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THE E.P. EXPRESS

FOS's Estate Planning Newsletter

An ounce of prevention. . .

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Editor: Diane Slomowitz

INCLUDING CRYPTOCURRENCY IN YOUR ESTATE PLAN

Many of us have heard of cryptocurrency, or "internet cash."

Few, however, really know what it is.

Cryptocurrency is an intangible, digital currency.

Cryptocurrency can be bought on an exchange and moved to a digital wallet for storage.

It is usually considered property, like your laptop, USB drive or cell phone.

More than 10,000 different cryptocurrencies are currently publicly traded.

Cryptocurrency can be held as an investment or used as a form of payment to companies accepting it.

Tangible money is transferred to an exchange to purchase the currency.

Coinbase, the largest online wallet and cryptocurrency exchange provider, reports that as of September, 2021, cryptocurrency has over 68 million verified users and a quarterly trading of $462 billion.

Newsweek reported in May, 2021 that 17% of the adult population owns bitcoin.

Cryptocurrency is real, and a real asset.

So, how can you leave a legacy with this digital currency?

If you already own cryptocurrency:

1. Inform your estate planning attorney how much and what type you hold;

2. Decide what you want to happen to your cryptocurrency on your death;

3. Maintain private key(s) to your wallet(s) in a secure location;

4. Inform your fiduciaries of your cryptocurrency and where to find your private keys, and;

5. Review your existing estate plan to ensure that it distributes the personal property housing your cryptocurrency as you want.

If you have contemplated purchasing cryptocurrency, consider from the start how you would like it titled:

1. If you have a revocable trust, do you want to title it in the name of the trust?

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FOS WELCOMES JAMIE BARWIN

Fox, O'Neill & Shannon, S.C. welcomes attorney and CPA **Jamie Barwin** as an associate with the firm.

Jamie provides legal services primarily within FOS's taxation and estate planning groups.

Jamie comes to FOS and returns to her native Milwaukee after providing legal services in Michigan and Illinois.

Jamie also has over ten years of accounting experience, having worked in "Big Four" accounting firms for high net-worth individuals and closely held businesses, and as controller for a prominent Chicago family.

THE GIFT OF EDUCATION

As this issue's article "Don't Forget Your Gift Tax Exclusion" notes, the annual gift tax exclusion is limited to $15,000 per giver, per recipient, for 2021.

Some educational gifts, however, have been given special tax treatment.

For example, if you are contemplating a gift for college tuition and expenses, a one-time contribution of $75,000 can be made to a 529 Plan for 2021.

An election can be made to use five years' worth of annual exclusions in one year.

Alternatively, tuition payments paid directly to a qualifying educational organization on behalf of another are not treated as taxable. The same is true for direct payments of qualifying medical expenses.

As a result, such qualifying payments do not count against a person's annual or lifetime gift tax exclusion.

COVID LIVES ON—SO SHOULD POWER OF ATTORNEY

Unfortunately, the COVID -19 pandemic remains a threat.

It continues to sicken and kill too many of our family, friends and colleagues.

For some, exposure or infection comes quickly, without warning, and with little or no time to react.

This continuing threat highlights the need for completed, signed Health Care and Durable Powers of Attorney.

Without these documents, if you become incapacitated, you may have no control over the decisions made for you about your health and finances.

In a Health Care Power of Attorney, you designate someone to make medical decisions on your behalf if you are unable to do so.

You can also indicate in advance whether you do or do not want certain medical actions taken.

These include the insertion of a feeding tube, the use of a ventilator, resuscitation, or the taking of extraordinary measures if you become non-responsive.

Many hospitals continue to restrict or prohibit visitors to admitted patients.

These policies may limit the ability of family or friends to communicate with medical personnel on your behalf, affirming the importance of a Health Care Power of Attorney.

A General Durable Power of Attorney is akin to a Health Care Power of Attorney, but applies to financial affairs.

In it, you appoint a trusted and financially knowledgeable person to handle your financial affairs if you are unable to do so.

Paying bills, making deposits, transferring matured CDs and other financial assets, making tax filings—your agent will have authority to attend to these and other financial matters on your behalf.

Without a General Durable Power of Attorney, if you are housebound or hospitalized, your unpaid bills could pile up until you default on important obligations.

Copies of powers of attorneys should be given to your agents, doctors and hospitals, and financial institutions, respectively.

If you don't have one or both of these powers of attorney, now is the time to contact your FOS estate planning attorney.

As this newsletter's motto says, an ounce of prevention…

QUESTIONS?

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Cryptocurrency, cont. from pg. 1

2. Would you prefer to create a limited liability company to own it?

Whatever you choose, the service agreement specific to your wallet(s) should be reviewed and followed, including any limitations on transfer.

Additionally, address cryptocurrency and other digital assets in your General Durable Power of Attorney.

This way, your designated agent can manage these assets if you become incapacitated.

Cryptocurrency experience should be a prerequisite for any estate plan fiduciary.

A knowledgeable digital agent can help appropriately administer your cryptocurrency.

In addition, a directed trust can be created, allowing a trust protector to make decisions involving cryptocurrency.

If you own or are considering investing in cryptocurrency, your knowledgeable FOS estate planning attorney can help make it part of your legacy.

FOS's ESTATE PLANNING ATTORNEYS

FOS Shareholder

Allan T. Young

A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

Al is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is a past Chair of the Wisconsin Bar Association's Taxation Section.

Al is a former Chair of the Milwaukee Bar Association's Taxation Section.

Al is a member of WICPA's State Tax Committee and the Waukesha County Estate Planning Council.

FOS Shareholder

Gregory J. Ricci

Greg worked at the Big 8 Arthur Andersen accounting firm before joining FOS. He is a CPA.

Greg served on the Board of the Wisconsin Bar Association's Taxation Section.

He also served on the American Bar Association's Fiduciary Income Tax Committee.

Greg is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is also a member of the Milwaukee Estate Planning Forum.

FOS Attorney

Jamie B. Barwin

Jamie is a CPA and an attorney who joined FOS after practicing law in both Michigan and Illinois.

Jamie worked in Big 4 accounting firms in the areas of taxation, audit and mergers & acquisitions.

Jamie has significant legal and accounting experience working with high net worth families and individuals.

LEGISLATIVE UNCERTAINTIES SHOULDN'T DERAIL YOUR ESTATE PLANNING

As this newsletter goes to press, Congress is considering various potential inheritance, tax and related legislative changes.

One or more of these, if enacted, could impact the estate planning process for certain estates.

No one knows if or when any potential changes may be adopted.

As a result, an air of uncertainty may hover over even the idea of creating a new estate plan.

This uncertainty, however, need not stop you from creating a new estate plan or reviewing your existing plan.

That is because many basic factors underlying a workable estate plan remain, irrespective of legislative changes.

The following are questions which everyone creating an estate plan should review and answer, even if you have an existing estate plan, since your answers to one or more questions may change over time.

1. What are my assets, tangible and digital?
2. What are my debts?
3. What major changes, financial and personal, do I anticipate experiencing in the next few years?
4. What are my goals– what do I want to achieve in my estate plan? Particular distributions to family members at specific times? Tax savings? Comfort and security?
5. Who do I want to receive my assets after I die, and how?
6. Who is the most trusted person, with the most knowledge about my medical wishes, who could make medical decisions on my behalf during my lifetime if I can't?
7. Who is the most trusted, financially knowledgeable person who could take financial actions on my behalf during my lifetime if I can't?
8. Who do I trust to be guardian(s) of my child(ren) if I die while they are minors?
9. Who is the most trusted, financially knowledgeable person to take care of and administer my assets after I die?
10. Who do I want to receive my life insurance, retirement accounts, certificates of deposit and other accounts after I die?
11. Do I want to make a particular statement about anything important to me in my estate plan?

The answers to these and other questions will inform the core of your estate planning documents.

True, the possibility of change will always be in the air.

Estate plans, however, can and should change over time, as your wants and needs change over your lifetime.

If legislative changes occur which affect your estate plan, you can analyze their impact with your estate planning attorney, and revise your plan accordingly.

DON'T FORGET YOUR GIFT TAX EXCLUSION

Before long, the holiday lights will be going up, festive music will fill Alexa, major baking expeditions will begin, and gifts will be purchased.

Gifts.

For some gift givers, more ties, unneeded toys, another tv, and those sexy reindeer pajamas don't cut it anymore.

Instead, they want to help family or friends monetarily, through a token of cash, some rainy-day money, or a "thank you" check.

Others want to go bigger, with the down payment for a first house or a grandchild's college expenses.

When considering significant monetary gifts, remember the lifetime and annual gift tax exclusions.

As of 2021, each adult may give up to a total of $11.7 million during his or her lifetime to one or more other person(s) without incurring any transfer tax liability.

Gifts can also be made up to $15,000 annually to each recipient without trigging a gift tax return filing.

Generally, gifts in excess of $15,000 require the filing of a gift tax return for the year of the gift.

The $15,000 is not aggregated.

This means that one person can give up to $15,000 to each of a theoretically unlimited number of persons without paying tax and without having to file a gift tax return.

Each spouse's $15,000 limit is separate, so combined, they can give $30,000 to the same recipient tax-free and the spouse can gift $60,000 to another married couple in aggregate.

So, if you're considering being the special Santa this year, you may be able to give yourself a gift by doing so, without incurring gift tax.

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IN THIS ISSUE

WILL CONGRESS REDUCE THE ESTATE TAX EXEMPTION?

The estate tax exemption—the amount of a deceased person's estate which is not subject to tax on death—has been praised and criticized for decades.

The current federal estate tax exemption is $11.7 million per individual ($23.4 million for married couples).

Net estate assets exceeding this exemption amount are subject to federal estate tax of approximately 40%.

Proposed legislation has been introduced to reduce the exemption to pre-Trump administration levels of $5.0 million per individual ($10.0 million for married couples), indexed for inflation.

The reduction would be effective in 2022, rather than in 2026, when the current increased exemptions would have otherwise expired.

This proposal is part of the House Ways and Means Committee's approval of $2.1 trillion in new tax levies, the largest potential U.S. tax increase in a generation.

Difficult hurdles remain, including full House and Senate passage, before the rollback could become law.

Notably, the proposed elimination of the basis "step-up" on death has yet to gain traction in the full House.

This proposed change would eliminate the adjustment ("step-up") of certain assets to fair market value on a deceased person's date of death, which significantly reduces the capital gains tax a beneficiary may have to pay when inherited appreciated assets are sold.

Despite these legislative uncertainties, and as discussed in this issue's "Legislative Uncertainties Shouldn't Derail Your Estate Planning," the hard work of estate planning should not stop during the legislative process.

Given the potential threats to the estate tax exemption, clients with assets exceeding $5.0 million per person should consider planning opportunities now that may utilize the current higher exemption amount. Such opportunities include lifetime gifts to family, friends or charity, using "freeze" techniques including grantor retained annuity trusts ("GRATs"), intentionally defective irrevocable trusts ("IDITs"), and family limited partnerships, which allow a person to maintain control while transferring assets outside of the taxable estate. However, the effectiveness of these techniques may be significantly reduced as soon as this year, too.

In addition, individuals who have lost a spouse in recent years should consider the "portability" of the deceased spouses' unused exemption (up to $11.7 million), which can shield a survivor's assets from the estate tax.