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THE E.P. EXPRESS

FOS's Estate Planning Newsletter

An ounce of prevention. . .

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CELEBRATING 60 YEARS

BUSINESS SUCCESSION PLANS ARE CRITICAL TO EFFECTIVE ESTATE PLANS

Many people mistakenly believe that estate planning is just for individuals and has nothing to do with businesses.

Especially for the owners of family businesses, however, an estate plan will not be complete or fully effective without a comprehensive business succession plan.

The incapacity, death, or retirement of the owner of a family business can wreak havoc with its operations and future success.

Succession planning is the key to preventing a potential business disaster.

The first question may be the hardest: What should happen to the business if the owner is unable or unwilling to continue running it? Should it be continued? Sold? Liquidated?

Identifying key "players" is essential. Consider:

- Who has the requisite skills and integrity to oversee and implement the succession plan?
- Who are the intended beneficiaries of the owner's personal estate?
- Who are the intended beneficiaries of the business?
- Which intended beneficiaries are capable of being involved in the business, if any?
- Which intended beneficiaries would want to be involved in the business, and which would not?

Tax considerations for the business, its owner, and potential beneficiaries should also be considered.

After answering these questions, a business succession plan can be created consisting of the following:

Succession Plan, cont. on pg. 2

DON'T LET SOCIAL SECURITY TAKE THE ROMANCE OUT OF REMARRIAGE

One part of the estate planning process is predicting your available income during your lifetime.

Social security is a common component of that prediction.

Social security benefits, however, can get complicated.

This is especially true in terms of survivor benefits for persons who are divorced and then remarry.

Survivor benefits can be paid, based on the death of a former spouse, to the survivor of that former marriage.

When an ex-spouse dies, the surviving former spouse may be eligible to receive survivor benefits based on the ex-spouse's social security record.

For this to occur, the prior marriage must have lasted at least 10 years.

And, for these benefits, 60 is the magic number.

60 is the age when most ex-spouses are eligible to receive survivor benefits.

However, if the survivor remarries before age 60, he or she is no longer eligible to receive the survivor benefit based on the ex-spouse's record.

This ineligibility continues for the duration of the remarriage.

If the remarriage ends by death or divorce, the survivor's eligibility for survivor benefits, based on the earlier marriage, is restored.

If the survivor remarries after age 60, the survivor remains eligible to receive such benefits and the remarriage has no adverse impact.

Is all of this hoopla romantic? No.

But if you or your spouse are past your first marriage and one or both of you is nearing the magic number 60, give your spouse an extra wedding present.

Time your wedding date so that you retain all social security benefits available to you.

NEW INHERITED IRA DISTRIBUTION RULES PROPOSED

According to the Investment Company Institute,* U.S. investors held $13.2 trillion in individual retirement accounts ("IRAs") at the end of 2021's third quarter.

With the country's aging population, significant amounts from these IRAs will be inherited in upcoming years.

The Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act"), effective January 1, 2020, changed certain distribution requirements for inherited IRAs, depending on the beneficiary.

After two years, proposed implementing rules have finally been issued.

While the final rules may change these proposed regulations, their window into the IRS's viewpoint is useful in financial and estate planning.

The proposed regulations are intended to be effective for tax years beginning and transactions taking place on or after January 1, 2022.

They focus on two beneficiary classes: Eligible Designated Beneficiaries and Non-Eligible Designated Beneficiaries.

Eligible Designated Beneficiaries are:

- Surviving spouses;
- Minor children (under 21) of the decedent;
- Individuals who are disabled, under regulatory definitions for those under, at, and over 18, with a "safe harbor" based on social security rules;
- Persons who are chronically ill, as defined in the regulations; and
- Persons not more than 10 years younger than the deceased individual, as defined in the regulations.

These groups may generally take distributions according to the beneficiaries' life expectancies.

A spouse-beneficiary who inherited his or her interest before the Act's effective date can use a "required beginning date" of age 72 to begin taking distributions.

In certain circumstances, Eligible Designated Beneficiaries may choose between a payout over 10 years or their life expectancy.

In contrast to Eligible Designated Beneficiaries, Non-Eligible Designated Beneficiaries are the largest group of inherited IRA beneficiaries who are not spouses of IRA holders.

For this group, if the IRA owner dies before reaching his or her "required beginning date" of 72, beneficiaries must withdraw all account funds by the end of the 10th year after the year the holder died.

Owners dying after age 72 are treated differently.

The proposed regulations' preamble states that these distributions must be made yearly, based on the beneficiary's life expectancy, during the first through ninth year after the owner's death.

The remaining balance must be withdrawn in the tenth year.

Additional rules, which have not been significantly changed, apply to Non-

Inherited IRA, cont. on pg 3

Succession Plan, cont. from pg. 1

- The Owner's Personal Estate Plan which establishes the disposition of the owner's assets through a will, trust, and related documents. The plan should include a durable power of attorney and health care power of attorney, naming fiduciaries to act on the owner's behalf, during the owner's lifetime, if he or she cannot. A marital property agreement may also be appropriate for married couples. The estate plan's coordination with the following business succession plan documents can provide for a comprehensive, consistent business transition.
- A Buy-Sell Agreement between the business and its owners which provides the process to transfer an owner's interest (including on incapacity or death), including to other owners or third parties, and details a business valuation mechanism.
- A Management Succession Plan for future managers, which provides essential information regarding business operations and the process for running the business.
- A Strategic Tax Plan to maximize the tax efficiency of business succession.

Succession Plan, cont. on pg. 3

FOS's ESTATE PLANNING ATTORNEYS

FOS Shareholder

Allan T. Young

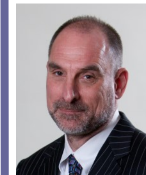
A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

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.

YOU DON'T HAVE TO DO IT ALONE

For many, the nuclear family is the norm—grandparents, parents, children, and even a pet.

That, however, is not the case for some people.

According to the 2020 Annual Social and Economic Supplement, about 126.9 million unmarried (never married, divorced, widowed) households exist in the U.S.*

A 2018 Census Bureau survey found that 15.2 million adults 55 or older are childless. **

These individuals may not have the traditional familial safety net to help them manage their financial, personal, and medical affairs as they age.

Unmarried individuals without children should make sure to create estate plans.

Of course, everyone should have a will, trust, and/or beneficiary designations indicating which people and/or charities should receive their assets upon their death.

However, it is especially important for unmarried individuals, particularly those without children, to take estate planning steps to protect themselves and their assets while they are still living.

These steps should include the execution of a General Durable Power of Attorney and a Health Care Power of Attorney.

A General Durable Power of Attorney appoints someone to pay your bills and manage and invest your money if you become incapable of doing so.

You may appoint someone to act immediately or upon your incapacity.

Ideally, the appointed person would be younger than you (less likely from becoming incapacitated himself or herself), honest, financially adept, and conscientious.

While there may be no children to call on for this task, disinterested extended family members or friends may be available.

Absent family or friends, a professional financial company may be willing to be appointed, at a monthly or yearly cost.

Be sure to make your financial preferences and intentions known to your appointed representative.

And be sure to remain in periodic contact so that any changes in your physical or emotional health can be noted.

In addition, a Health Care Power of Attorney is essential.

A Health Care Power of Attorney appoints someone to make medical decisions on your behalf if you become incapacitated.

Typically, this is someone who makes decisions on your behalf only when you cannot.

The document can also give directions regarding attempts to resuscitate, feeding tubes, ventilators, and similar actions.

The key is to find a trusted person who knows your wishes and will reliably enforce them.

It may take an unmarried person without children a little longer to locate a suitable health care appointee.

The effort, however, will pay off greatly if you become medically incapacitated.

Even individuals with children or spouses may have to face these issues if their children live across the country, have become estranged or are not up to the task.

For everyone, the best prediction for a worry-free future is the creation of an appropriate estate plan today.

* www.seniorcare2share.com/how-many-seniors-live-in-independent-living-facilities/

** www.census.gov/newsroom/press-releases/2021/childless-older-adult-population.html

Succession Plan, cont. from pg. 2

- Disability and Life Insurance which provide income security for an owner's family upon incapacitation or death.
- Key Person Life Insurance which covers vital business principals and key employees, and pays out on death (or a terminal illness). These proceeds can keep a business afloat during a transition to new owners or a sale.

Your FOS estate planning attorney can guide you through the process in developing a successful business succession plan.

Inherited IRA, cont. from pg. 2

Eligible Designated Beneficiary entities such as charities, decedents' estates, and most trusts.

These are complicated proposed rules, with highly technical requirements.

The final rules will likely retain their overall viewpoint and requirements.

Your FOS attorney can help you make sense of them and incorporate them into your financial and estate planning.

*Release: Quarterly Retirement Market Data, Third Quarter 2021 | Investment Company Institute (ici.org)

MEDICAL PREFERENCES CHANGE? SO SHOULD YOUR HCPOA

A Health Care Power of Attorney ("HCPOA") allows you to specify whether you want actions like feeding tubes or DNRs to be taken if you are medically incapacitated.

With our first HCPOAs, many feel certain about our decisions. Certainty is easy when we're young (or younger).

But when serious illness strikes, we might change our minds, even to our families' surprise. Now we may want that DNR. Or that feeding tube. Even if our HCPOAs say the opposite.

But if we don't change our HCPOAs and become incapacitated, our wishes may not be followed.

So, review your HCPOA regularly, and again if you become ill. If it no longer works for you, change it.

HCPOAs can be changed, and changed again, so long as the signer can still make medical decisions on his or her own behalf.

Your medical choices should be yours. Make sure your HCPOA reflects them.

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ESTATE PLANS ARE NOT "DO IT YOURSELF" PROJECTS

One of the benefits of our online world is our ability to perform financial, administrative, or other tasks via the computer.

Many of these tasks used to require a trip to a government or business office.

Money transfers, mortgage approvals, car titles, pet licenses, property tax payments, and even the notarization of documents can now be completed and/or obtained online.

All in less time and with less inconvenience than before.

Estate plans? Not so fast.

Sure, typing "estate plan" into Google will return many "free" forms.

In the long run, however, using those forms without appropriate legal consultation may cost you and your family unnecessary time, money, taxes, and frustration.

And your assets might not go where you want them to after you die.

Why? Because, among other things, online estate plan forms <u>may not</u>:

- Comply with state law, in substance or as to attestation requirements;
- Be up to date with the most recent federal and state tax and estate planning laws and judicial decisions;
- Include documents aside from a basic will, which could lead to the public disclosure, cost, and formalities of probate;
- Include beneficiary designations for insurance and financial accounts, including 401(k) and other retirement accounts, which could also lead to probate;
- Include general durable and health care powers of attorneys;
- Include documents needed to implement an estate plan;
- Recognize and apply all available tax benefits, as nuanced drafting would;
- Address generational transfers to grandchildren and great-grandchildren;
- Address the unique impact of "blended families;"
- Account for unanticipated consequences; and
- Answer questions about specific situations.

Online estate planning forms assume all people are the same.

People, however, are different, with distinct assets, families, priorities, likes, and dislikes.

Internet estate plans, with their "one size fits all" approach, ignore the many different "sizes" of the population.

One benefit of creating and maintaining an appropriate, effective estate plan is for you to live your life without worrying about what will happen to your assets when you die.

An online "plan" can only increase, not erase, that worry.

So do it right the first time. Contact your FOS estate planning attorney.