Accettura & Hurwitz
Estate & Elder Law
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Please Say Nice Things About Us!

If you are unhappy with our service please contact our office and speak with our office manager, Kim Rapp, and we will do our best to remedy the issue. If you are happy with our service, please visit our Facebook page called “Accettura & Hurwitz: Estate and Elder Law” and/or Google Review and give us a good review so others will know of our good work.

This Newsletter is considered general information and is not intended to constitute individual legal advice. Please contact us if you think the information herein impacts you directly. We look forward to speaking with you soon. Please visit our website ***www.elderlawmi.com***

Very truly yours,
ACCETTURA & HURWITZ

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FALL 2022 UPDATE

As is our custom, this semiannual correspondence is intended to keep you abreast of developments in estate and elder law. The following is a brief summary of noteworthy developments since our last communication:

This newsletter is dedicated to the subject of optimizing the benefits of your estate plan and minimizing the difficulties in wrapping up your estate at the time of death. You went through the cost and effort of creating an estate plan, make sure it reflects your wishes and avoids probate. We also address what we see as the growing problem among our aging clients of unfiled income tax returns and lapsed homeowners’ insurance.

How Often Should I Review my Estate Plan?

Your estate plan is a living breathing instrument. You should visit with us to have it reviewed no less than every five years, or more often if there have been changes in the law (which we will advise you of in this newsletter), you have experienced significant events like divorce, death or disability of a spouse or beneficiary, or if you have purchased new real estate. Other causes for review include struggles of beneficiaries with drugs, alcohol, divorce, bankruptcy, incarceration, or other events that make them unable to receive or manage an inheritance. You should periodically review your choices for making medical and financial decisions if you become disabled or pass. Changes in the lives of those you choose to help you, including something simple as a family member moving to another state or country, may make your previous choices less than optimal.

Younger couples with minor children should revise their estate plan when their children become old enough to take over the fiduciary responsibilities previously assigned to other family members or professionals.

Generally speaking, the older you are the more often you need to review your estate plan. You should also regularly review your assets to make sure they are properly coordinated or “funded” into your trust.

Proper Trust “Funding” To Avoid Probate

Trusts are a wonderful tool to accomplish a number of objectives including avoiding probate. However, trusts aren’t magic. Trusts only govern assets owned in trust or that name the trust beneficiary. Trusts don’t have jurisdiction over assets that are co-owned with others or that name beneficiaries other than the trust. In a worst-case scenario, assets that are owned in the decedent’s name alone or do not name a beneficiary must go through probate.

IRAs and Retirement Accounts

Generally speaking, all financial assets, other than IRAs, should either be owned in trust or name the trust as beneficiary. However, with regard to IRAs and other qualified accounts, until we get further guidance from the Department of Treasury, we are advising clients to not name their trust as beneficiary. Instead, married clients should name their spouse as primary beneficiary and their children as contingent beneficiaries. Unmarried IRA owners should name their beneficiaries directly.

Real Estate

Our practice is to transfer your principal residence to your trust using a Ladybird deed, and to transfer all other real estate directly to trust.

Convenience vs Intent

Joint ownership and beneficiary designations that do not name the trust take precedence over the language of the trust unless it can be proven in court that such ownership or beneficiary designation were solely for "convenience." Although such co-ownership and beneficiary designation outside the trust avoid probate, they may undermine your wishes as expressed in your trust. For example: If your trust leaves everything to your three children equally, but you add only one daughter to all of your accounts (she may live nearby and help you pay bills, etc.), your daughter is the presumed owner of all such joint accounts. She would also inherit her one-third of the trust, a result you may not have intended.

Action Plan

Apart from meeting with a member of our firm at least once every five years, there are a number of things you can and <u>should</u> do on you own:

- ☐ **Keep a current list of all of your assets,** including bank accounts, brokerage, credit union, bonds, and life insurance policies. The list should include the name of the institution, account numbers, the owner (preferably the trust) and the beneficiary, if applicable.
- ☐ **List IRA and retirement accounts separately,** identifying the primary and contingent beneficiaries.
- ☐ **Identify <u>closed</u> accounts on your asset list** indicating the date the account was closed so your trustee doesn't have to chase down false leads.
- ☐ **Periodically check who is named as beneficiary on retirement accounts and life insurance policies.** Companies sometimes lose your beneficiary designation (yes, really!). Or, you may never have updated beneficiary designation after divorce, death of a beneficiary, or creation of a trust. Account statements rarely list beneficiaries so you will have to call. Remember, assets that don't name a beneficiary go through probate.
- ☐ **Try to consolidate and simplify the number of your accounts.** You probably don't need three credit union or five banking relationships. Having multiple accounts makes the job of administering your trust that much more difficult and exponentially increases the likelihood of mishaps and unintended results.
- ☐ **Use a full-service financial advisor.** Having a financial advisor who knows you will pay dividends when it comes to administering your trust. Discount brokers may save you a few bucks during life but will leave your family high and dry when it comes to accessing funds at the time of your disability or after your death. Discount brokerages use call centers, sometimes outside the US. Your fiduciaries will be asked to fill out reams of forms that are difficult to understand, only to have them rejected by the call center representative for minor errors or requirements that were not explained by the first (second or third) representative your trustee spoke with.
- ☐ **Don't own individual stocks.** Over the years, you may have acquired a small number of shares in a life insurance company or other stocks that are being administered by a company transfer agent like "Computershare." These companies are a nightmare to work with. They are hired by the companies whose shares they manage and have no accountability to you. You're not their customer! By contrast, a full-service broker represents your best interests and will be happy to help the transition of money between generations in the hope of keeping the next generation as clients. They will typically be happy help you move your Computershare stocks to your brokerage account, eliminating the need to deal with hellish call center bureaucrats.
- ☐ **Call us if you move or buy a second home, especially if the second home is in another state.** All real estate must be transferred to your trust. Failure to do move out of state real estate to trust will result in DOUBLE PROBATE: Probate in Michigan and the state where the second home is located.

$80 Billion Allocated to IRS Under the 2022 Inflation Reduction Act

While news reports of eighty-seven thousand new IRS auditors is exaggerated, it portends an era of increased IRS scrutiny. As our clients begin to decline, they often stop filing their income tax returns. Disability and death do not suspend or waive the obligation to file income tax returns and pay tax. Your fiduciaries will be stuck with the problem and may even become personally liable for your tax debt. The IRS cannot be ignored!

A decedent's Personal Representative (named in the Will) is responsible for filing the decedent's income tax returns. He or she may be *personally liable* if he or she distributes the estate without reserving funds to pay for tax preparation, tax, interest and penalties. The process of gathering the information necessary to file past returns and then waiting for the IRS to accept them can take years. It is important that you file every year. If you've been doing your own returns, it may be time to hire an accountant to help you stay on task. Don't expose your loved ones to the burdens and liabilities of straightening out your tax mess after your death. The new Inflation Reduction Act will put a lot more IRS eyeballs on you and your family.

Only 13% of Florida Residents have Flood Insurance

We are finding than an increasing number of older homeowners allow their homeowners' insurance to lapse. Without insurance, a fire, flood, or injury to a visitor could wipe out everything you worked so hard for. It is also important to advise your insurance carrier if you have moved to assisted living, a family member's home, or a nursing home, as not living in your home could void your policy. You might want to have your insurances automatically debited from your accounts in order to avoid lapse.

Call Us Immediately When…

Call us from the hospital *before* you are discharged to "rehab." While hospital discharge planners may suggest a facility, it is ultimately your right to choose the nursing home (nursing homes provide both rehabilitation and long-term care services) where you wish to continue your recovery. Hospital discharge planners often choose facilities that only accept Medicare. Since at least 90% of rehab facilities accept both Medicare and Medicaid, it would be a shame to accept a discharge to a facility that you will have to leave when your Medicare days (potentially up to 100 days) run out. Also, **please call us if we haven't seen you since 2017**.