

Fall, 2011

After the uncertainty of the tax laws in 2010, it has been a welcome relief to have an estate, gift and generation skipping transfer tax exemption of \$5,000,000 for 2011 and \$5,120,000 for 2012, with a gift tax annual exclusion of \$13,000. As anticipated, the significantly increased exemption has permitted most of our clients to focus less on the tax consequences of their gift and estate plans, and more on their family goals. We are hopeful that the current exemption will be extended after 2012. We will keep you posted on our website at www.ansellpa.com.

New Hampshire law has also focused more on family goals than on tax law changes this past year. No-contest clauses are now recognized for both Wills and Trusts, in order to discourage disagreements among the intended beneficiaries of the estate. In addition, New Hampshire law now expressly directs that your intentions, as expressed in your Will or Trust, should outweigh the interests of the beneficiaries. Although most of you probably thought that this has always been the case, a growing number of other states have been challenging this concept. Both of these issues were raised in the 2010 Tamposi case which enforced a no-contest clause when a beneficiary challenged the authority of the Trust's investment advisors to retain interests in certain family businesses. The Court also upheld the division of responsibility between the Trustees and the Trust Advisors as directed in the Trust.

Along the same lines, New Hampshire law now permits a Trust created under a Will (a Testamentary Trust) to elect out of the annual Probate Court accounting and surety bond requirements, if all of the interested parties agree and this election does not violate a material purpose of the Trust. After the filing of an agreement signed by the Trustee and beneficiaries, the Trustee is able to account informally each year to the Trust beneficiaries. These reports do not need to follow any particular format, and may simply include copies of account statements if they are sufficiently clear to detail the activity of the Trust in any year.

When Trust beneficiaries are unhappy about the actions of any Trustee, they can complain to the Probate Division of the Circuit Court. Under a new law, these complaints must generally be brought within 3 years after the beneficiary learns of the Trustee's action. This period can be limited to 1 year if the Trustee advises the beneficiary of this limitation. Beneficiaries should continue to review the reports which they receive in a timely manner and ask for clarification of any action which they do not understand. If the Trustee fails to provide reports on an annual basis, the beneficiaries should ask for them.

A notable case this past year highlighted the need for people to review and revise their estate plans when their circumstances change dramatically. This case involved the interpretation of a Will signed in 2005, in which Tim Donovan gave his company stock to members of his family and the balance of his estate to his girlfriend. Tim sold his company stock in 2008 for \$15,000,000, and died accidentally in 2009 without changing his Will.

The Court concluded that Tim had not intended for the proceeds from the sale of the stock to go to his family. Needless to say, this was not the result which his family had anticipated or desired.

Unfortunately, the Tamposi and Donovan cases are part of a growing trend for beneficiaries to argue over the disposition of an estate. While some disputes reflect years of disharmony among family members, other disputes could have been avoided with more careful planning in the designation of agents, executors and trustees, or in the distribution of estate assets. Not every family can continue to harmoniously share a vacation home after mom and dad have passed. Not every family can agree on the sale of estate assets, or the investment of a Trust. A no-contest clause may discourage a legal conflict, even when a family dispute is unavoidable.

Do you know who will receive your estate at the time of your death? We encourage each of you to review your estate plan every year, including a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations, and to consider whether changes are needed. This recommendation is especially true in light of the significantly increased estate tax exemption which has occurred in recent years, and the many ways in which property can pass without probate. Are there ways to realistically reduce potential conflicts among your family after your death? These important decisions can often be the most difficult.

Circumstances have certainly changed for us over the years. Ruth has been practicing law for 30 years, and is not nostalgic for the days when the estate tax exemption was \$225,000, the maximum estate tax rate was 60% and all documents were typed by secretaries, page by page.

We have certainly taken advantage of the improvements in technology which have occurred in recent years. We now retain both paper and electronically scanned copies of our clients' estate planning documents. As part of our on-going efforts to reduce our carbon footprint, some of you are receiving this newsletter via email, in lieu of US Mail, for the first time. Please send an email to lmurphy@ansellpa.com if you want to be added to the list of clients who receive all mail electronically. We also encourage our clients, and their family members, to update their advance directives for health care as necessary using the forms and instructions available on our website at http://ansellpa.com/index.php/estate_planning.

Once again, we were honored to be counted among the best trust and estate attorneys in New Hampshire and New England. We are thankful for all of our clients and peers who have helped us to achieve this distinction. We appreciate your referral of other family members and friends for our services.



and

