The Law Office of Bruce Kiselstein, Ltd.

NEWSLETTER

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

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What Assets Should Be Owned By Your Trusts? What Assets Should Name Your Trust as Beneficiary?

These two questions are asked of us by our clients all the time. Here are basic rules:

I. OWNERSHIP BY TRUSTS

- Title to any real estate
- Title to Certificates of Deposit, Money Markets, and Savings Accounts
- Title to Mutual Funds, Stocks, REIT'S, and Brokerage Accounts
- Title to Bank Accounts:
  1. if jointly held (or in a single person's name) and under $15,000, it can remain jointly held;
  2. if over $15,000, it must be owned by your Trust or if you have two Trusts, put it in one Trust or the other; and
  3. Caution, if a checking account is over $15,000 and receives direct deposits or pays automatic debits, bring the account value down to $15,000 and leave it in joint tenancy (or in a single person's name)
- Cars, furnishings, jewelry will be left in your name, not your Trust's name.

II. TRUST AS BENEFICIARY

- Life Insurance - your Trust must be the primary beneficiary of your Insurance Policies
- IRA's, IRA Annuities, and Employee Retirement Plans:
  1. Single persons - your Trust must be the primary beneficiary if we created your Trust after 2005*; and
  2. Married persons - in most cases (2nd marriages are possible exceptions), spouse must be primary beneficiary; your Trust (the spouse who owns the IRA) must be the contingent beneficiary if we created your Trust after 2005*
- Non IRA Annuities - this is a more difficult choice to make:
  1. If you are married, spouse must be primary beneficiary;
  2. If you are married, the contingent beneficiary may be your Trust. Many variables enter into deciding whether Trust or individuals will be the contingent beneficiary;
  3. If you are single, the primary beneficiary may be your Trust; and
  4. The determination of naming Trust or individuals, depends on many variables, including size of annuity, contract provisions, and estate planning objectives. These issues should be discussed with the agent who sold you the annuity.

*If your Trust was prepared before October 2005, you should not name it as the primary or contingent beneficiary of your IRA or retirement plan until your Trust is amended to include the proper "stretch-out" language. Failure to amend, will cause all IRA or retirement plan assets to be paid within five years of your death, losing the potential of many years of tax deferred growth and increasing your beneficiaries' income tax burden.

2012 Tax and Other Rates			
TAX OR EXEMPTION	**AMOUNT**	**CONTRIBUTION LIMITS**	**AMOUNT**
Annual Gift Exclusion until 12-31-12	$5,120,000.00 per person	401(k), 403 (b) & 457 Plan Annual Contribution Limit	$17,000.00
Federal Estate Tax Credit Amount until 12-31-12	$5,120,000.00 per person	403(b) Annual Contribution Limit with employer additions	Lesser of $49,000.00 or 100% of compensation
Illinois Estate Tax Credit until 12-31-13	$3,500,000.00 per person	401(k), 403(b), and 457 Plan Over age 50 "Catch-Up" Extra Contribution Limit	$5,500.00
Estate Tax Rate - Federal	35% on excess above $5,120,000.00 (until 12-31-12)	Roth IRA/IRA Annual Contribution Limit	$5,000.00
Income Tax Rate on Irrevocable Trusts	35% on income over $11,650.00	IRA & Roth IRA Over Age 50 "Catch-Up" Extra Contribution Limit	$1,000.00

Your Digital Estate Planning for Cyberspace

What happens to your digital property after you die? What is digital property? It is all those newfangled technological items that have resulted from the use of internet and websites.

Millions of people have Facebook accounts. Millions more engage in other "social media" like LinkedIn, Twitter, and MySpace. Each of these have user names or ID's and passwords. Other commonly used digital assets include software, websites, e-mail accounts, bank accounts, brokerage accounts, and mutual funds. They are all password protected. How will your heirs obtain access to these digital assets after you are gone?

We used to collect print photographs and music CD's. Now we store these things on our computers and many people use on-line photo or music storage so that they don't clog up their computer memory. These on-line storage sites all have contracts between you and the service provider. These contracts don't provide access to your survivors.

Think about your airline award miles and points and your travel points with hotel chains. Can they be passed down to your heirs? Nearly every provider has different rules about this, often quite complex.

We have found that after some clients have died, their children have a very difficult time locating financial information because the deceased parent no longer received statements through the U. S. Mail. All access to their bank accounts and brokerage accounts was done on-line with user ID's and passwords. Some had additional "security questions." The same issues have appeared with credit card balances, on-line accounts with the U. S. Treasury for savings bonds, and mortgage payments.

What about your e-mail accounts with Yahoo, Gmail (Google), Hotmail (Microsoft) and your employee email accounts? Passwords and user ID's are a problem here, too. Who should have access to your email accounts after you are gone and further, do you really want anyone else reading your emails. Again, each of

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Illinois Estate Taxes

On January 1, 2011, after one year of zero Illinois estate taxes, the Illinois estate tax returned with an exemption identical to its 2009 level of $2 million per spouse. However, the Illinois legislature surprised estate tax practitioners when they passed a new bill in November, 2011, which became effective on January 1, 2012. This new bill increased the Illinois Estate Tax Exemption to $3,500,000.00 per person. In further surprising us, this bill increases the exemption amount again, on January 1, 2014, to $4 million per spouse. This means that those of you who have the A-B two Trust system, can now effectively avoid Illinois Estate Tax on assets valued as much as $8 million. This also means that if you who have the A-B Trust system and have lost a spouse, you must be sure to keep your late spouse's "Family B" Trust totally separate and distinct from your assets, if you want to take advantage of both spouses' Illinois exemptions. If you combine or have already combined your late spouse's Trust assets into your Trust assets, you may have created a tax liability. Call us at (847) 670-8200 if you have questions about the above.

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these email service providers have different rules. A few years ago, the family of a deceased marine, killed in Iraq, filed suit against Yahoo in the Michigan Courts just to get his emails. Earlier this year, an Oregon court ruled that a mother could use her late son's password to enter his Facebook account for a limited time period. A few states have passed laws controlling access to "profiles" of deceased social network users and companies like Facebook have just issued new access rules regarding this issue.

Some on-line accounts can have substantial value, for instance, PayPal, E-Bay, airline miles, reserved airline tickets, I-Tunes, Pandora music, Nook or Kindle readers, Quicken, and Turbo Tax. There are many more. What is the solution?

First you must identify the digital asset and then you must address how those assets will be handled during life if you become incapacitated or after your death. You should include specific language in your Power of Attorney (POA) to permit a loved one to access these digital assets if you are unable. We now include these provisions in our Power of Attorneys. Your Will should also include specific language for transfer of digital assets if they have value. Your Trust should not be the instrument to handle such transfers. Your Will could give your computer to one child but require that child to provide digital copies of all photos on your computer to all children. Your Will should be specific regarding who has access to your email, since content could be sensitive. Your Will should also be specific about who has access to your digital devices such as computers, laptops, smart phones, tablets, and storage devices.

Remember, passing on music or photos is one thing but not everyone may want a relative snooping on their emails. Unfortunately, technology moves much faster than legislation or your own estate plan. What you plan for today may be outdated in a few years. It is very important that you spend adequate time, providing detailed lists of all of the user names, passwords, and security questions that are attached to all of the digital assets described above. Make a clear list and place it in your estate plan three-ring binder. Doing so may avoid substantial difficulties for your survivors.

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

Semi-Annual Newsletter
Important Estate Planning Information Enclosed

Recent Illinois Case: In Re: Estate of Boyar…..
"If You Eat the Sandwich, You Can't Get a Refund Because It Tasted Bad."

In a January, 2012 case, the Illinois Appellate Court in Chicago, applied a rule to Trusts that had never been applied before. The long standing "Doctrine of Election" has applied to Wills for decades, and now applies to Trusts in Illinois. It states that if you "elect" to take a distribution of any assets under a Will, you are prohibited from then filing a claim against the Will to contest its validity. In this case, Mr. Boyar's doctors in March, 2010, stated that he was unable to handle his personal and financial affairs due to "significant dementia." His children were aware of these facts. In April, 2010, however, Mr. Boyar executed an Amendment to his Trust that removed his son as Successor Trustee and named his neighbor instead. Mr. Boyar died in May, 2010. In 2003, while he was competent, Mr. Boyar signed a Bill of Sale, selling all of his furniture, furnishings, and personal property to his Trust. A few weeks after his death, Mr. Boyar's children divided his personal property in his home among themselves. His son, Robert, who had previously been named as Successor Trustee, received 14 items of his father's personal property. Robert then filed a lawsuit against the Trust to have the Trust Amendment declared void due to his father's dementia. He attached a sworn statement to his lawsuit, stating that he had properly received the 14 items of property. The Trustee of the Trust filed a Petition to Dismiss Robert's lawsuit stating that he had received and admitted taking personal property under the provisions of the Trust, and the Doctrine of Election should apply. The trial court dismissed Robert's lawsuit. The Appellate Court agreed with the trial court and stated that the Doctrine of Elections applied even though Robert's appeal argued that he only received a very small amount of trust assets, the 14 items of personal property. The lesson to be learned is that you can't accept a benefit from a Trust, then try to invalidate that Trust.