Trusts & Estates Update: October 2013

By RIW on October 11, 2013

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Powers of Attorney and Health Care Documents: An Integral Part of Every Estate Plan

A power of attorney, a health care proxy, and a medical privacy release ("HIPAA Authorization"), are powerful tools and an essential part of your estate plan. If these documents are not in place when they are needed, your family will have no legal authority to act on your behalf with regard to any financial or contractual matters, or with regard to your health care decisions. For example, your family would not be allowed to access your bank balances, speak with your mortgage representative, or make medical appointments for you; and you would not be able to do these and many other necessary tasks for your spouse, elderly parent, or adult child.A durable power of attorney is a legal document in which you appoint someone you trust as your "attorney-in-fact" to manage your finances. This document may also include the powers to fund or create trusts, manage your investments, make gifts, pay your bills, file your tax returns, and maintain, sell and/or mortgage your real estate.

A health care proxy is a legal document in which you name an individual to make health care decisions for you when you are unable to make or communicate such decisions. Since living wills are not legally binding in Massachusetts, having a health care proxy is critical. A HIPAA Authorization grants named individuals access to your protected medical information. Without this written authorization, your medical professionals and insurance company will violate medical privacy laws if they disclose your information without your in-person authorization.

Without a durable power of attorney and health care documents in place, your loved ones will have to file a Probate Court Petition requesting that the Court appoint a conservator and/or a guardian to manage your financial and health care affairs if you become unable to

do so.

Clients often have difficulty selecting their attorneys-in-fact or health care agents, due to the tremendous responsibility and authority those individuals will have. Choosing an attorney-in-fact who is organized and responsible, and a health care agent who will be calm and comfortable carrying out your specific health care wishes, is important. In all cases, care must be taken to select people you trust implicitly. Naming successors to those individuals is also important, as future circumstances may make it impossible or undesirable for your first choice to serve.

We recommend that you review these critical documents every three to five years to ensure that your initial choices are still appropriate. In addition, financial institutions and certain health care facilities may refuse to honor older durable powers of attorney, deeming them "stale." Although a durable power of attorney is legally valid no matter how long ago it was executed, having a nursing home or bank refuse to honor it can leave your loved ones scrambling at a crucial time and may force costly Probate Court involvement. Simply refreshing a durable power of attorney every few years can save your loved ones the time, expense and aggravation of dealing with institutions that refuse to honor an older durable power of attorney.

In addition to having your own durable powers of attorney and health care documents, your children need these as well when they attain 18 years of age. This comes as a surprising realization to many parents who, though they understand that their children are legally adults, have not thought about the implications of having their legal authority to act for their children expire.

If it has been some time since you last executed your health care documents or durable power of attorney, or if you do not have these documents in place at all, we encourage you to call us so that we can assist you with this vital part of your estate plan.

The Repeal of the Defense of Marriage Act ("DOMA"): IRS Issues Needed Guidance

On August 29, 2013 the Internal Revenue Service released Revenue Ruling 2013-17 which provided much awaited guidance into the tax implications of the United States v. Windsor, 570 U.S. _____, 133 S. Ct. 2675 (2013), whereby the Supreme Court struck down Section 3 of DOMA. In summary:

- The "state of celebration" rule will be followed. Same sex couples legally married in a jurisdiction that recognizes same sex marriage will be treated as married for federal tax purposes (including income, estate and gift) regardless of whether the couple currently lives in a jurisdiction that recognizes same sex marriage.
- Legally married same sex couples must file their 2013 federal tax return as either married filing joint or married filing separate.
- Legally married same sex individuals may, but are not required to, file original or amended returns, and refund claims, choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations.
- Windsor and the Revenue Ruling will be applied prospectively beginning September 16, 2013.
- Couples in a registered domestic partnership or civil union will not be treated as married for federal tax purposes.

Now that we have clear guidance as to how the Windsor case will be applied, we encourage all legally married same sex couples to determine whether their estate plans need to be revised. Prior to the Windsor case the federal estate tax marital deduction was not available

to the surviving spouse in a same sex marriage, and many techniques were employed to work around the potentially devastating financial consequences of the federal estate tax payment that became due upon the first spouse's death. These techniques may no longer be necessary, and we welcome your inquiries if you would like us to assist you with a review of your current estate plan, or with formulating a new one.

Other Tax Items

Projections based on the August 2013 Consumer Price Index have been released for those tax items that are adjusted for inflation annually. Those impacting the federal estate, gift and Generation-Skipping Transfer Tax are listed below:

- The annual gift exclusion amount for 2014 is projected to remain unchanged at $14,000.• The annual gift exclusion amount for gifts to a non-citizen spouse is projected to increase to $145,000.
- The unified estate and gift tax exclusion amount is projected to increase to $5,340,000 for 2014.
- The GST tax exemption amount is projected to increase to $5,340,000 for 2014.

Member Spotlight

Lisa Weinstein Burns, Esq.

Lisa Weinstein Burns is a shareholder of the firm and the Co-Chair of the Trusts & Estates Group. For more than 18 years, Ms. Burns has concentrated her practice in the areas of tax planning, multi-generational wealth transfers, business succession planning, estate planning and estate administration.Her work with clients includes drafting a variety of estate planning documents including wills, revocable trusts, irrevocable insurance and generation-skipping trusts, qualified personal residence trusts, charitable trusts, durable powers of attorney and healthcare proxies. Ms. Burns also assists executors and fiduciaries with estate and trust administration matters.

Ms. Burns has achieved an AV Preeminent Rating in Martindale-Hubbell from her peers, which is the highest possible rating for both ethical standards and legal ability. She recently has also become a member of the New Hampshire Bar and has been recognized by Boston Magazine and Law Politics magazine as a "Super Lawyer Rising Star" in the area of Trusts and Estates.

In the April 2008 issue of Women's Business Boston, Ms. Burns was named one of The Top 10 Lawyers by readers. Ms. Burns is a lecturer for Massachusetts Continuing Legal Education (MCLE) and has published several articles on various legal topics.

For a full description of our **Trusts & Estates Group** and a list of all of our practice areas, visit **riw.stagingarea.org** or contact any member of the T&E Group listed below.

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