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Estate Planning Solutions

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Top Ten Tweaks To Our Clients' Estate Plans

Estate Plans should be reviewed on a regular basis to accommodate changes in state and federal law, changes within family relationships, and/or possible changes in health or personal finances.

Here are the ten most frequently made changes to our clients' estate plans:

Number Ten... Exercising a Power of Appointment in order to achieve desired planning or tax goals in light of changes in intentions, changes in beneficiaries' circumstances or changes in the law.

Number Nine... Signing updated General Durable Powers of Attorney for Property to avoid

consequences of a financial institution considering them "stale."

Number Eight... Updating estate plan documents in light of a loved one having passed away.

Number Seven... Making Special Provisions (Trusts, Section 529 Plans, Uniform Transfers to Minors Act Accounts, etc.) for Grandchildren.

Number Six... Accelerating or decelerating the time at which, or the form in which (continuing trust vs. outright, e.g.) children or grandchildren become entitled to distributions, as a result of or in anticipation of children or grandchildren getting married.

Number Five... Accelerating or decelerating the time at which, or the form in which children or grandchildren become entitled (if at all) to distributions due to reasons other than marriage – e.g. engaged in risky profession, changes in health, changes in resources, family falling out, spendthrift habits, substance abuse issues.

Number Four... Adding, deleting or modifying bequests of cash or of items of real or personal

property to family, friends, employees and/or charities

Number Three...Giving grown, responsible children a role in the management of estate and trust affairs in event of your death or incapacity – as current or successor Trustee (or Co-trustee) of your living Trust, as current or successor Agent (or Co-Agent) under your Property and Health Care Powers of Attorney, as Executor (or Co-Executor) under your Will, etc.

Number Two...Updating estate plan documents in light of changes in tax laws

And the Number One Tweak to our Clients'

Estate Plans...Repositioning or otherwise dealing with assets (through beneficiary changes, retitling in name of a trust, reshuffling as between husband and wife, gifting to loved ones or charities, and/or instituting or modifying business purchase agreements, among other techniques) in order to minimize taxes and avoid probate court proceedings at death and incapacity.

Number One above may be wishful thinking on our part. Failure to get newly acquired assets properly positioned correctly may actually be the number one reason estate plans fail to achieve their purposes.

Does your estate plan need a tweak or two?

It costs you nothing to find out. Lahti, Lahti & O'Neill, LLC provides a complimentary estate planning update consultation to clients who haven't had their estate plan reviewed in three or more years, provided they complete our simple ***Estate Planning Update Questionnaire***. Call or email or stop in soon to schedule an estate plan review. ♦♦♦

Upcoming Tax Law Changes

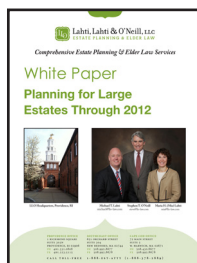
Now that the health care law has been declared constitutional, the remaining provisions will be going into effect. One little known provision is a new 3.8% investment income surtax, also called the health care surtax or the Medicare tax; it will go into effect on January 1, 2013.

This new surtax will be assessed on the lesser of a) net investment income or b) the excess of modified adjusted gross income (MAGI) over the "threshold amount." For married taxpayers filing jointly, the threshold amount is \$250,000; married filing separately, \$125,000; all other individual taxpayers, \$200,000. For trusts and estates, it is the beginning of the top income tax bracket (\$11,650 in 2012). Stated another way: 1) If your modified adjusted gross income (MAGI) is less than or equal to the threshold amount that applies to you, you will not pay this tax. 2) If your modified adjusted gross income (MAGI) is greater than the threshold amount that applies to you, you will pay the 3.8% tax on the lesser of a) your net investment income or b) the amount of your MAGI over the threshold amount.

Note that the surtax liability is determined on income *before* any tax deductions are considered. That means your deductions could put you in the lowest income tax bracket, yet you could still have investment income that is subject to the surtax. Also, the capital gain rate is scheduled to increase for high-income taxpayers to 20% in 2013, so the total tax on capital gains (with the surtax) could be 23.8% in 2013 and beyond.

The good news is that there are some steps you can take this year to help you avoid or reduce the amount of surtax beginning in 2013.

Also, 2012 is an exceptional year for estate planning in general. The federal estate tax exemption is \$5.12 million, which allows a married couple to transfer as much as \$10.24 million from their estate with no estate tax. Under current law, this exemption is scheduled to shrink to \$1 million in 2013. Other Bush tax cuts, including income and capital gain taxes, are set to expire at the end of 2012.



For more information about available wealth transfer techniques, consult LLO's 12-page ***White Paper*** (cover at left), ***Planning for Large Estates Through 2012***, which was distributed in January of this year.

It's available on our web site, or hard copies can be provided upon request.

Now, more than ever, you need the assistance of experienced professionals to advise you and help you implement the best plan for you and your family. We stand ready to assist you. ♦♦♦

Wandry v. Commissioner: IRS Provides a "Road Map" for making Gifts of Business Interests Using "Defined Value" Clauses

On March 26, 2012, the United States Tax Court issued a groundbreaking decision in *Wandry v. Commissioner* approving of use of a defined value clause in gifting of a closely held business interest, i.e. gifting of an asset without a readily determinable fair market value. *Wandry* is the latest in a line of cases over the last few years that have approved of defined value clauses as a distinct estate planning technique apart from so-called "savings clauses" that were rejected long ago in *Commissioner v. Procter*. Yet up until *Wandry* the line of taxpayer-favorable defined value clause cases have all had an important factor in common, a factor which often inhibited potential donors from making gifts of interests in closely held businesses. In those older cases, the donors had to include a charitable beneficiary in the gifting transaction in order to be successful. The reasoning behind this was as follows: because the interest being gifted had no readily determinable fair market value, the interest had to be appraised by an independent business appraiser, and the appraisal had to be submitted to IRS with the required federal gift tax return. Such appraisals typically apply non-marketability discounts and similar discounts against the gross value of the gifted interests, and the IRS often contests the size of such discounts. In the past, if the IRS successfully asserted that the true fair market value was higher than the appraised value, the only way to avoid paying gift tax on the excess value was to have stated in the gifting instrument that any such excess went to charity.

Wandry is groundbreaking in that it is the first case to approve of a defined value clause where no charitable donee was a party. In fact, no "residual"

beneficiary was involved at all. Instead, in *Wandry* IRS revaluation served to reallocate interests in excess of the defined value to the original donor, something that was previously thought to be too aggressive. Even better, the Tax Court provided a "road map" of the points to follow when implementing a defined value clause.

The details of IRS' new defined value clause roadmap are beyond the scope of this Article, but we'll gladly share the details with you or your advisors or colleagues if you give us a call. ♦♦♦

Request a Speaker

Lahti, Lahti & O'Neill will be happy to conduct complimentary Estate Planning & Elder Law educational workshops and seminars for professional management organizations, retired professional groups, financial advisor firms and senior support groups. To arrange an educational seminar or workshop for a group of 25 or more people, email or call us at (401) 331-0808.

Introductions

Lahti, Lahti & O'Neill is always grateful to receive referrals from our clients and professional colleagues. If you know of anyone interested in our estate planning or elder law services, please have them contact us for a free consultation.

Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication is not intended or written to be used for, and may not be used for, the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This Newsletter should not be construed as legal advice but rather as general guidance on matters as to which you may wish to consult with a qualified professional advisor.



An Interview With Mia Lahti

*Interviewed By
Brian McCarthy*

1. Why did you become an attorney?

I became interested in a legal career while in

college, taking political science classes. During my senior year at Vassar, I did an internship at a legal aid office in Poughkeepsie, New York. That experience confirmed that I wanted to go to law school, and specifically I was interested in family and disability law. I ended up working for a legal services office in New Bedford after Suffolk Law School, and found that elder law and estate planning interested me most.

2. How long have you practiced law?

I began practicing law in Massachusetts in 1988. Soon after, I got my license to practice in Illinois and then Rhode Island.

3. What areas of estate planning & elder law do you enjoy the most?

I most enjoy probate practice because it enables me to help families at a difficult time. I have lost family members, and I can relate to how challenging it can be to take care of legal affairs after the death of a loved one. Focusing on the area of probate has enabled me to become very knowledgeable in one area, while giving me opportunities for client contact.

4. Has your practice changed much over the years?

I started out in legal services focusing on public benefits and some family law practice. When Mike and I lived in Chicago for several years, I worked in a small firm that focused on special education law and estate planning for families with disabled dependents. I did not practice special education law after that job, but took away from it a greater knowledge of special needs planning and public assistance.

I put my legal career on hold for about twelve years, during which time I focused on raising three terrific children. I work four days a week now, since I continue to be busy with our 10, 14 and 16 year old kids.

5. How does your work fit into the LL&O organization?

Mike and Steve handle the firm's estate planning and drafting. However, if people don't do any advance planning, and later become unable to express personal, medical, and financial decisions, they may need a guardianship and/or conservatorship. That's where I step in and assist families and couples with petitioning the probate court to have someone appointed as a decision-maker. Likewise, if someone passes away without having given proper thought to establishing an estate plan, their estate may need to go through "probate" which is court-supervised. I assist with that process, and also assist with trust administration.

6. What inspires you to practice law?

My inspiration to practice law comes from my enjoyment in working with families toward a positive, constructive goal. I deliberately chose an area of law that does not involve litigation or a lot of adversity, but is positive and helps people put their families' affairs in order. I love this kind of work.

7. Describe a typical day in your law practice, and in your personal life.

A typical day for me involves juggling a vibrant law practice, with the help of my husband Mike and our partner Steve, with running a busy household with three children...and pets! I work two days a week in our New Bedford office, which is close to our home in Dartmouth, Massachusetts and two days in the Providence office. My work involves a lot of client contact, which I greatly enjoy, and a lot of paperwork, which I find challenging, but in a good way.

When I get home from work, I often have evenings where I feed my family before we get back into the car and off to the kids' assorted activities. I'm happiest when I'm busy.

8. What general advice do you give to your clients?

Because my work often involves helping clients who have failed to plan, I cannot emphasize strongly enough how important it is to have plans set up properly, ahead of time. Clients should always call me if they have questions or concerns.

Brian McCarthy is an independent marketing consultant