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Estate Planning and Elder Law

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Michael Lahti--Steve O'Neill--Mia Lahti

Providing Peace of Mind Since 1976

Estate Planning Solutions *Holidays 2011*

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Michael, Mia, Steve, Laurie, Mary & Rose – The Lahti, Lahti & O'Neill, LLC Team

Top Ten Reasons for Updating Your Estate Plan

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Estate holdings have become more valuable and/or complex

Number Nine

Sold or about to sell business

Number Eight

Descendant encounters or overcomes financial or personal difficulties

Number Seven

One or more children in parents' business (especially when one or more is not)

Number Six

Children now grown and have established careers and/or families and/or have varying levels of financial security

Number Five

Spouse or other family member deceased or incapacitated

Number Four

Have or are expecting Grandchildren

Number Three

Children about to get or have recently married

Number Two

Laws and Regulations have changed

And the Number One Reason for Updating Your Estate Plan…

It's been too darn long since you've paid those charming LLO folks a visit!

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. Call or email or stop in soon to schedule an estate plan review. ♦♦♦

LLO welcomes its newest employee, Rose McPherson, who joined us in September. Rose is working as an assistant to our two Senior Paralegals, Laurie LaRoche and Mary MacLeod. She is a veteran of the Iraq War and is enrolled in Bristol Community College's Office Administration Program. Rose can be reached at Rose@llo-law.com

Updated LLO E-mail Directory

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Planning for an Incapacitated Loved One, Part II: Guardianships

Maria H. ("Mia") Lahti, Esq.

When does one need to petition the court to become appointed as the guardian of a family member? Guardianship is needed only when a person is incapacitated and unable to make important life decisions. If the incapacitated person has not executed a Power of Attorney ("POA"), POA for Health Care, or Health Care Proxy (as they're called in Massachusetts), then it may be necessary to petition the court to have a decision-maker, i.e., guardian, appointed for that person. If the individual is unable to make important decisions due to a developmental disability, then they may have never had the capacity to execute a POA, and a guardianship petition can be filed after the individual turns eighteen.

In Rhode Island, city and town probate courts issue guardianship orders and oversee guardianships. In Massachusetts, probate courts in each county process and issue orders. The guardian's authority, once appointed, may include the right to make health care decisions, to decide what relationships the individual may have and with whom (e.g., marriage), to decide where the individual will reside, and to control that person's finances. In Massachusetts, the term "guardian" applies to a court-appointed decision-maker for medical and personal decisions, and the term "conservator" applies to a court-appointed decision-maker for financial decisions. Rhode Island does not differentiate between guardianship over the person and estate. Rhode Island's guardianship law allows an order to be tailored to focus on one or more of four areas of decision-making capacity: finances, health care, relationships, and residence.

Therefore, individuals who are not incapacitated can avoid the cost and loss of privacy that are involved in guardianship proceedings by executing a POA and health care directives. Important decision-making support can also be accomplished through the use of trusts. An estate

better chance of avoiding guardianship than just a POA.

An estate plan that includes these important documents can save your family members time and money. Health care directives will be effective indefinitely, but POAs should be updated every few years. Clients of LLO are entitled to regular three-year updates to their POAs at no cost. Please give us a call if we drafted your POA more than three years ago and schedule a no-cost appointment. ♦♦♦

Estate Taxes in Rhode Island, Massachusetts and Florida: The Hard Numbers

Set forth below are Tables for Rhode Island and Massachusetts showing the death tax on estates of various sizes, ranging from a zero taxable estate to a $19,000,000 taxable estate. In both states, as soon as you hit the taxable threshold, you are in a very high "marginal" bracket -- 39% in Rhode Island and 41% in Massachusetts. These high brackets continue to apply until the "taxable estate" (essentially the gross estate less any marital or charitable deduction less any deductible debts and expenses) reaches $75,000, at which time the marginal bracket drops (though as the tables illustrate, not as precipitously in Massachusetts as in Rhode Island) to about 6%, and then works its way back up gradually for large taxable estates until it hits the maximum marginal rate of 16% for taxable estates over $10,000,000.

Rhode Island Estate Taxes – as of 2011

Total Estate	Taxable Estate	Estate Tax	Marginal Rate
$859,350	$0	$0	0%
869,350	10,000	3,900	39%
909,350	50,000	19,500	39%
934,350	75,000	29,250	39%
959,350	100,000	30,924	6.69%
1,059,350	200,000	36,524	5.6%
1,859,350	1,000,000	89,473	6.6%
2,859,350	2,000,000	169,623	8%
4,859,350	4,000,000	375,847	10.3%
9,859,350	9,000,000	1,046,221	13.4%
19,859,350	19,000,000	2,644,296	15.98%

Massachusetts Estate Taxes – as of 2011

Total Estate	Taxable Estate	Estate Tax	Marginal Rate
$1,000,000	$0	$0	0%
1,010,000	10,000	3,900	41%
1,050,000	50,000	19,500	41%
1,075,000	75,000	29,250	41%
1,100,000	100,000	38,800	32.2%
1,200,000	200,000	45,200	6.4%
2,000,000	1,000,000	99,600	5.5%
3,000,000	2,000,000	182,000	8.24%
5,000,000	4,000,000	391,600	10.48%
10,000,000	9,000,000	1,067,600	13.52%
20,000,000	19,000,000	2,666,800	15.99%

As indicated, the tables produce unfortunate results for taxpayers whose estates are between $1 and $100,000 over the state exemption amount. The silver lining may be that, because neither Rhode island nor Massachusetts has a gift tax, taxpayers can make gifts to reduce their estates down below the taxable threshold right up until their date of death, with the result that such gifts escape both state gift tax and state death tax.

Don't make gifts unless you are certain you can thereafter continue to maintain your standard of living. And in considering whether you should make gifts, bear in mind that gifting of appreciated capital gain property can produce unnecessary capital gains taxes for your heirs after your death. This is because the recipients of your gifted capital gain property must use *your* income tax basis as *their* income tax basis, whereas if the same capital gain property was retained by you until your death, it would get a brand-new "stepped up" income tax basis equal to its date of death value, effectively eliminating any potential capital gains tax. So generally it is preferable to make such gifts using either cash or other property which has little or no appreciation.

For our Florida resident clients: Florida currently has neither a gift tax nor an estate tax. However, if by Congressional inaction or Presidential veto we wind up with a $1,000,000 federal estate and gift tax exemption in 2013, this could have the effect of reinstating Florida's pre-2002 estate tax regime. Stay tuned and stay warm. ♦♦♦

Please Introduce Us!

Do you have family, friends, colleagues, customers, clients or other acquaintances who might benefit from our 70-plus years of combined estate planning and elder law experience? Do you have acquaintances needing help in protecting their family and property and in paying less tax?

If so, give them one of the enclosed **Introduction Certificates**, and ask them to call us.

A Tax-Free, Charitable Opportunity, Scheduled to Expire at the End of 2011

While the fate of the IRA charitable rollover remains uncertain for 2012, this year it continues to offer persons age 70 1/2 and older a special, *tax-free* opportunity to make a significant charitable gift.

How does the IRA charitable rollover work?

If you are at least 70 1/2 and required to take a 2011 minimum distribution from your IRA, you can transfer up to $100,000 of your IRA assets directly to a public charity. The transferred assets will not be recognized as income, so they will be free from federal income taxes today and will also be free from estate taxes in the future. If you and your spouse are both of an age where required minimum distributions must be made, you each may transfer and deduct up to $100,000 in 2011.

Amounts transferred to charity from your IRA in 2011 also are a credit against your 2011 required minimum distribution.

At present, only IRAs qualify for this special charitable treatment. The withdrawals cannot come from any other type of retirement plan.

Although expanding the scope of the charitable IRA rollover has been discussed in Congress, it currently does not apply to other charitable alternatives such as donor-advised funds, charitable gift annuities, charitable remainder trusts, and private foundations. ♦♦♦

Request a Speaker...

Lahti, Lahti & O'Neill, LLC 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. Seminar attendees will learn how to avoid probate at death and incapacity, reduce or eliminate estate taxes, protect a residence from nursing home expenses, and more.

To arrange an educational seminar or workshop for a group of 25 or more people, email or call any of our attorneys or senior paralegals – see the LLO e-mail directory on page 2.

Rhode Island Estate Tax Exemption is Inflation-Adjusted for 2012 to $892,865

The Rhode Island Division of Taxation announced in October that the Estate Tax Exemption is to be raised 3.9% for deaths occurring on or after January 1, 2012, to account for inflation. Thus the exemption as of 1/1/12 will be $892,865.

As soon as our estate tax calculation software has been updated to reflect this increase, we'll notify our readers and update the chart which appears on page 3. In the meanwhile, Rhode Island residents who are thinking of getting their estates down below the taxable threshold (see the discussion of this on page 3) should be aware that the threshold will be raised to $892,865 as of 1/1/12. ♦♦♦