STOVER & SPITZ LLC

ATTORNEYS AT LAW

Dusting Off Your Estate Plan

After you sign your will, it may be tempting to put it in a safe place and forget about it. However, it's wise to revisit your will, and your entire estate plan, from time to time. The following are just some of the reasons why updates to your estate plan may be appropriate.

1. **Change in Family Circumstances.** There can be a variety of changes in family circumstances that warrant revisiting your estate plan, such as births, deaths, marriage and divorce. Even if there is not a dramatic change in family circumstances, you may want to reconsider the individuals you have named as your fiduciaries (such as agent under your power of attorney or personal representative under your will). As time passes these individuals get older, may relocate or may no longer be the best choice to serve in these roles.

2. Children Reaching Adulthood. If you sign a will while your children are young, it's important to revisit your planning when your children reach adulthood. For example, if your plan calls for assets to be held in trust, it may now be appropriate to consider leaving the assets outright to your children. Conversely, if your assets will pass outright to your children under your current plan, you may determine that the assets should instead be held in trust. You may want to leave assets in trust due to concerns that your children will not prudently manage their inheritance, or you may just want to take advantage of the protections offered by trusts. If properly structured, leaving assets in trust for a child can provide some protection against the child's creditors and some protection against claims by the child's spouse.

3. Financial Changes. A well-considered estate plan will be crafted with your assets in mind. The overall value of your assets is important, as are the types of assets that you have. As your assets change, it may be advisable to also make adjustments to your estate plan. For example, if your assets increase in value, it may be advantageous for your estate plan to include planning to reduce or eliminate estate tax at your death. On the other hand, if your assets decrease in value, you may be able to simplify your estate plan. When appropriate, simplifying your estate plan can reduce costs that would be incurred later to implement a plan that no longer fits your needs.

4. Updating Beneficiary Designations. It's important to periodically check your beneficiary designations to make sure they coordinate with your estate plan. When you signed your will, you hopefully reviewed the beneficiary designations for your assets and made any necessary updates. As time goes by and new assets are acquired, you may forget to name beneficiaries in a manner consistent with your estate plan.

5. Law Changes. The law is constantly evolving. Over the past decade, there have been significant changes to federal estate tax law and also to state law. Your estate plan may no longer be the optimal plan for you in light of these changes. For example, if your estate plan was put in place before 2006, the federal estate tax exclusion amount was under $2,000,000. The exclusion amount is now over $5,000,000. Your will may include estate tax planning as a cornerstone of the plan. Depending upon the current value of your estate, it may make sense to eliminate that tax planning, which will simplify your plan and as a result, simplify administration of your estate.

6. Move to Another State. Most states recognize a will as valid if it was validly executed in another state. However, a will executed in one state and tailored to that state's laws may not work as well with the laws of another state. Accordingly, it may be appropriate to update all or some of your estate planning documents after you make a move.

Signing a will is a good step in leaving a thoughtful estate plan for your family. To ensure that your property passes as you intend, and as smoothly as possible, dust off your will and other estate planning documents at least every 3 to 5 years, and consider whether any updates are needed.

$64 Million Charitable Deduction Lost

The case of 15 West 17th Street LLC v. Comm'r, decided by the Tax Court on December 22, 2016, is a cautionary tale of the importance of complying with federal tax laws when making a charitable gift. Although the charitable gift at stake in that case was a remarkable $64 million, the lesson from that case applies for anyone making a charitable gift that exceeds just $250.

Federal income tax laws provide that for any contribution of $250 or more, the taxpayer must substantiate the contribution with a "contemporaneous written acknowledgment" of the contribution by the charitable recipient.

The written acknowledgement must contain the following information:

1. Name of the organization;
2. Amount of cash contribution;
3. Description (but not necessarily the value) of non-cash contribution;
4. Statement that no goods or services were provided by the charitable organization, if that was the case;
5. Description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution; and
6. Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

Without a written acknowledgment in compliance with these requirements, the charitable deduction is not allowed when cash or property in excess of $250 is given to charity. That was the case with the gift made by 15 West 17th Street LLC.

15 West 17th Street LLC made a charitable gift valued at over $64 million. There was no question that the gift was made. In fact, the charitable recipient provided the LLC with a letter acknowledging the gift.

However, the letter did not comply with the requirements above. Notably, the letter did not state whether the charity had provided any goods or services to the LLC, or whether the charity had otherwise given the LLC anything of value in exchange for the contribution. Accordingly, the entire charitable deduction of over $64 million was disallowed.

Although you may not be making gifts in the magnitude of $64 million dollars, this recent case is a good reminder that if you make a gift to a charity in excess of $250, cash or otherwise, you need to obtain a qualifying letter from the charity acknowledging the gift. Otherwise, you cannot deduct the amount of the gift on your income tax return, even though you may be able to easily prove that you made the gift to the charity.

Americans gave $373.25 billion to charities in 2015

Source: National Philanthropic Trust

The Future of the Estate Tax

There has been a great deal of speculation as to what affect the current administration will have on the transfer tax system, and whether the estate, gift, and/or generation-skipping transfer (GST) tax will be eliminated altogether.

As of press time, legislation (H.R. 631 and S.205) has been introduced to eliminate the estate and GST tax. The proposed bills preserve the gift tax. The top tax rate for gifts would be reduced to 35%, and the lifetime exemption from gift tax would remain in place. Source: congress.gov.

However, even if Congress does repeal the estate tax, repeal may not be permanent, as was the case under prior law which led to one year of repeal in 2010 followed by full reinstatement of the estate, gift and GST tax. Without a crystal ball, no one knows for certain the future of the estate tax. Stover & Spitz LLC will be monitoring relevant legislation.

Avoiding (Colorado) Probate Could Be A Mistake!

Probate is the process that governs the orderly transfer of a decedent's assets to his or her loved ones or to trusts for their benefit in accordance with the decedent's will. In Colorado, the governing law is the Uniform Probate Code (UPC), which is a thoughtful and well-crafted statute.*

The UPC allows what is referred to as "informal probate." An application for probate of a will or appointment of a personal representative is not terribly complicated and can even be electronically filed. In well over 90% of cases no court appearance is required. Court fees are minimal and there is no statutory requirement that the estate pay the personal representative (often referred to as an executor) or the lawyers a set amount. In both cases, the estate is charged for services actually provided.

An enduring myth is that Colorado probate should be avoided at all costs. True, it may make sense in some cases to avoid probate. However, the unsuspecting too often follow the recommendations of well-intentioned, but misinformed friends and advisors and rearrange their financial affairs to pass much or all of their estate to beneficiaries outside of their will, as discussed below. This can be a disaster for several reasons, particularly if the will includes devises to one or more testamentary trusts for tax or asset protection planning purposes.

If your will includes such devises, adding rights of survivorship and POD (payable on death) or TOD (transfer on death) directions to your accounts to "avoid probate" means that the assets will pass outside of the will, which can starve the plan of the assets necessary to fund these devises. It is very difficult to put Humpty Dumpty back together again after you have died, so it is important to make sure your assets are titled properly before you pass on to your reward.

Another advantage of the probate process is that it facilitates the orderly collection of assets following death. The probate court will issue "Letters Testamentary" to the personal representative that are universally accepted by all financial institutions and title companies. By contrast, the same entities often request a laundry list of requirements to prove that the successor trustee of a decedent's revocable trust really has the authority to act. In many cases, these entities want an attorney's letter or an indemnification from the successor trustee. This is because the revocable trust has not been reviewed and approved by the court.

The Uniform Probate Code has been enacted by 17 states, including Colorado

Source: Uniform Law Commission

In addition to insuring that the decedent's plan will be carried out from a financial perspective, there are a number of other beneficial attributes to Colorado probate. Possibly the most significant are the UPC's provisions providing for quick resolution to creditors' claims. All estates have creditors, such as medical bills and credit card balances. The UPC provides an efficient mechanism for resolving most claims within four months. Without this system, creditors of the estate can bring claims against the estate up to one year following death. This can hold up distribution of assets and possibly subject the recipients of the assets to claims of the decedent's creditors for far longer than a timely probate action.

Finally, it is important to note that the UPC primarily governs wills (with some limited exceptions). Many of its provisions are very favorable to the heirs and devisees of a decedent. If assets bypass the probate system, these provisions are of no help.

*This article addresses probate in Colorado. The probate procedures in other states may be different.

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ROLL CALL

Who's in the News

Tom Stover just completed his 10 year tenure on the Colorado State Membership Committee of the American College of Trust and Estate Council (ACTEC), which he chaired for half of that time. In January, he presented a talk to the Boulder County Estate Planning Council on the many inadvertent ways that planners can sabotage estate plans.

In February, **Jennifer Spitz** gave a presentation for the Colorado Bar Association on the topic of opening a probate estate. She also gave a presentation for the Boulder County Bar Association on planning for out-of-state property.

Kate Keiser and her husband Adam welcomed their daughter, Ada Louisa, in November. Baby Ada is full of joy and laughter, and big sister Cora is her #1 fan. Kate returned from maternity leave in March.

Stover & Spitz LLC is a Tier 1 Trust and Estates law firm, as recognized by U.S. News Best Law Firms.