Summer 2014

Estate Strategies

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Lansing's Walk to End Alzheimer's

Fraser Trebilcock is proud to sponsor a team for Lansing's Walk to End Alzheimer's. Learn how to join us!

Deadline Extended: Save on Your Estate Taxes

By: Marlaine C. Teahan

The IRS recently issued an official statement extending the deadline for certain taxpayers to make a "portability" election of their deceased spouse's unused federal estate tax exclusion amount (or DSUE amount). The portability election allows the decedent's spouse to apply the DSUE amount to their own transfers during life and death (except for generation skipping transfers). See Rev. Proc. 2014-18.

The deadline for making the portability election under this new IRS procedure is December 31, 2014. This extension of time applies to those decedents who died with a surviving spouse; died after December 31, 2010 and on or before December 31, 2013; was a citizen or resident of the United States on the date of death; and had a gross estate which includes taxable gifts at date of death of under $5,000,000, as adjusted for inflation in each year after 2011.

If your spouse died in 2011, 2012, or 2013, his or her estate may qualify for the portability election. "Spouse" includes an individual legally married to a person of the same gender, even if no longer residing in a state where same-gender marriage is recognized. Given the quickly approaching extension deadline, we urge you to call us to talk about this issue.

Trusts & Estates Department Chair Marlaine Teahan can be reached at 517.377.0869.

Planning for Your Family Cottage

By: Mark E. Kellogg

The family cottage traditionally holds a sentimental place for many people. It is the gathering spot for families, bringing back fond memories as a child growing up, as parents with your children, and as the family patriarch and matriarch. Often, people desire to keep the cottage within the family for generations to come, to continue to provide a place for everyone to gather together and feel as one. This view is often held by the senior generation, envisioning their children, grandchildren, and subsequent generations bonding together at this special gathering place. Despite these fond memories and the desire to maintain the family cottage, there are challenges to consider.

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When to Consider Termination of Your Late Spouse's Trust

By: Melisa M. W. Mysliwiec

If your spouse is deceased and you are the current beneficiary of his or her trust, keep reading. You may be able to save a significant amount of money in income taxes and capital gains taxes by distributing income and/or assets out of the trust now or dissolving the trust entirely if the terms of the trust permit this.

Trusts are currently subject to the maximum tax rates on any income over $12,150. It doesn't take much to meet that threshold. As a result of new tax laws passed in 2013, the highest income tax rate is now 39.6 percent, the maximum tax rate for long-term capital gains and dividends is 20 percent, and a 3.8 percent "Medicare" tax is imposed on investment income (including capital gains).

Many of you may have established typical revocable trusts that would split into a marital and family trust at death in an effort to avoid payment of federal estate tax. A few years ago, that likely made perfect sense. However, many of you likely face a much different set of circumstances now that do not include a risk of owing federal estate taxes. As a result, there may be no reason for you to be a lifetime beneficiary of your deceased spouse's trust any longer; and, in fact, it may be more beneficial to terminate the trust (if at all possible).

The following hypothetical situation explains this concept. Assume your spouse died 4 years ago. In life, he established a revocable trust naming you as the lifetime beneficiary. He died with approximately $500,000 in trust assets (held in a brokerage account), all of which were funded to the Family Trust; nothing is held in the Marital Trust. The Family Trust gives the trustee the discretion to distribute income and/or principal to you for health, education, support and maintenance during your lifetime, and upon your death, the balance will be distributed to your 3 children in equal shares. Currently, the brokerage account has grown in value to over $600,000. Hopefully, the trustee is exercising discretion to distribute the net income out to you each year so that the income tax owed is based on your income tax bracket as opposed to the trust's income tax bracket. This alone would save thousands of dollars long-term, provided you are in a lower marginal income tax bracket than the trust. But another issue that needs to be considered is capital gains taxes.

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Meet our Trusts & Estates Attorneys

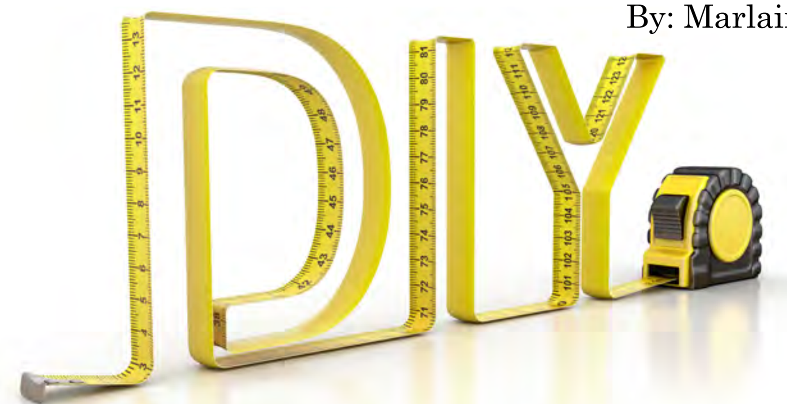
Marlaine C. Teahan
517.377.0869
mteahan@fraserlawfirm.com

Mark E. Kellogg
517.377.0890
mkellogg@fraserlawfirm.com

Melisa M.W. Mysliwiec
616.301.0800
517.377.0887
mmysliwiec@fraserlawfirm.com

The Case Against Do-It-Yourself Estate Planning

By: Marlaine C. Teahan



Lowe's and Home Depot have made DIY (Do It Yourself) projects a household name. Easy directions, helpful advice, and available materials make building a shed, planting a garden, or fixing the plumbing within reach of the average person. Of course, we never hear of DIY brain surgery or DIY root canals. Why, then, do many folks think DIY estate planning is a good idea?

A recent Florida Supreme Court case illustrates that DIY estate planning doesn't always work out the way you might intend. For instance, what if you receive assets after someone else dies, but then those assets were not given to anyone in the will that you had already prepared?? That question was answered in Aldrich v. Basile, 2014 WL 1250073. Ann Aldrich used an "E-Z Legal Form" to list specific gifts to be given to her sister, and then to her brother. However, her sister died first becoming her benefactor instead of her beneficiary. When Ann later died, it suddenly became unclear who should get those additional assets, because her "E-Z" will did not include what is commonly referred to as a "residue clause", which gives a gift of everything else (the residue). So, who should get the assets that her sister left to her? Should they go to her brother? Or pass by the law of intestacy, which dictates who inherits assets not given in a will?

In this case, the brother argued that he should get everything; however, two children of a pre-deceased brother argued against him. In the end, the two children were successful in arguing that the law of intestacy should apply in their case, since there was no residue clause in the will. Even though the Justices thought Ann's intent was clear and that she intended her surviving brother to receive her entire estate, they still ruled against enforcing her intent since the form did not make a gift of the residue. In the end, the other family members received half of the assets that were not specifically gifted.

In a concurring opinion, Justice Pariente pointed out that there was no space on the E-Z will form for a residue clause. It wasn't that the woman forgot to fill that part out; evidently, the form's publisher omitted that important part of the will. The Justice invoked the old adage of "penny-wise and pound-foolish" and ended her opinion with the following quote, which should be carefully considered by all who contemplate the best method of conducting estate planning:

"I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance. As this case illustrates, that decision can ultimately result in the frustration of the testator's intent, in addition to the payment of extensive attorney's fees [spent interpreting the will]—the precise results the testator sought to avoid in the first place."

Many attorneys actively educate clients and the general public against DIY estate planning; others, however, view such DIY estate plans as job security. When a person drafts his or her own estate planning documents, or relies on pre-printed forms, the money saved on the front end is often spent ten times over on the back end. Expensive fixes of badly drafted DIY wills and trusts are best avoided by using experienced trusts and estates attorneys at the outset.

Marlaine C. Teahan is one of only 54 attorneys in Michigan elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC). She handles a wide variety of matters including: drafting wills, trusts and durable powers of attorney; trust and estate administration; guardianship and conservatorship matters; and probate litigation. For more information, contact her at 517.377.0869 or mteahan@fraserlawfirm.com.

Planning for Your Family Cottage, continued

Developing a plan for the succession of your family cottage is imperative in order to avoid, or at least have mechanisms in place to deal with, potential problems and conflicts in future generations.

There are various ways that the real estate may be owned. Some ownership options include: joint ownership, ownership by a trust within which the various family members are trustees and beneficiaries, and ownership by an entity, most commonly a limited liability company where the family members are members of the company. The current ownership of choice among most advisors is ownership by a limited liability company, an LLC. Regardless of the form of ownership selected, a written agreement among the various parties should be developed to address, at a minimum, the following issues:

- Management of the property.
- Payment of expenses associated with the use and maintenance of the property.
- Specific rules for adding additional family members as owners or beneficiaries.
- Rules and procedures for the exit of those family members that no longer wish to be part of the ownership structure.

Items to consider while planning, in order to keep your cottage within the family:

- Method of ownership for the property.
- Whether all children or heirs are of like mind in their desire to use and maintain the family cottage within the family.
- How expenses associated with the ongoing use, maintenance and preservation of the family cottage will be paid.
- Rules to help promote peaceful and amicable use among family members.
- Options for family members who want to exit the common ownership of the family cottage.

The Family Cottage LLC.

Assuming that the LLC ownership structure is selected, the family members who actually hold ownership of the property, or are entitled to ownership, will enter into an operating agreement with each other, each designated as a "member" of the LLC. There are a number of matters requiring consideration with respect to the LLC operating agreement. The following is a brief discussion of some of the more significant aspects associated with planning for the family cottage within the LLC.

Management of the LLC. Consider whether the LLC should be governed by all of the members who have ownership in the LLC (a member-managed LLC), or do the members select managers for controlling the LLC (a manager-managed LLC). The member-managed LLC may become cumbersome with too many members. If there are multiple families, each family may elect a manager to represent that family in making day-to-day decisions with regard to the LLC and the property. However, even if manager-managed, there may be significant decisions (such as amendments to the operating agreement, approving capital improvements, mortgaging the property, the sale of the family cottage) which might require consent of all of the members.

Financial Aspects of LLC. The potential financial challenges associated with the use, maintenance and repairs of the family cottage are often some of the most difficult considerations for preserving it within the family. An annual budget of anticipated expenses and income (if any) should be developed. In establishing a budget for the funding of the LLC, the following should be considered:

- Membership fees for all members, typically based upon ownership percentage.
- Assess a usage or rent fee for those members that use the family cottage (based upon the consideration that not all members are able to, or interested in, using the cottage in equal amounts).

- Any agreement should specify the deadline for any such payments or assessments and the consequences of a member failing to pay by the deadline.

Use of the Property. Consider developing a usage schedule/calendar, which may include rules and procedures as to:

- Determining how cottage use is determined.
- Defining the season for use (for example, summer use and what that entails).
- How use will be available to each owner during the year.
- The allocation of use during holiday weeks/weekends.
- Whether the family cottage will be available for rent to non-members.

Rules and Procedures for Transfer of Interests and Exit Strategies. Finally, any agreement should incorporate rules, limitations and procedures relating to the transfer of membership interests by the members, such as transfers to subsequent generations; and an exit strategy for those members who no longer wish to continue to maintain their membership interest in the LLC.

These are just some broad considerations relating to maintaining the family cottage within the family for generations to come. These considerations should be analyzed and defined in more detail. However, one thing is certain: the more considered and comprehensive your plan, the greater potential for long-term success of keeping the family cottage within your family.

Mark E. Kellogg, an attorney and CPA, has devoted his 27 years of practice to the needs of family and closely-held businesses and enterprises, and estate and succession planning. For more information or to discuss your estate planning needs, email mkellogg@fraserlawfirm.com or call 517.377.0890.

Consideration of Trust

The assets in the Family Trust do not gain a step up in basis upon your death. When they are eventually sold, there will be capital gains taxes owed on the growth in value since your spouse's death, which, in this example, amounts to more than $100,000. However, if the trust's terms allow the trustee to terminate the trust or distribute all of the principal to you, even to the extent of exhausting the trust, this would allow you to transfer the brokerage account – in kind – to yourself or your trust (thus incurring no capital gains). At your death, the assets would gain a step up in basis and your children would escape the capital gains tax that would've been paid if they had remained in your spouse's Family Trust. This could amount to a significant amount of savings in many circumstances.

A recent client situation, just like this, resulted in our client's family saving almost $80,000 in capital gains taxes simply by having the trustee of the husband's trust distribute all trust assets to the wife, in kind (not by sale), pursuant to the terms of the trust. A simple review of the terms of your deceased spouse's trust and the trust's current assets may reveal that you are the perfect candidate for this type of savings measure.

Melisa M. W. Mysliwiec works out of Fraser Trebilcock's Grand Rapids and Lansing offices, focusing her work in the areas of Elder Law and Medicaid planning, estate planning, and trust and estate administration. For more information, contact her at 616.301.0800 or mmysliwiec@fraserlawfirm.com.

Alzheimer's Advocacy Day 2014

On March 27, 2014, people from across the state came together for Alzheimer's Advocacy at the State Capitol. Advocates shared their stories with State Representatives, asking for their support in assisting families faced with Alzheimer's Disease.

Fraser Trebilcock sponsored the Advocacy Day luncheon hosted by the Young Professional Alzheimer's Advocates of Lansing, a group of young advocates who are dedicated to raising awareness and funding to fight the disease.

Legal Documents All College Students Need

By: Melisa M. W. Mysliwiec

In just a few months, our high school graduates will head off to college. We'll make sure they have the text books they need, the right-sized dorm sheets, perhaps even a mini-fridge. But what about the proper legal documents? Despite what many parents think, the law does not give you the authority to act on behalf of an adult child. It's crucial for anyone 18 and older to have a durable power of attorney and designation of patient advocate in place. These documents allow the student to authorize someone else – you – to act on his or her behalf should the need arise.

A durable power of attorney deals with business and financial matters. This document allows the individual named (often called "agent") to act on behalf of the college student when necessary, and without the college student needing to be present. The following list provides a few examples of what a durable power of attorney would allow you to do, if you were named as an agent for your child:

- Handle banking matters;
- Handle tuition payments and rental agreements; and
- Sign legal documents.

In essence, it allows a parent, as an agent, to handle all of the child's business and financial affairs as needed – even in the unfortunate event of an unexpected disability.

A designation of patient advocate deals with health care matters. This document permits an individual to name a patient advocate, who is then able to make decisions regarding care, custody, medical and/or mental health when the individual is no longer able to communicate those decisions on his or her own (as certified by two physicians). A designation of patient advocate also allows another person to authorize the withholding or withdrawal of life support systems, and to authorize or refuse organ donation in the event of death. All college students should have a designation of patient advocate in place. Unfortunately, accidents happen. If for any reason, your student becomes unable to make medical decisions, you would be able to step in and act according to his or her wishes.

As much as we might prefer to avoid the topic of death or disability, it's important that we have open conversations with our children. If you have a child heading off to college this fall, be aware of the importance of having a durable power of attorney and designation of patient advocate in place.

Research is Crucial When Choosing Nursing Homes

Not all nursing homes are created equal. Several are rated poorly, many are average, and some are exceptional. It takes time and research to choose the best nursing home possible for yourself and your loved ones. You should know the difference and make your decision based on real data and information.

Before entering a nursing home, or admitting a loved one, you should do your research, or hire someone to do it for you. If you have the ability to research on your own, Nursing Home Compare is a great place to start. Nursing Home Compare can also be found online on the Medicare.gov website, which is the official U.S. government site for Medicare. There, you will find detailed information about every Medicare and Medicaid-certified nursing home in the country.

Supreme Court Rules:
Inherited IRAs Not Retirement Funds

While protection from creditors for "retirement funds" is available when filing for bankruptcy, the Supreme Court ruled on June 12, 2014, that inherited individual retirement accounts (IRAs) are not protected from creditors during bankruptcy proceedings as they are not "retirement funds".

Inherited IRAs differ from traditional IRAs in multiple ways. An individual who inherits the IRA is not a contributor, and is able to withdraw any amount from the IRA without penalty, whereas the original account holder may not withdraw money without penalty before age 59 ½.

In its decision, the Supreme Court stated that "reference [in the Bankruptcy Code] to 'retirement funds' is therefore properly understood to mean sums of money set aside for the day an individual stops working". This definition makes clear that protection from creditors in the bankruptcy setting is only available to those IRA owners who are the contributors of the funds, not those IRA owners who inherited them because of the death of an IRA owner.

If you want to learn how trusts can protect your IRAs from your beneficiaries' creditors, contact Trusts and Estates department chair Marlaine C. Teahan, at 517.377.0869 or mteahan@fraserlawfirm.com.

Walk to End Alzheimer's
September 14, 2014
State Capitol
11 a.m.

The Walk to End Alzheimer's® is the nation's largest event to raise awareness and funding for Alzheimer's Disease.

For many members of our Fraser Trebilcock team, the fight is personal. Some of us have held the hand of a loved one, a close friend, or a grieving client, dealing with the devastating effects of Alzheimer's disease.

So this fall, we'll come together in support of the Alzheimer's Association and its great work to fight the disease.

We ask for your support, whether it be well-wishes or making a financial contribution. We also invite you to join our Fraser Trebilcock team and walk with us in September!

Join Team Fraser Trebilcock by registering online:
fraserlawfirm.com/resources/blog/endalz

Fraser Trebilcock LAWYERS
124 W. Allegan Street, Ste. 1000
Lansing, MI 48933

Estate Strategies

Summer Newsletter

Fraser Trebilcock LAWYERS

You don't have a cookie-cutter family. Why use a cookie-cutter firm?