

January 2014

Last year was pleasantly uneventful with respect to the federal gift and estate tax law. It now appears that the \$5,000,000 gift and estate tax exemption really is permanent. Some additional good news is that for 2014, the gift and estate tax exemption inflation adjusted amount is \$5,340,000 (\$10,680,000 for a married couple.) The 2014 annual gift tax exclusion remains \$14,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to \$145,000 for 2014.

Portability provisions, made permanent in 2013, allow spouses to share their gift and estate tax exemptions. If a person does not fully use his or her gift and estate tax exemption, an estate tax return may be filed to allocate the unused exemption of the deceased spouse to the surviving spouse. For many of our married clients, the portability provisions allow for more streamlined estate plans using one revocable trust, rather than two. The permanency of the increased exemption and the portability provisions means that much of the estate planning that we are currently assisting our clients with is elegantly uncomplicated.

The estate tax planning that we do for our clients in same-sex marriages is now aligned with the estate tax planning we do for opposite-sex married couples as a result of the ruling in *United States v. Windsor*, 133 S. Ct. 2675 (2013). In *Windsor*, the U.S. Supreme Court held that the portion of the Defense of Marriage Act (DOMA) that states that marriages are only valid between one man and one woman unconstitutionally violates the equal liberty protection afforded to all citizens by the Fifth Amendment.


Individuals considering making gifts in anticipation of an extended nursing home stay must be on alert. New Hampshire's Senate Bill 138, effective July 2, 2013, imposes liability for nursing home costs on persons who receive assets from a nursing home resident when the transfer of those assets is made within five years of the nursing home resident applying for Medicaid and results in Medicaid disqualification. The asset recipient is liable to the nursing home because the nursing home is not otherwise able to collect from Medicaid as a result of the disqualification. The potential liability is limited to the amount of assets transferred. In addition, a fiduciary (an agent under a power of attorney, a trustee, a guardian or a representative payee) who is in control of income or assets of a nursing home resident is potentially liable for the costs of nursing home care if the fiduciary negligently fails to apply for Medicaid for the resident. A fiduciary or joint account holder who has access to a nursing home resident's income or bank accounts is also potentially liable to the nursing home if the fiduciary or joint account holder refuses to pay the patient's liability to the nursing home. We urge our clients to be extremely cautious about making gifts or accepting gifts if the donor may be applying for Medicaid assistance within five years.

Prenuptial agreements are a routine part of our estate planning practice and we anticipate that, going forward, postnuptial agreements will be too. This year, the New Hampshire Supreme Court held that a postnuptial agreement entered into by a couple married approximately 50 years was valid. In *Re Estate of Richard B. Wilber*, 75 A.3d 1096 (2013). Once parties are married, they have certain rights to each other's assets and to property acquired during the marriage. Prenuptial agreements, authorized by statute in New Hampshire and entered into before marriage, allow the parties to contractually alter how property would be divided in the event of death or divorce. Postnuptial agreements, entered after the parties are already married, can now be used to alter the rights of the parties to the couple's property in the event of death or divorce. In both cases, the agreement must be procedurally and substantively fair. Both parties must be afforded complete financial disclosure, must not be under duress to sign the agreement and should have the opportunity to be represented by separate counsel.

We encourage each of you to review your estate plan every year and to consider whether changes are needed. This process should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations.

Many of you have had the opportunity to meet Alyssa Graham, who joined us as an associate attorney in July 2012. We have genuinely enjoyed integrating her into our practice. If you have not met Alyssa, please introduce yourself when you are next in the office.

We were honored to be counted among the best trust and estate attorneys in New Hampshire and New England again this year. We are thankful for all of our clients and peers who have helped us to achieve this distinction. We appreciate your loyalty and referrals of other family members and friends for our services. Best wishes for a healthy and prosperous 2014.

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