Spring 2016

Estate Strategies

New Laws Take Aim at Inherited Guns

Did your grandfather leave you his Colt Army Revolver in his will? If so, then Senate Bill 225 should help.

By: Paula J. Manderfield

Did your grandfather leave you his Colt Army Revolver in his will? Are you the personal representative of an estate and have to deal with disposition of firearms?

The intent of SB 225 is to simplify the process of how to transfer ownership of an inherited pistol, including a pistol that was never registered, as is often the case with older guns.

If so, then Senate Bill 225 should help. It was signed by the governor and went into effect February 22, 2016.

The bill will hopefully make it easier for the person inheriting the pistol and for the person disposing of the decedent's estate, and provide guidance to local law enforcement agencies. SB 225 amends the Firearms Statute, MCL 28.422, to add a provision dealing with the transfer of ownership of a pistol by inheritance. The intent is to simplify the process of how to transfer ownership of an inherited pistol, including a pistol that was never registered, as is often the case with older guns.

Old Law

Section 2, paragraph (1) of MCL 28.422 provides that a person shall not purchase,

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carry, possess, or transport a pistol in this state without having first obtained a license for the pistol as prescribed in this section and sets forth the requirements for obtaining a pistol. A personal representative was required to apply for and obtain a pistol license and register each pistol that he or she takes possession of for the sole purpose of testamentary or intestate disposition. It also required that before inherited pistols could be transferred to a devisee under a will, a license to purchase had to be approved by the commissioner or chief of police, sheriff, or authorized deputy, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.

New Law

The statute as amended states: "This section does not prevent the transfer of ownership of pistols to an heir or devisee, whether by testamentary bequest or by the laws of intestacy regardless of whether the pistol is registered with this State". "An individual who has inherited a pistol shall obtain a license as required in this section within 30 days of taking physical possession of the pistol" (emphasis added). The license may be signed by a next of kin of the decedent or the person authorized to dispose of property under the estates and protected individuals code, MCL700.1101 to 700.8206.

The amendment allows for pistols that have never been registered to pass by inheritance, which may be the case with antique or sentimental guns. The responsibility is then on the heir or devisee to apply for and obtain a license within 30 days after taking possession.

If the heir or devisee is not qualified for a license under Section 2, he or she may direct the decedent's next of kin or the person authorized to dispose of the estate's property to dispose of the pistol in any manner that is lawful and the heir or devisee considers appropriate. MCL 28.422(3)(a-h) contains the requirements a person must meet in order to be qualified for a pistol license; these requirements have not changed. A few of the requirements to obtain a pistol license include being 18 years of age or older, not being convicted of certain felonies, and not being subject to a court order under the mental health code.

Section 2, paragraph (8), further provides that "A law enforcement agency may not seize or confiscate a pistol being transferred by testamentary bequest or the laws of intestacy unless the heir, or devisee does not qualify for obtaining a license under this section and the next of kin or person authorized to dispose of property under the estates and protected individuals code, MCL 700.1101 to 700.8206, is unable to retain his or her temporary possession of the pistol or find alternative lawful storage".

In a case where a pistol is confiscated under Section 2 and the heir or devisee is not qualified to obtain a license, the heir or devisee retains an ownership interest in the pistol. The amendment provides that within 30 days of being notified of the seizure, the heir or devisee may file with the appropriate court asking the court to direct the law enforcement agency to lawfully transfer or otherwise dispose of the pistol. During this time period, law enforcement shall not destroy, sell or use the pistol until after 30 days from notifying of the seizure and no legal action having been filed in any court.

While this amendment should help streamline the process for the personal representative administering an estate, there are several issues that are not being addressed. Should the personal representative or person with authority to dispose of property determine before transfer of the pistol if the heir or devisee is qualified to obtain a pistol license? Does Probate or Circuit Court have jurisdiction? The statute is silent on both of these. It is also silent on how long the personal representative or person authorized to dispose of property may retain possession of possibly an unregistered pistol. One would assume it would be for the ordinary course of administering an estate, but again, the statute is silent.

Who Controls My Body at Death?

Coming Soon: Funeral Representative Designations

By: Marlaine C. Teahan

Who controls the disposition of a person's body or the final resting place of an individual, or decedent, after his or her death?

Old Law

Generally speaking, Michigan law has provided that the next of kin, in a certain order of priority, had authority to make decisions regarding a decedent's funeral arrangements and the handling, disposition, cremation, right to possess the cremains, and disinterment of a decedent's body. The presumption that the next of kin had this decision-making authority often created disputes between those closest to the decedent and the next of kin (who may have been estranged from the decedent or were very distantly related).

Until now in Michigan, without creative will or trust provisions that would disinherit uncooperative next of kin, not following a decedent's wishes on burial or cremation, an individual could not direct how their body would be disposed of after death. This was true even though a person could designate another to make medical decisions for him or her during life. This dichotomy between a person's ability to make decisions for themselves during life but not after death has frustrated many individuals and many estate planners. Similarly, the struggle at death over the control of a person's body between close friends and relatives often involved funeral homes in heated disputes and difficult situations with bodies that could not be buried in a timely fashion.

New Law

Effective June 27th, 2016, an individual's designation of a funeral representative will control who has the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body. This power includes the right to decide about cremation, and the right to retrieve from the funeral establishment and possess cremated remains of the deceased immediately after cremation.

How to designate

A funeral representative designation may be included in an individual's will, patient advocate designation, or other writing. Given conflicting signing formalities and the conflicting effective dates of various powers granted in these documents, our plan is to have our clients execute a separate, standalone funeral representative designation.

Other features in the new law

The law contains many other important provisions such as:

- Powers of a funeral representative can only be exercised after the death of the declarant;
- One or more successor funeral representatives may be designated;
- A funeral representative may not delegate his or her power to another individual, unless the written designation so authorizes;
- Certain individuals may not act as funeral representatives, such as one who feloniously and intentionally kills, or is convicted of committing abuse, neglect or exploitation of the decedent;
- How a funeral representative designation can be revoked; and
- Who has priority to exercise the powers of a funeral representative in the absence of a designation.

This law will streamline the burial vs. cremation and funeral issues that face surviving family members. Instead of all of your children needing to sign off on cremation, you can designate one child to make such decisions, thus eliminating much unwanted paperwork for the whole family. This new law will also be helpful for those who want someone other than family members to make decisions on burial, cremation, and a final resting place. Often, individuals are closer to friends than to family, or certain family members are better decision-makers in times of crisis than other family members, making them a better funeral representative choice. This law finally allows an individual the right to choose who will make decisions about his or her funeral, cremation and burial. Please contact us for help in designating your funeral representative.

The Transition of the Family Business

By: Mark E. Kellogg

Every day, for approximately the next 15 years, 10,000 baby boomers will reach age 65. This phenomenon is currently having, and will continue to have, a significant impact on our country in a number of areas, including on the family business and transition issues. Family-owned businesses are the backbone of the American economy. Family firms comprise 80 to 90 percent of all business enterprises in the United States. In the next 5 years, 30 percent of family-owned businesses will experience a change in leadership due to retirement or semi-retirement.

Only 30 percent of all family-owned businesses survive into the second generation and only 12 percent will survive into the third generation. Ultimately, only three percent of all family businesses operate at the fourth generation and beyond. Therefore, making it to the fourth generation is very rare. Planning for the succession of the family business is crucial to the success of the transition of the family business to subsequent generations.

Based upon the research of Williams and Preisser (2003), of the 70% of businesses that fail to transition successfully, 60% fail due to problems with communication and trust; 25% fail due to lack of preparation from the next generation; and 15% fail from all other issues (for example, poor tax or financial planning, legal advice, etc.). Therefore, roughly 85% of business transitions fail due to a lack of communication, trust or next generation competency.

A family-business owner contemplating the fate of his or her business has essentially four distinct choices: (1) Business succession to the next generation; (2) Sale of the business to a third-party; (3) Merger or other reorganization of the business with a third-party; or (4) Termination of the business and liquidation of its assets. The rest of this Article will focus on option (1) above, the transition of the family business to the subsequent generation.

Most often, the family business constitutes the largest asset in the estate of a family-business owner, thus, considerations regarding the business and the overall estate plan are inextricably related. Despite this, however, business succession planning and estate planning should be looked at as separate endeavors. However, the estate planning attorney is often confronted with the role of being the family-business advisor and the responsibility of beginning the succession planning process is frequently thrust upon him or her.

As you begin to engage in planning for the successful transition of the family business to the next generation, consider the following:

1. Form a planning team.

Business succession planning is complex and requires a team of advisors. The planning team may consist of one or more of the following: (1) the estate planning attorney; (2) the company CPA; (3) a financial advisor; (4) key members of the family business; (5) key members of the family, including representatives from the next generation;

(6) an outside advisor or respected family friend, possibly someone whom the family trusts and who maintains a high degree of credibility; (7) given that per above, 60% of businesses fail to transition successfully due to problems with communication and trust, it may be beneficial to add an outside consultant who can assist with the psychological aspects of the succession planning process. Note further, that despite the importance and benefits associated with the planning team approach, the team should have someone who can serve as the "quarterback" – to coordinate all the pieces and monitor and ensure continued progress.

2. Conduct a Family/Business Assessment.

Today there are a number of assessment tools that can assist in initiating the planning process. An assessment can assist the business owner and its advisors in (1) identifying issues and concerns that may impede the succession plan, such as uncovering potential land mines before they explode; (2) measure the strengths of the family as it relates to the family business and possible areas that need improvement; and (3) benchmark the family transition against best practices. The results of such an assessment will assist the business in developing it succession plan including specific action steps. In addition to the use of an assessment tool, it will also be beneficial to conduct individual interviews of key stakeholders to help provide a clear picture of the concerns and desires of those involved. The key stakeholders should include the business owner's spouse, key employees, children and even children's spouses. Although in-laws might not have direct involvement, undoubtedly they will have opinions, and those opinions may influence the success or failure of the planning process.

3. Define the Desired Outcome.

The ultimate goal of any succession plan is to achieve the desired outcome. Typically, the desired outcome is a plan that can be deemed successful by as many of those involved as possible. The success of any succession plan will be determined on a case-by-case basis, as the final succession plan will be as varied as the families and businesses involved in the planning process. There are, however, a few common factors in any effective succession plan:

- The business is managed by those who have the necessary skills to maintain the success of the business;
- Provide liquidity and sufficient income for the senior generation (former business owner);
- The business generates sufficient cash flow for all of its owners, which may include owners not directly involved in the business;
- Minimization of transfer taxes;
- There is an exit strategy in place for those who wish to exit the business;
- Obtain the buy-in of key stakeholders; and
- Ideally, the business is only a reasonable portion of each owner's overall financial picture.

4. Implementation of the Succession Plan.

The implementation of a business succession plan will typically be an on-going process. The ultimate success or failure of the plan may not be known for years. Further, the family and other key stakeholders must be committed to the plan and remain diligent in carrying out the action steps necessary for implementation of the plan. Further, any business succession plan should be viewed as a living document which may require ongoing revisions and updates, as circumstances may change.

Estate planning for the family business requires the balancing of basic tensions between what may be fair for family members and ensuring the success of the family business. The objective of the estate planner should be to assist in finding that balance. This article outlines in very general terms, a process that can assist in developing a family business succession plan that can overcome the overwhelming odds of a successful business transition to one or more subsequent generations. As is most often the case, the devil is in the details.

What to Know Before You Sign a Nursing Facility Admissions Contract

By: Melisa M. W. Mysliwiec

Nursing facility admissions contracts cannot require a third party guarantee of payment as a condition of admission.

The nursing home admissions process is a stressful and overwhelming time for most families. Once a nursing facility is selected, there is lots of paperwork and documentation involved with the admissions process. While this is an emotional time, be sure to carefully review the documents involved, especially the admissions contract. If you are signing the document on behalf of someone else, be extra cautious since failure to carefully review the terms of the contract might result in personal financial obligations to the nursing facility that you never anticipated or realized that you were agreeing to.

Under federal law, nursing facilities accepting Medicare and/or Medicaid must follow certain guidelines that apply to all residents, not just those insured by Medicare and/or Medicaid. Such a facility is prohibited from requiring third party guarantees of payment as a condition of admission, expedited admission, or continued stay in the facility. If you have legal access to a resident's income and assets available to pay for care, the facility can require you to sign a contract on behalf of the resident to provide payment to the facility from the resident's income or assets, but without incurring personal financial liability. Examples of having access to a resident's income include serving as his or her agent, conservator, or trustee.

"Despite federal law prohibiting it, many nursing facilities have third party or "responsible party" guarantees included within the terms of their admissions contracts."

Despite this federal law, many nursing facilities have third party or "responsible party" guarantees included within the terms of their admissions contracts. We frequently see this language in nursing facility admissions contracts our clients give us to review. If you are helping someone else move into a nursing facility, and are signing their admissions paperwork, unless you carefully review the terms of the contract and modify all third party guarantor type language, you are very likely signing the document as a financially liable "responsible party," potentially subjecting yourself to personal liability for the cost of their care. Read the contract. Do not sign as a third party guarantor or a financially liable "responsible party;" in fact, the nursing home cannot require you to do so, so do not voluntarily do so. If you have to sign the agreement on behalf of a resident, as their agent under durable power of attorney or otherwise, be sure it clearly states that you are signing as the party's agent and not in your individual capacity. If you are uncertain about the terms of the agreement, seek legal assistance prior to signing it to best protect yourself.

Do Not Call Registry: *Stop Telemarketer Calls*

Tired of receiving disruptive calls and texts? Stop the harassment by registering your home and cell phone numbers with the National Do Not Call Registry. It's as easy as calling 888-382-1222 from the telephone you want to register. Alternatively, you can go to donotcall.gov and register up to three phone numbers. Just provide your email address and make sure you respond to the confirmation email from donotcall.gov within 72 hours, and you're registered. Telemarketers have thirty-one days from the date you register to stop calling your phone number. If calls continue after that time, you can file a complaint with the Federal Trade Commission against the offending business.

The Do Not Call Registry goes a long way to reduce unwanted calls, but, unfortunately, it doesn't stop them entirely. The Registry only prohibits sales calls; therefore, political and charitable organizations can still call, as can companies you have recently done business with (if you've given them your phone number). Additionally, telemarketers continue to find ways around the Do Not Call Registry, so you may receive illegal solicitation calls from time to time. A service called Nomorobo can prevent such calls by identifying and blocking any incoming calls made from an automated dialer system. Perhaps the best thing about it though, is that it's available to consumers for free. Keep in mind, that if you find yourself on an unwanted call, you can request that the business stop calling you and they are required to abide by your request.

Few matters are as important as estate planning.

You need a plan that is highly personal and individualized, created by professionals who are experienced, honest, responsive, and caring. We help develop and implement plans to safeguard you and your family, so that when you can no longer care for yourself or your loved ones, the documents will be in place to put your plans into action.

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