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The Law Office of Bruce Kiselstein, Ltd.
NEWSLETTER

Trusts, Estates, Taxes & Asset Protection - A Problem Solving Law Firm

INSIDE THIS ISSUE...

New Illinois Law Provides ASSET PROTECTION For Your Home

For years, we have advised our married clients to put their primary residence into their Trust or Trusts. This prevents your home from going through the Probate Court or the Guardianship Court. There was a trade-off, however, in placing the residence into to your Trust. The trade-off is that we could not allow a husband and wife to hold the residence as "Tenancy by the Entirety." The Illinois statute would not allow interests in Trust to be held in that form of ownership.

"Tenancy by the Entirety" is a law that makes your home indivisible by a law suit, if ***one*** spouse faces litigation. It's a type of legal "fiction" that states that each spouse owns the entire house. I currently have my residence in "Tenancy by the Entirety" (not in the name of my Trust), to protect my wife if I cause a car crash and am sued because I seriously inured someone. Or, let's suppose my deceased client, Ms. Louise Jones, has a nephew, Louie. Louise never liked Louie because he was always causing trouble. She instructed me not to include Louie in her Will. After Louise dies, Louie pops up and declares, "Aunt Louise loved and adored me. In fact, I was named after her. I know that Aunt Louise would never leave me out of her Will. I am entitled to her Five Million Dollar estate!" If Louie sues me, for allegedly not drafting Louise's Will "according to her wishes," he cannot attach my house since my spouse is protected, as the other "Tenancy by the Entirety."

The problem is that although my home is protected from possible lawsuits because it is held in "Tenancy By the Entirety," it is NOT owned by my Trust. Upon the death of the last of my spouse and me, our daughter must go through the Probate Court to receive title to our home. In addition, all of the estate planning done by my Trust, will **NOT** apply to my house. I don't want my daughter to go through Probate and I **DO** want the estate planning design of my Trust to apply to my residence, but I also don't want any lawsuits to attach my home. I can now have it both ways!

The Illinois Legislature finally addressed this problem by passing Public Act 096-1145 in July, 2010. The Act amends existing laws and allows interests held in Trust by a husband and wife for estate planning purposes, to now be held in "Tenancy by the Entirety", as well. **If you are married and your house is held by your Trust(s), this new language must be placed on your deed to provide you with asset protection for your primary residence**.

Please call us to make this change to the deed for your primary residence. Our fee is $150 plus the recording fees charged by the county (and possibly your city or village). However, ***the cost is minimal compared to the protection of your most precious asset, your home***.

Big Discounts on Fees For Family

We want your children and your brothers and sisters to join our "family" of clients. Certainly, if they have children, they should have a Will and if they own their own home they should have a Trust. They need to protect their families from Probate and create a protective distribution plan for their children in the event something happens to them. They should also have Powers of Attorney for Health and Property. They need these Powers to manage healthcare and financial planning in the event of their disability and without the intervention of the Guardianship Court. We have always provided a 10% discount to family members, however***, if you refer a family member to our office for any estate planning services before January 31, 2011, we will provide them with a 15% discount off our flat fee schedule of services.*** Better yet, if they attend one of our dinner seminars in January or February, they get a ***free dinner***, 2.5 hours of legal education and a $500 coupon on our PAT Trust or $200 coupon on our standard Trust (we'll give them the greater of the coupon or the 15% discount, but not both). ***Upcoming seminars are on January 11, 2011, and January 12, 2011, at the Palm Court Restaurant in Arlington Heights, Illinois. Call before January 4, 2011, to reserve seats.***

Tax Rate Chart

You can find our chart of current tax rates for your reference, in our Spring, 2010 Newsletter. We do not have any new changes to report since that Newsletter. We expect substantial new tax legislation in early 2011 and our tax rate chart will be back again, with the most recent updates, in our Spring, 2011 Newsletter.

UPDATES THAT YOU NEED FOR YOUR TRUST THAT YOU JUST HAVEN'T MADE YET

(We All Love to Procrastinate)

We wish all of our clients had taken advantage of our Personal Asset Trust℠ with its Lifetime Service Program and "asset protection" for your beneficiaries, including free phone calls for life, free newsletters, free reviews meetings every three years, and a free meeting with your beneficiaries after death. However, for those of you that are giving everything to charity, or have beneficiaries who may not be your children, or you just don't want our Personal Asset Trust℠, you still need to make sure that your Trust complies with the current regulations and laws, necessary to have a properly operating Trust.

HIPAA – If you have received any newsletters from our office in the last seven years, you should have this done already. The Health Insurance Portability and Accountability Act states that your **medical records are private**. No one is allowed access to those records without your written consent. The problem occurs when you are disabled and your Successor Trustee needs to act on your behalf. How can he or she do that if they are not allowed access to your medical records or if your doctor or hospital is forbidden by law, from communicating with them? We provide for the release of not only **your** medical records, in the Trust provisions, but authorize the release of your Successor Trustee's medical records, in case he or she becomes incapacitated.

Costly Loss of IRA "Stretch-Out" – If your Trust was executed prior to 2005, you need a modification so that your IRA's can be "stretched out" over the lifetime of the oldest living beneficiary**. Prior** to the Treasury Regulations in 2003 and the following regulations in 2004 and 2005, if you named your Trust as the beneficiary of an IRA, it ***had to be paid out over five years***. This destroys the long term tax-deferred growth that your beneficiaries can enjoy and creates substantial income taxes for them. The new regulations allow a "stretch-out" of your IRA distributions over the oldest Trust beneficiary's lifetime, but ***only*** if the Trust is: a) irrevocable at the death of the Settlor of the Trust and it states this in the Trust; and b) the beneficiaries were identifiable under the terms of the Trust and ***all*** have a valid life expectancy. Requirement (a) is a problem since prior to 2005, ***Trusts did not state that they became irrevocable at death***. Requirement (b) is not met if a Trust beneficiary is a charity and is also a problem if "heirs-at-law" are listed in your Trusts as beneficiaries, in the event your named beneficiaries predecease you (***heirs-at-law do not have a valid life expectancy***). If in doubt, let us review, so your beneficiaries can "re-start the payout clock" and enjoy many years of tax deferred growth.

The Prohibition Against Contest Clause – We now use a nine-point "Prohibition Against Contest" clause. It not only covers litigation against the **terms** of the Trust (such as an attempt to increase the amount of a share or gift), but covers a beneficiary's failure to cooperate with the Trustee, suing to have an IRA or insurance beneficiary designation overturned, litigating against your estate, and other protective clauses. This provision is a must for those of you that have unequal distributions to your beneficiaries or are in second marriages with children from different families. Unfortunately, we have seen too many cases of children suing their siblings, step-siblings, or surviving step-parent.

NEW Trustee Powers That Are Important – There are some very important Powers for your Successor Trustees, that may not be contained in your Trust, if it was prepared in the '80's or '90's. Your Successor Trustee needs protection from frivolous law suits. We've added provisions to protect the Successor Trustee for acting in good faith and avoiding personal liability unless acting with gross negligence. Also, the Illinois law for terminating a Trust (if the value is so low that it is not economical to keep the Trust operating), has been increased to $100,000 from $50,000. Your Trustee also needs to have the ability to litigate on behalf of the Trust and defend the Trust from claims. We want to make sure that more expansive powers are included in ***your Trust***.

The Bottom Line – If you have not had your Trust reviewed since 2005, you should meet with us to have it reviewed. Your Trust is like a car. Let us do the routine maintenance to keep it running properly. Give it a tune-up and an oil change!

YOU DO NEED OUR LEGAL ADVICE AFTER THE DEATH OF YOUR SPOUSE

(Administering a Trust by Yourself Is Dangerous)

In our Spring 2010 newsletter, we told you that many of our clients' children believed that they could handle the administration of their parents' estates after death, without proper legal advice. We discussed the numerous tax, legal, and family problems that have resulted. What do **you** do after the death of **your spouse**? Is it really necessary for the surviving spouse to seek legal advice from us regarding the handling of the estate plan? The answer is absolutely, yes! The following are many planning opportunities that can be lost or wasted and cost your children hundreds of thousands (and possibly millions) of dollars if not handled correctly, following the death of the first spouse.

1) **IRA's and Retirement Plans:** Most IRA's and retirement plans designate the surviving spouse as primary beneficiary and the Trust as the contingent beneficiary. On my retirement plan, my wife is the primary beneficiary and my Trust is the contingent beneficiary. When I die, my wife will most likely "roll over" my retirement plan into her own IRA. She can then defer withdrawing from the IRA until she is over age 70 1/2. However, once she rolls over the retirement plan, it will be included as part of ***her*** taxable estate. This could cause a serious estate tax problem. Let's suppose that I have a $1,000,000 estate and my wife has a $1,000,000 estate. Our estates consist of our house, life insurance, securities, and retirement plans. After my death, my wife's financial advisor instructs her to "roll over" my $300,000 retirement plan into her own IRA. She now has sheltered only $700,000 in my estate through my "credit shelter" Trust (we often refer to this as the Family "B" Trust). My wife later dies when the estate tax exemption is $1,000,000 and her total taxable estate, including my IRA, is now $300,000 over the exemption limit. Our daughter would have to pay at least $160,000 in Federal and Illinois estate taxes. If my wife had obtained legal advice from our office following my death, we would have advised her that she should "disclaim" my retirement plan, so that it pays to my Trust. A ***disclaimer*** is a presumption of death. If my wife is presumed to be deceased, my retirement plan **must** pay to my Trust as the contingent beneficiary. She is still beneficiary of my Family "B" Trust and has the right to income and principal from my retirement plan. However, the retirement plan will **not** be included in her taxable estate, at her death. A clever, effective way to avoid death tax.

2) **Tax Sheltering the Deceased Spouse's Trust:** We touched on this in our Spring 2010 newsletter. "Funding" the deceased spouse's Trust is extremely important to avoid taxes at the death of the second spouse. We have had many widowed clients who see us for "updates," having never advised us that their spouse passed away. If the deceased spouse's Trust has been depleted and transferred into the surviving spouse's Trust, we can't place assets back into that depleted Trust. To do so, would cause a taxable gift. Once the genie is out of the bottle, we cannot undo the damage. All of those improperly transferred assets ***will be included in the estate of the second spouse to die***. Also, it is not enough to just simply keep the funds in the deceased spouse's Trust, separate from the surviving spouse's Trust. After the death of the first spouse, surviving spouse must obtain a tax identification number for deceased spouse's Trust. The IRS will only exclude the value of the Trust of the first spouse to die, if surviving spouse has treated the deceased spouse's Trust as "separate property." This means filing a separate income tax return for deceased spouse's Trust.

3) **Assets in the Name of the Deceased Spouse:** Once your spouse has passed, you cannot use that spouse's Power of Attorney for Property. You must not sign your spouse's name on any checks. To do so, is forgery. The State of Illinois requires Probate of assets owned in your late spouse's name **alone**, if in excess of $100,000. If deceased spouse's assets have a total value **less than** $100,000, you may have access to those assets by using a **Small Estate Affidavit**. The Affidavit is a statement made under oath, that the assets are less than $100,000 in value and are being given to the appropriate person, heir, or Trust, under the terms of the Will. In addition, the Affidavit states that surviving spouse automatically receive a $10,000 award from the decedent's property. Our office drafts these Affidavits regularly. It is the only legal way to pass assets outside of Probate, if under $100,000 in value.

4) **Joint Trust:** You and your spouse have one joint Trust. After your spouse has passed, you believe that everything is simply yours and there is nothing else you need to do. This is not correct. There are steps you must take after your spouse's death, even if you have a joint Trust. You are required by Illinois law, to file your spouse's Last Will and Testament with the County Clerk's office within 30 days of spouse's death. Also, you must be sure that the tax identification number for the Trust is yours and not your late spouse's, on all of your investments, IRA's, and bank accounts. It is also the time to be sure assets are titled correctly in the name of your Trust and that beneficiary designations on IRA's have been changed, now that your spouse has passed away.

5) **Review Your Own Plan**: In addition to making sure your spouse's plan is administered correctly, meeting with us is the perfect opportunity to review **your estate plan**. Consider planning for creditor and divorce protection for your beneficiaries or IRA "stretch-out" planning for your beneficiaries if your IRA is more than $150,000. Do you have HIPAA provisions in your documents? Taking care of these issues **now**, avoid problems **later.**

Trivia Question

Which professional sports organization employed our own paralegal, Diane Matalas, who has been with us since 1993?

- The Chicago Blitz (USFL)
- The Chicago Bulls
- The Chicago Cubs
- The Chicago White Sox
- The Chicago Blackhawks
- The Chicago Bears

First client to answer question correctly, will receive free dinner party with six couples of your choice at a restaurant of your choice; second correct answer will receive appetizer/wine tasting party with six couples at Cooper's Hawk Winery in Wheeling.

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*"Trusts, Estates, Taxes and Asset Protection….
A Problem Solving Law Firm"*

Annual Newsletter
Important Estate Planning Information Enclosed

What Is Happening To The Estate Tax?

As you may recall, the Federal Estate Tax Exemption amount in 2009 was $3.5 million per person ($7 million per married couple with proper planning documents). On January 1, 2010, the Estate Tax went into **"repeal"** for one year. That repeal expires on December 31, 2010, along with the rest of the "Bush Tax Cuts." The bill containing these tax cuts was passed in 2001 and was given a ten year "sunset" provision with the expectation that Congress would pass a **permanent** tax bill before December 31, 2010. **That didn't happen**. Once again, early this month, the Obama Administration and Senate Republicans have agreed to put a "band-aid" on taxes rather than draft and pass a comprehensive permanent tax bill. If the House Democrats pass the new Senate bill, it appears, the "Bush Tax Cuts" will be extended for another two years. This means that, we will have an exemption amount of either $5 million **or** $3.5 million per person on January 1, 2011. As this letter goes to print, the House Democrats have refused to bring the current proposed tax bill to the Floor for a vote. Note, **if** the bill is passed, and since the ***Illinois Estate Tax Credit*** hinges upon the existence of the Federal Estate Tax, the Illinois Estate Tax (also repealed on January 1, 2010, along with the Federal Tax), will most likely return with an exemption amount of $2 million per person ($4 million per couple). A 2003 Illinois law set the maximum credit amount at $2 million per person. Our reliable source in the Senate (yes, our office does have "ears" in the Senate Finance Committee) tells us that in Spring of 2011, a bill will be drafted and presented for approval by the Senate, which will be a ***permanent*** estate tax measure. We're going out on a limb and predicting the 2011 Estate Tax Bill will maintain the $3.5 million per person exemption. It will also be indexed to inflation similar to what Congress approved in 2001, with the annual ***gift tax exclusion amount***. Over the past ten years, the annual gift tax exclusion has **increased from $10,000/person, to $13,000/person.** Stay tuned for our Spring, 2011 Newsletter and we'll keep you updated on the Estate Tax situation.