



Lahti, Lahti & O'Neill, LLC
Estate Planning and Elder Law



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**Traversing the Retirement Plan Beneficiary
Designation Minefield**

Stephen T. O'Neill, Esq.

A February 1, 2014 article by the Wall Street Journal's Kelly Greene, "*The Hazards of Inheriting an IRA*," contrasts the benefits of properly structured retirement plan beneficiary designation arrangements with the pitfalls of neglecting such arrangements.

Although Ms. Greene's article discusses IRA's, the same benefits and pitfalls pertain to all tax-deferred retirement vehicles, i.e. not just IRAs but also corporate and self-employed retirement plans such as 401(k)s, profit-sharing plans and the like.

Ms. Greene reminds readers that there are numerous occasions during their lives when retirement plan beneficiary arrangements should be revisited: as new retirement vehicles are put in place, as employment history changes, as plan custodians are changed, as family circumstances change (births, adoptions, marriages, divorces, deaths, etc.). Proper attention to beneficiary arrangements at such times can produce

significant, even multi-generational, prolongation of tax-deferred retirement plan distribution stretchout. Neglect, on the other hand can severely truncate tax-deferred stretchout. And we all know how painful a truncated stretchout can be!

At LLO, as prospective new clients come in for their free initial consultation, we ask that they complete our *Client Organizer*. As existing clients come in for their free three-year reviews, we ask that they complete our *Estate Planning Update Questionnaire*. Both of these forms elicit, among other personal and financial information, details regarding all retirement vehicles, *including beneficiary arrangements*. As part of the estate planning process, we make sure that proper attention is paid to retirement plan beneficiary arrangements. In fact, we recommend that prospective and existing clients obtain written confirmation from each retirement plan administrator and IRA custodian as to primary and contingent beneficiaries. Such information is obtainable online or with a telephone call.

Here are some issues we commonly address once all necessary information is at hand:

- a. Have you designated not just a primary but also a contingent beneficiary or beneficiaries?

b. If you have named children or other non-spouse individuals as beneficiaries, have you provided for the possibility that one or more of these individuals might not survive you?

Planning Tip: some but not all IRA custodians' beneficiary forms allow checking off a "per stirpes" box, the legal effect of which is that if a beneficiary predeceases you, his or her share is payable to his or her offspring. If the custodian's form doesn't include "per stirpes" checkboxes, the only way to provide for a predeceased beneficiary's offspring is by attaching special language as an exhibit to the beneficiary designation form.

c. Do the circumstances of any beneficiary, or your overall estate plan objectives, call for designating a trust as beneficiary, rather than merely having benefits payable outright?

For more information on this topic, go to the "Articles by LLO" page of our website and read Using Standalone Retirement Distribution Trusts, a chapter which Steve O'Neill wrote for the 2008 book, Estate Planning Strategies, published by Wealth Builders Press, LLC.

d. What estate tax and income tax minimization provisions relating to retirement benefits should be included in the estate plan documents?

For example, is there a provision assuring that retirement benefits can't be used to pay death taxes; are there provisions assuring that retirement benefits payable into a trust will be distributed out of that trust in accordance with IRS' required minimum distribution regulations?

If you're uncertain about the effectiveness of your retirement plan beneficiary arrangements, contact us and arrange for an estate plan review. We'll set a date and send you our ***Estate Planning Update Questionnaire***. We'd urge that as you complete it, you conduct your own "retirement planning audit" by having each IRA custodian and retirement plan administrator provide written confirmation of your current beneficiary arrangements. And if you're thinking of referring us a friend, relative, colleague or client, rest assured we'll pay close attention to all aspects of their estate planning and retirement distribution planning.

Reminders About Estate Tax Exemptions

We would like to refresh everyone's memories on the various estate tax exemption amounts. As a brief and very general introduction, in most states, the estate of a decedent may owe an estate tax at the state and federal level based on the amount of the assets the decedent owned. The decedent must own assets beyond a threshold amount in order to pay an estate tax. In most states and on the federal level, such as Massachusetts and Rhode Island, this threshold "exemption" amount is doubled for married couples. Here are the important numbers:

- Rhode Island: In 2014, an estate tax is due for estates over \$921,655
- Massachusetts: In 2014, an estate tax is due for estates over \$1,000,000
- Florida: Florida has no estate tax
- Federal Estate Tax: In 2014, an estate tax is due for estates over \$5,340,000

The estate tax rates are variable but as an example, at the federal level, the maximum rate is capped at 40% for 2013 and beyond. The above exemption amounts also are adjusted annually for inflation. If you are worried about leaving your spouse or children with such a monetary burden after your death, come in and speak with us about various planning techniques.

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.

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.

Ways to Benefit Charity through Giving

By Rebecca E. Dupras, Esq.* and Mia H. Lahti, Esq.**

In our spring 2013 Lahti, Lahti & O'Neill, LLC newsletter, we touched on the subject of charitable bequests, and gave several examples of how bequests can be structured to aid various charities and schools. The Rhode Island Foundation has been kind enough to expand on this topic, describing clearly the different ways to approach charitable giving.

Besides the standard cash gift, there are many other ways that you can give to support your favorite charities. These options provide ways of not only reducing estate and income tax liabilities but also allow you to create a legacy that will last and show your values for future generations.

Bequests

Bequests are generally the simplest way for many donors to make significant, lasting gifts to charity. After the needs of family and other loved ones are addressed, many individuals find it satisfying to know that a portion of their resources will make a difference through a gift to charity. There may also be an estate tax savings that comes with a bequest.

Charitable Gift Annuities

Charitable Gift Annuities (CGAs) are a way for you to make a gift today and still receive income for yourself or another person, such as a spouse. CGAs are contracts between you and a charity. In return for your donation, you or another person will receive a yearly fixed payment for life. The remainder goes to benefit the charity. There are several factors that impact the annual payment, including your age. You receive a charitable deduction in the year the contract is set up. There is also favorable taxation on the annual payments depending on the type of asset used to fund the gift and other factors.

Charitable Remainder Trusts

Charitable Remainder Trusts (CRTs) are similar to CGAs in that a present gift is made in exchange for a stream of income to either the donor or some other person(s). The trust pays out a percentage of the trust, depending on several factors, including the beneficiary's age. There is more control with CRTs than with CGAs; more than one person can receive the benefit, it can be for a term of years, the payout is more flexible, etc. There is also a favorable tax structure applied to the payments depending on the type of asset used to fund the gift and other factors.

Charitable Lead Trusts

Charitable Lead Trusts (CLTs) are the reverse of the CRT model discussed above. Assets are transferred to a trust for a number of years. Annual payments are made to a charity during those years and at the end of the term the balance is paid to the beneficiaries named in the trust. This is beneficial to certain donors who wish to receive a charitable deduction for their gift but also transfer assets to their family members with substantially reduced gift and estate tax liabilities.

Life Insurance

Life insurance gifts have become an increasingly popular way of giving to charity. These types of gifts allow donors to make a relatively small, yearly, tax-deductible contribution to leverage a substantial gift to support their favorite charity after they have passed away. It is fairly simple to accomplish this type of gift: 1.) you take out an insurance policy on yourself; 2.) all ownership rights belong to the charity; and 3.) the charity is irrevocably named as the beneficiary so that it receives the proceeds. Each year, you pay the premiums, which are treated as a charitable contribution. The proceeds of the policy pass to the charity free of estate taxes.

Appreciated Securities (Stocks)

Gifts of appreciated securities or stocks save income tax and may avoid capital gains tax. For most donors, the full fair-market value of publicly-traded stocks and bonds may be deducted for income tax purposes up to 30% of your adjusted gross income with a 5-year carry-over. Appreciated securities and stocks may also be used to fund a CGA, CRT or CLT discussed above.

IMPORTANT

You should always consult your tax or financial planning adviser before making any gift or contribution of assets. Should you have questions about any of the options, please contact us at Lahti, Lahti & O'Neill, LLC., or contact The Rhode Island Foundation directly. We both can provide you with projections to see what type of gift would work best for you and your family.

Lahti, Lahti & O'Neill, LLC greatly appreciate the substantial information provided by the Rhode Island Foundation for this article.

*Rebecca E. Dupras, Esq. Donor Services & Planned Giving Officer, Rhode Island Foundation

**Mia H. Lahti, Esq. Partner, Lahti, Lahti & O'Neill, LLC

Questions for the Attorneys

Question: What is the average time span for a typical estate to proceed through the Probate Court system in Rhode Island? How about Massachusetts?

Answer from Mia H. Lahti, Esq.

In both Massachusetts and Rhode Island, estates generally do not get completely closed and distributed before one year has passed, to give any potential creditors time to file a claim on the estate.

Massachusetts has adopted the Uniform Probate Code in an attempt to streamline the probate process whenever possible. For smaller, simple estates, the process can go quickly, within a couple of months under the “informal” procedure. However, the “formal” probate procedure can take anywhere from six to ten weeks just to get a personal representative appointed.

In Massachusetts, most of the probate process takes place “administratively”, i.e., through the mail without a court appearance. Unfortunately, the probate clerks’ offices in most counties are backlogged due to staffing shortages. The hope is that as the bugs get worked out of the Uniform Probate Code (UPC), the process will move more quickly and efficiently.

Rhode Island has not adopted the UPC, and requires an initial court appearance by the personal representative or attorney. So there is an added expense and time up front, but then the process proceeds more quickly. If the judge finds everything to be in order at the initial court appearance, he/she will immediately appoint the personal representative, who can begin administering the estate.

How does a person who turns 70 ½ calculate exactly how much money they have to remove from their IRA to satisfy the government?

Answer from Stephen T. O’Neill, Esq.

Unfortunately there’s not a simple answer. For example, although you’re not required to take the first distribution until April 1 of the year following the year in which you turn 70 ½, from an income tax planning point of view it usually makes sense to take the first distribution by 12/31 of the year that you turn 70 ½; and if your spouse is more than 10 years younger than you (we should be so lucky), you calculate your annual required minimum distributions using a different IRS Table. The answers to most of your questions, including the IRS Tables, are all found in IRS Publication 590, <http://www.irs.gov/publications/p590/> which is republished once a year.

Question: Are conversations between an attorney and a potential client still considered “Attorney/Client Privileged,” if the potential client never hires the attorney?

Generally speaking, yes, the private conversations held between an attorney and a potential client are considered confidential even if the potential client never hires the attorney. However, there are several exceptions. This privilege may not apply when the communications are used to further a crime, tort, or fraud, or if the communications are not already confidential (this can occur for any number of reasons – i.e., the potential client shares it with others or the information is already in the public domain). We take this privilege very seriously.

Questions?

If you have a question regarding estate planning or elder law, please email it to rose@llo-law.com and look for the answer in a future newsletter.

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.