that we cannot keep any information from being disclosed to the other. It also means that in the event any conflict develops between the couple we cannot ethically take the side of either of you, and we must therefore resign from representing either of you until any conflict is resolved. Although this problem has occurred very rarely, when it does we want to have given you not only verbal notice as we have previously done, but this written notice of our dual representation as well.

HEALTH CARE DIRECTIVE ADDRESS

We have run into a few instances where a health care directive was not honored because the party who created the directive or the health care agent has changed their address. While this refusal is not proper under the law, the denial of the use of your health care directive can cause delay and other unnecessary problems for you.

We have purposely left the health care agent's address lines blank so you can complete it in pencil and change the address if needed. However, the address of the creator is printed. If you have changed your address, you may wish to have us create an addendum to the directive which indicates your change of address so that this potential problem is avoided in times of emergency.

OWNERSHIP OF ASSETS BY LIVING TRUST

BEWARE OF MISLEADING SEMINAR ADS

During the past year we have become aware ourselves and through our clients of false and misleading advertisements for retirement and estate planning seminars. Bullet points in the ads ask, for example "Why living trusts will still require probate," or "What to do now with your living trust under the new tax law," or statements implying that something has changed so living trust centered estate plans no longer work. The truth is that nothing has changed to make your living trust less effective. If you have followed our instructions for titling of your assets in the name of the trust, the trust will work as designed. Also, no new tax laws have been passed affecting your living trust.

Always judge these type advertisements for what they truly are - an attempt to attract you to a sales meeting where you are exposed to direct or indirect pressure to purchase a product. Without judging whether or not the product being promoted is good or bad, we urge you to have your guard up when false and misleading ads are used to attract you.

GAP TAX REMINDER

Over the past few years we have tried to alert our clients to the potential of Minnesota Estate Tax at the first death of a couple rather than deferring all taxes, if any, until the second death. This result occurs because the exemption from estate taxes for federal and state taxes no longer are the same, and the formula within your trust may be written as if they were the same as may have been the case when your trust was prepared.

This doesn't affect all trust clients. Only those with a combined total estate assets over \$2,000,000 would be affected by this potential problem. But if your estate is affected the tax at the first death could be significant. If your estate is vulnerable to this potential tax and you haven't already contacted us to change your trust to rectify the problem, please call to set up an appointment to discuss the problem and its solution.

In previous volumes of this newsletter, we have discussed the importance of having all your assets titled in the name of the trust. Having combined assets totaling more than \$20,000 still titled in your individual name and not in the trust name can cause probate to be required after your death. The cost of starting a probate for a small amount of assets is identical to that for a large amount of assets. To avoid probate an annual review of the title of your assets may prove invaluable after a death occurs. It happens more frequently than we would want that an asset is found to have been overlooked and triggers a needless probate.

Real Estate Titled in Living Trust

We have numerous questions each year from clients unsure of whether their real estate is properly titled in their trust. Over the course of the years we have used different methods to transfer real estate to the trust. Some methods recorded deeds with the County Recorder while other methods delay the recording until after death. Both methods are equally effective.

To determine if your real estate is properly titled in your trust, follow the following steps:

1. If the name of the trust appears on the real estate tax statement, stop here - title is OK in the trust, if not go to step 2.
2. If the name of the trust does not appear on the tax statement, look in your red trust portfolio under the tab "Transfer documents." If you find a deed and escrow agreement for your real estate stop here - title is OK in your trust.
3. If your real estate is not covered by either step 1 or step 2, contact our office immediately for further assistance.

Note:

A. Be sure to check the legal description in the deeds in step 2 for accuracy. If the description is not accurate as given to us originally or has changed since the deed was prepared, the deed may not be recordable after death.

B. If you have sold any parcels that are titled under step 2, be sure to let us know so we can remove it from the escrowed deed.

C. If you acquire any new parcels of real estate or have moved, be sure to let us know to prepare a new deed and escrow for such parcel.

LONG TERM CARE PROTECTION

Does your living trust provide protection of your assets so they do not have to be spent on long term care such as nursing home costs? This question is frequently asked of us. The simple answer is *NO*, it does not.

The federal medicare law, which is what Minnesota's medical assistance laws are based upon, have been modified in recent years to make it clear that if a trust is revocable it cannot provide asset protection from nursing home costs. Since your living trust is revocable, no asset protection from these type of costs is available.

Even irrevocable trusts in which you or a spouse have the right to receive the income or in which you or a spouse have any rights of control will no longer provide protection from long term care costs. Only specially designed trusts to which you give away your assets retaining absolutely no rights thereafter can protect from these costs. Obviously this is a drastic step that should not be taken without careful consideration when long term care is nearing being necessary. While we can help you design and implement properly trust documents for this purpose to supplement or replace your existing trust the advisability thereof must be carefully considered. If you wish to discuss whether you should consider such a specially designed trust, please schedule an appointment to discuss this further. But this article is meant as a reminder that a revocable living trust such as you have is not designed to protect assets from long term care cost but rather its purpose is to avoid probate, taxes and assure proper distribution to your family.

STATUS: FEDERAL ESTATE TAX EXEMPTION

Every year since we started this annual newsletter, the topic of the status of the Federal Estate Tax exemption has been included. You will recall that the law as it currently stands has the exemption this year of \$2,000,000 raising to \$3,500,000 next year. Then all estate tax is repealed for one year in 2010; but the tax returns in 2011 with a reduced exemption of only \$1,000,000.

For years Congress has debated whether to make the repeal of the estate tax permanent or to freeze the exemption at one of the higher levels. But

since the last election with the newly constituted house and senate under different leadership, the debate has been strangely silenced. We do not know what this means, but it should be observed that if no action is taken by Congress, the estate tax exemption will automatically decrease in 2011 to \$1,000,000. This would result in many people who, under the current exemption level, would pay no estate taxes, who would suddenly be paying significant estate taxes. This increased revenue which would flow into the federal treasury would happen without the need for passing any legislature by just letting the current law expire. Perhaps this is the strategy and the reason why the debate in Congress on this topic is conspicuously silent.

CHANGES TO YOUR TRUST

Your revocable living trust is, as its name states "revocable." This also means it is amendable. In case of a change in your circumstances or a change of your mind, you can change your trust to adapt it to your new wishes.

Many times, however, the language of the trust is flexible enough as initially written to adapt to new circumstances. For example, the language of the trust already will include new children or grandchildren without having to make any alterations or changes in the trust document. But most clients prefer to see the name of their children specifically named in the trust. For our younger clients who add children to their family, we are pleased to provide trust amendments to specially add their newborn children without charge. However, because all children are automatically included, there is no urgency to add the new child's name.

Another change that is often requested is when a named successor trustee has died or otherwise become unable to act as a trustee. You should be reminded that in most instances a sequence of successor trustees is provided so that an alternate is already named. Therefore, no trust amendment is needed unless the entire sequence of successor trustees named in your trust document have become unavailable. On the other hand, if the person who you have named is no longer your choice, your trust, as well as your ancillary support documents in your portfolio can be amended. In that event, please contact us to request an appointment to discuss the change in your trust, or any other changes you may desire. While these changes will have a fee, the cost of an amendment to the trust for our existing clients will remain as reasonable as possible.

.....

RETIREMENT ACCOUNT BENEFICIARIES

One of the most frequently asked questions is who should be the beneficiary of retirement accounts such as IRA's, 401(K)'s, 403(b)'s, etc. Our instructions in the Asset Transfer Instructions located under the "Funding Instructions" tab of the portfolio have remained the same for about the last ten years. Instructions for married couples given before this time may need to be changed as follows, and all clients should verify that their beneficiaries are as follows:

"Spouse as primary beneficiary; Successor Trustee of your trust as secondary beneficiary."

For those without a spouse:

"Successor Trustee of your trust as primary beneficiary; no secondary beneficiary is needed."

Our reason for naming your trust as the beneficiary is that all the protections from creditors, bankruptcy, divorce, etc. is available for these retirement accounts if your heirs receive their rights to these retirement accounts through the trust, whereas if they receive it directly in their name these protections are unavailable to them.

Sometimes other advisors discourage our clients from following these instructions because they claim a trust cannot stretch out the tax deferral of these accounts over the life expectancy of the child as could be done if the children are named directly as the beneficiary. This is simply not accurate. The stretching of tax if a trust is named as beneficiary is the same as if your heirs are named directly. You simply look through the trust for who is the ultimate beneficiary of the trust.

But the advantage of account protection is an added benefit under the trust. Another benefit of using the trust as the beneficiary is that without the trust the stretching of benefits over time is only an option, not a requirement. On the other hand, if your trust has provisions to distribute in installments, the stretching of distributions from a retirement account is mandatory within such deferred payment provisions of the trust.

OFFICE LOCATION

We have been in our new office location in Eagan for over 3 years. Unfortunately, we still have clients who are using the old address.

Please change your portfolio and other records to our new address and phone number. The post office no longer forwards mail and the phone number will not automatically forward for much longer. Our new information is:

STIER LAW OFFICES, P .A.

Paul J. Stier

Jeffrey P. Stier

4470 Erin Drive, Suite 102
Eagan, MN 55122

(651) 452-6250
Belle Plaine (952) 873-6868

Fax (651) 452-7781
Toll Free 1-800-994-9005