

Zolla Law Firm December 2014 Newsletter

Happy Holidays!

IMPORTANT: I have had no phone service since Monday and do not know when it will be restored. If you need to reach me, please send me an email and I will get back to you as soon as possible.

Please note that my mailing address and fax number has changed:

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Although my desk is still in the same place, my front door has moved one suite to the right. Please make a note of it.

Estate & Gift Tax for 2015

For those of you who keep track:

The Estate and Gift Tax Exemption in 2015 is \$5.43 million (\$10.86 million for a married couple). The tax rate on assets above the Exemption amount is 40%.

The annual Gift Tax Exclusion remains at \$14,000.

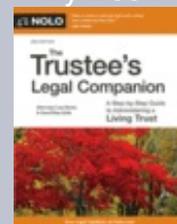
My Experience with Donor Advised

Carol Elias Zolla



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Funds

For years, I have been encouraging my clients to set up a donor advised fund to streamline their charitable giving. But to be quite honest, I didn't set one up myself until this year! It was incredibly easy to create and (with one minor hiccup), it has made our giving a breeze. I highly recommend it.

My husband and I were lucky enough to have a mutual fund which had appreciated more than 100%. We also anticipated that we'd be giving to our kids' school, our universities, and our house of worship in the next few months. Typically, we make our charitable donations out of ordinary income, but this year we decided to do it through a donor advised fund ("DAF") instead. We set up our personal DAF and moved our mutual fund to it in minutes. My husband and I will not have to pay capital gains tax on the sale of the appreciated mutual fund within the DAF, but we will get to take an income tax deduction for the gift of the mutual fund to the DAF.

So, now we basically have a pool of money in which to give to charity over the next few years. When our kids' school's home and school club asked us for the "suggested donation", we were able to go online, "advise" the DAF to choose the home and school club as a charitable recipient, and our grant was approved within 24 hours. Although it is possible the charity overseeing the DAF would not approve a grant, given that our charities are rather mainstream, it is incredibly unlikely. I have to say, the process is easier than writing a check and my husband and I have been more generous than in previous years, given that we saved the capital gains tax on the sale of the mutual fund.

The only issue we've had is associated with my husband's employer and its matching donations. The company uses United Way as its charitable infrastructure, so the DAF had to make its donations

through United Way. The process will take much longer because it will go through the United Way pipeline, but given that our end-of-the-year donations will now be doubled, we think it's worth it. Because we got the charitable deduction when we made the initial transfer of the mutual fund to the DAF, we will not get a second charitable donation when the money goes from the DAF (or United Way) to the charities. But we will still be listed as the "donors" on the donor lists.

Many people are uncomfortable creating a DAF because they don't have "enough". According to the [Silicon Valley Community Foundation](#), approximately 1/3 of their DAFs have less than \$25,000. [Fidelity Charitable](#) (now the 2nd largest US charity) runs DAFs, and their median account balance is just over \$16,000. Many charities that run DAFs have a minimum of only \$5,000 to establish a fund. The amount my husband and I have put into our DAF will probably cover our charitable donations over the next three years. But, given our positive experience, I anticipate that we will continue to fund the DAF if our mutual funds continue to appreciate.

Powers of Attorney

These last few weeks have been a very difficult time for my extended family. We've experienced a planned surgery, an emergency hospital procedure, a terrible debilitating accident, and sadly the last illness and death of my beloved 96 year-old grandfather. I am in complete shock, and thankful my husband, children, and I were together for a Thanksgiving dinner with my family to re-group and commiserate.

As the sole estate planner in the family, I've been asked for advice a lot these past few weeks. Most of the questions are associated with the use of a power of attorney (POA). So, I thought I'd address them here:

- A POA is only useful when the "principal" (the incapacitated person) is alive. Once a person is

deceased, the POA cannot be used. The access to the now-deceased person's account will be managed by the executor (if there's a will) or the trustee (if there's a trust). Do not try to use the POA after a death; it isn't legal.

- A POA works best if an individual is the owner of an account. My POA form has been drafted to allow the "agent" to serve on behalf of the principal as an individual and/or as trustee of the principal's revocable trust. However, not all financial institutions accept this authority and there may be a three day delay for the institution to get approval from its legal department. If there is a time crunch, and the agent and successor trustee of the trust is the same person (one person wearing different hats), it may be quicker for the person to act as successor trustee. But, in that instance the successor trustee will have provide a doctor's note saying the the principal is unable to act along with a copy of the trust to the financial institution.
- A POA can be "durable" and/or "springing". A durable POA is one that lasts after a person becomes incapacitated. Most POAs are durable and the intent is that they will only be used upon incapacity. A springing POA is one that only becomes effective upon incapacity. The agent will have to obtain a note from the principal's treating physician stating that the principal can no longer manage her financial affairs and present that note to each financial institution before the agent can act. Requiring the note can delay its effectiveness. Most married couples are comfortable with POAs that are not springing (i.e. they are effective immediately) so that the other spouse can act whenever it's needed without the need for a doctor's note.
- A POA is only effective if the agent knows where the principal does his banking and borrowing. In this day and age everyone seems to have tiny accounts at financial institutions for the purposes of obtaining lines of credit and multiple

department store credit cards for access to discounts and sales. I highly recommend that everyone look around and close accounts with less than \$500 or that were obtained to get a discount on a mattress. It can take a new agent on a power of attorney half a day to access an account, only to find out there isn't enough there to pay a hospital bill.

- Even if you have a POA, it will still be helpful if the agent knows your online passwords. Although it's technically against the rules, there are times when an agent needs to go online to move money between accounts or to find out how much is in an account (to see if it's worth it to access to pay bills -- see above). Make sure your passwords are secure, but still discoverable by trustworthy family members. Creating passwords to open lists of passwords, which then require a key to decode, can add hours of frustration in an already trying time.
- Finally, you may have an immediately effective power of attorney, with everything signed correctly, but still encounter problems and delays. Some banks make the agents go to a branch for every transaction, while others allow online or telephone access with no hurdles to jump through. Allow plenty of time to sort it all out, and be patient.

Zolla Law Firm

I wish you all a very Happy Holiday, New Year, and good health in 2015.



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