

Estate Planning Matters

Kramer Radin, LLP
Law Firm

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Beneficiary Designation Alert

Since the recent spate of financial institution consolidation, it has become evident that beneficiary designations may not have followed the transfer of funds. For example, when a person opens a retirement account at a bank, savings and loan, life insurance company or brokerage firm, generally the beneficiaries are designated at that time.

We have found, however, that some institutions do not have current beneficiary information and this can negatively impact your estate plan. We suggest you contact your financial institutions to verify that your accounts are in order and the beneficiary designations are correct. Spending a little time doing this now could save a lot of time, money and a probate later.

Targeting Scams

On a too-regular basis we learn of new and recurring scams. And, although scammers don't really discriminate on the basis of age, sex or ethnicity, they tend to prey on the vulnerable people in this world including senior citizens. From fake or unnecessary home repairs to inappropriate annuities to worthless deed of trust investments, scammers will try to get your money any way they possibly can.

...they tend to prey on the vulnerable people in this world...

The recession is increasing the frequency of scams. With the turbulent stock market and low interest earning Treasuries, the promotion of "low-risk" investments or a "safe" way to get back in the stock market to earn back losses is tempting to many.

Following are some questions you should ask before investing:

- How liquid is this investment?
- What are the risks?
- What happens if I want to sell or cash in?
- For what type of person is this investment a good idea?
- For what type of investor is this a bad idea?
- Are your questions being answered satisfactorily? Are the answers in writing?

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No Contest Clause Law Changes

From time to time the California Law Revision Commission reviews laws and recommends changes. This is to take into consideration changes which occur in the American legal system.

After more than two years of study, the commission recommended that, under most circumstances, California's No Contest Clause law be abolished. Governor Schwarzenegger signed the resultant bill and it becomes effective January 1, 2010.

No contest clauses are frequently used in Wills and Trusts to avoid costly litigation between or among family members. They generally provide that if a beneficiary attempts to contest any of the terms of the Will and/or Trust, he or she runs the risk of being disinherited. If the contest is brought for anything other than probable cause (fraud, forgery, lack of mental capacity, etc.), the contest could forfeit or severely reduce that beneficiary's share of the inheritance.

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However, the Commission found that in reality Will and Trust contests are often used by dishonest or greedy heirs. Because court procedures are of public record, a contest was used as a blackmail tool for forcing an out of court settlement from the rightful heirs so their private matter would not become public.

In the past no contest clauses have been part of almost every estate plan. But now, going forward, each situation will need to be individually evaluated for the risks and benefits of including no contest provisions and thus should no longer be automatically included in every Trust and Will.

If there is a specific concern that someone will contest the terms, this needs to be explored with the attorney to ensure that the situation is addressed in the original document and in any subsequent amendments or codicils.

Great Tax Quote

"Is there a method to resolve the current problem of the tax system? Perhaps as a first step, Congress can pass its own ethical rules that will require each representative and Senator to prepare and file his or her own tax return without any professional help or guidance and, under penalty of being dismissed from Congress, certify his or her compliance to the respective ethics committee."

-- Denis A. Kleinfeld, Florida Attorney and former Internal Revenue Service employee in the Estate and Gift Tax Division

Social Security and Medicare Update

The Social Security and Medicare Board of Trustees is required to report the condition of both programs every year. The 2009 report was recently released. Unfortunately, neither section of the report was encouraging.

Because of the economic downturn, the current Social Security surpluses are close to the end and it is anticipated that it will begin to have a cash-flow deficit as early as 2016. Its reserve fund, invested in Treasury bonds, now is projected to be depleted by 2037—four years sooner than estimated in 2008.

The Medicare Hospital Insurance Fund will be depleted by 2017. The Medicare Supplementary Medical Insurance Fund currently receives general revenue financing. Congress will be warned this year that general revenue support will exceed 45% of the total Medicare cost.



"Winter is the season in which people try to keep the house as warm as it was in summer, when they complained about the heat."

Unknown

It is imperative that Congress act on these matters in a bi-partisan manner to solve the problems sooner rather than later when fewer choices will be possible.

Estate Tax Update

There is much talk about the fate of the estate tax. This year the federal estate tax rate is capped at 45% and the exemption amount is \$3,500,000. Under current law the rate falls to 0.00% (no estate tax) in 2010 but increases to 55% in 2011 with an exemption of \$1,000,000. In addition, if you own property in a state other than California, that property will be subject to that state's estate tax. Many states have exemptions far lower than the federal level thereby subjecting more of the estate to state estate taxation.

As part of his budget plan, President Obama has proposed keeping the estate tax rate and exemption at this year's levels. Many believe Congress will agree with this. That's the good news.

The not-so-good news include the modifications President Obama wants such as placing limits on estate valuation discounts. Thus clients who have assets that are eligible for discounts may want to discuss with us accelerating the timing of any gifts of these assets.

Because we expect legislation to be enacted later this year to address these issues, we will continue to follow this and keep you informed.

FDIC Insurance Update

As noted in our Fall 2008 issue, the Federal Deposit Insurance Corporation (FDIC) temporarily increased the amount of coverage from \$100,000 to \$250,000 per depositor for accounts at participating financial institutions. The increase was scheduled to expire December 31, 2009 and return to \$100,000 on January 1, 2010. The temporary increase in coverage was recently extended to December 31, 2013.

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The FDIC provides separate coverage for deposits held in different account ownership categories. The coverage limits refer to the total of all deposits that an accountholder has in the same ownership categories at each FDIC-insured institution.

For example, single owner accounts, IRAs and other certain retirement accounts are insured up to \$250,000 per owner and joint accounts (two or more owners) are insured up to \$250,000 per owner.

Revocable Living Trust accounts are insured up to \$250,000 per owner per beneficiary with certain limitations for accounts with six or more beneficiaries. A beneficiary must be a natural person, charity or other non-profit organization as recognized by the Internal Revenue Service. More information is available through www.fdic.gov/deposit/index.html or by calling 1-877-ASK-FDIC.

We recognize the topics discussed in this issue are complex and can have far reaching implications for your estate plans. We would be pleased to answer any questions you may have about the foregoing.

Review Reminder

Your estate plan should be reviewed with us every 3 years or whenever any of the following occurs:

- Change in your marital status
- Birth, adoption or death of a child
- Birth, adoption or death of a grandchild
- Marriage or divorce of a child
- Death of a parent
- Significant increase or decrease in wealth
- Receipt of substantial inheritance or gift
- Change in your relationship with or death of the individual you have named as Executor, Successor Trustee, Guardian, or Agent under the Powers of Attorney
- Change in state law
- Change in federal tax laws

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