

February 2022

As estate planners, we strive to anticipate every contingency. Who could have imagined that we would be entering our third year of living with Covid-19 in 2022? We have been impressed by our staff, clients and colleagues who have pivoted repeatedly throughout the pandemic, remaining flexible and persevering throughout.

We are pleased to send you this annual summary of the most significant changes to federal and New Hampshire laws that affect estate planning and estate and trust administration. We hope that you find this information helpful.

It is wonderful news that the much-anticipated changes to the gift, estate and generation skipping transfer tax law did not materialize in 2021! Under current law, each person has an exemption against federal gift and estate taxes, which allows you to transfer property to your family without tax. In 2022, the exemption amount is \$12,060,000, to be indexed for inflation in future years through 2025, with portability of the unused exemption by a surviving spouse. Under current law, in 2026, the exemption reverts to \$5,000,000 as adjusted for inflation.

The annual gift tax exclusion increased to \$16,000 this year. Each person is allowed to give another person up to \$16,000 in 2022 without reducing the amount exempt from estate tax. A person may give up to \$16,000 to as many individuals as the person wishes, again without reducing his or her exemption.

While changes did not materialize in 2021, there is discussion that the gift, estate and generation skipping transfer tax credit will be reduced sooner than 2026 and/or to an exemption below \$5,000,000. In 2021, we assisted some of our clients with gifts to utilize the current increased gift tax exemption in anticipation that the exemption will be reduced. Whether making gifts to fully use the \$12,060,000 exemption makes sense for you is specific to your assets and family situation. If you would like to consider these issues and how they apply in your situation, please contact the office and schedule a discussion with Alyssa or Christine.

The law that temporarily allowed remote notarization of estate planning documents became permanent in 2021. In order for the notarization to be effective under the law, the notarial officer must be the attorney who drafted the instrument, licensed and in good standing in New Hampshire, or an attorney or paralegal acting under the supervision of the drafting attorney. The person whose documents are being notarized remotely, the presiding notarial officer and any witnesses must be able to communicate simultaneously by sight and sound through an electronic device at the time of the notarial act. While we are able to notarize and witness clients'

estate planning documents remotely via video conference, in-person execution of documents is preferable, when possible.

Effective July 1, 2021, there is an updated Advance Directive for Health Care, which is intended to be easier to sign. As with the prior version, the new version has two parts: a Durable Power of Attorney for Health Care and a Living Will. Clients who have signed the prior version of the Advance Directive for Health Care need not sign the new form. The law specifically grandfathers existing Advance Directives. When you otherwise opt to update your documents, we will prepare the most current version of the form.

Waiver of Administration is a procedure that makes probate easier. Estates that qualify for Waiver of Administration do not have to obtain a probate bond, file an inventory or file annual accountings. In 2021, the category of estates that qualify for Waiver of Administration was expanded to include any estate in which the fiduciary and the beneficiaries agree to Waiver of Administration. In addition, under this statutory change, it is now possible to extend the one-year deadline for closing an estate that is being administered under the Waiver of Administration process. While we assist our clients with avoiding the probate process to the extent possible, the expansion of the Waiver of Administration procedure is welcome in those situations in which probate is still required.

New Hampshire adopted the Uniform Disclaimer of Property Interests Act last year. A disclaimer is a mechanism that allows a person to refuse to accept an asset that would otherwise pass to them either as a beneficiary of an estate, trust, retirement account, or life insurance policy. The disclaimer must be in writing, the beneficiary must not have accepted an interest in the property, the disclaimer must be irrevocable, and it must be delivered to a fiduciary or designated individual as specified in the statute. In order for the disclaimer to not be considered a taxable gift by the disclaiming party, the disclaimer must be completed within nine months of the death of the decedent from which the transfer originates. Many of our clients have incorporated disclaimer planning into their revocable trusts. This change in the law will not affect those trusts. Disclaimers were always possible under New Hampshire law, but the new statute provides greater detail and clarity with respect to disclaimers.

An alternative to guardianships for individuals over the age of 18, Supported Decision-Making was legally recognized with the 2021 enactment of the law bearing the same name. It is defined as “a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including, without limitation, decisions related to where the adult wants to live, the services, supports and medical care the adult wants to receive, whom the adult wants to live with, education, and where the adult wants to work, without impeding the self-determination of the adult.” New Hampshire RSA 464-D:4. The process has been

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introduced as an option that allows individuals in need of some support to maintain more self-determination by entering into an agreement with a “supporter” who will assist the individual. In many situations, with the written authorization of a treating physician, we have been able to help adults with diminished capacity to similarly maintain control by executing financial and health care powers of attorney. It will be interesting to see how this statute is implemented in the coming months and years.

As always, it is important that your estate pass to your intended beneficiaries, whether by will, trust, beneficiary designation or joint tenancy. We encourage each of you to review your estate plan every year. This should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations. You should consider whether any changes are needed at this time.

We appreciate the positive feedback that we receive from so many clients regarding our staff. They each work hard to provide our clients with superior service. We are thankful for the assistance of our paralegals, Jennifer Pierce, Robin Davison and Victoria Farren. We were fortunate to hire Emily Moser as our receptionist in July. We could not serve our clients without the support of our staff. We are thankful for their help.

Our associate attorney, Jaran Blessing, transitioned to another law firm. Our receptionist, Michele Folsom, left to assist her son in his business. We wish Jaran and Michele all the best.

Alyssa welcomed her second child, Elizabeth Garrigan, in April of last year. Alyssa appreciates our clients’ understanding as she was out on maternity leave and during her transition back to the office.

Christine was again honored to be counted among the best trust and estate attorneys in New Hampshire and New England. Christine is thankful for all of our clients and peers who have helped her to achieve these distinctions.

We appreciate your loyalty and referrals of other family members and friends for our services. We are humbled by the volume of business that is sent to us. In order to best serve our clients, we are limiting the number of new clients each week, so that we can provide excellent service to the clients with pending planning or administration needs. As a result, it may take a new client a bit longer to get onto the calendar.

Let’s hope this is the last year that Covid-19 affects our daily lives. Best wishes for a healthy and peaceful 2022.

