Zolla Law Firm
December 2015 Newsletter

Happy Holidays!

2015 was truly a whirlwind! I am happy that my business has continued to grow and truly appreciate your referrals and continued support.

Estate & Gift Tax for 2016

For those of you who keep track:

The Estate and Gift Tax Exemption in 2016 is $5.45 million ($10.9 million for a married couple). The tax rate on assets above the Exemption amount is 40%.

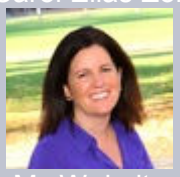
The annual Gift Tax Exclusion remains at $14,000.

Digital Estates

For the past ten years or so, Estate Planners have been talking rather hypothetically about the "Digital Estate". That is, what's supposed to happen to your Facebook account, PayPal balance, and online photos after your death? Does it disappear into the ether? Does it belong to your heirs? Can you specify that some accounts should be shared with the children and others quietly go away? (ahem... Ashley Madison... or Match.com)

I don't typically raise this issue with my clients because, quite frankly, I don't know what to tell you. Much of what happens to your Digital Estate at your death is currently governed by the user agreement you "agreed" to when you first opened the account. Did you read the Facebook user agreement? How about Yahoo? The rules are quite different. Have you asked your ISP what happens to your family website, domain name, and email? Which

Carol Elias Zolla



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states protects your privacy and which ones will give unfettered access to anyone named as the Executor? It's the wild frontier.

In the past few years, a committee representing the 50 states met to create a Uniform Act regarding Digital Estates. On the spectrum between complete privacy for the decedent and open access to the named Executor, the Uniform Act leaned toward access. But, then the tech companies got together and argued that they'd be violating federal law if they ignored the deceased user's expectation of privacy. Another state group (led by California) attempted to tackle the problem by leaning toward privacy, but with access if explicitly permitted by the decedent before her death. And, now the group creating the Uniform law is attempting to merge the two approaches by creating a separate opt in/out for privacy/access for each account that the users can clearly understand and that is not hidden in a six page user agreement. The final result has not been hammered out, and has not been adopted by California or any other state.

In the meantime, I will soon add a paragraph to both my Will and my Power of Attorney form to allow the Executor and Agent to access the decedent's Digital Estate. And, I will start instructing my clients to write a separate letter to the Executor/Agent saying what she wants him to do with the information once it's accessed. Do you want the email deleted? Should your avatar in World of Warcraft be sold to the highest bidder? Do you want a final note on your blog?

You're going to have to let the Executor know what you want. And you're going to have to update this letter as your Digital Estate changes. It's a lot to manage, but as our life moves more and more online, we have no choice but to manage our Digital Estate with the same oversight we give our bank accounts and businesses.

Transfer on Death Deeds

Let's face it, living trusts aren't cheap. The fees reflect hours of client meetings, emails, and document

drafting, and the resulting cost of a trust is just too much for some people. The alternative to a trust, however, is a will or nothing at all (called intestacy), which may lead to probate, high costs, and delays.

California has had Transfer on Death/Payable on Death "(TOD)" bank and brokerage accounts for awhile. It allows the creator of an account to name someone to inherit the account after the creator's death without probate and regardless of what the creator wrote in his will. And it's different from a joint tenancy account, because the beneficiary will have no access to the account during the creator's lifetime.

After years of discussion, Governor Brown has recently enacted a law allowing for TOD deeds for real estate. This new type of deed allows a homeowner to name someone to inherit his home without the need for probate or a trust. It is designed to minimize costs and delays for people with uncomplicated family situations. It's not for everyone.

After executing a TOD deed, the homeowner must record the deed with the County Recorder within 60 days. This is done to avoid fraud, but in effect it makes TOD deeds unattractive for gifts to friends, because the friend could do a public records search and find out about the gift. I find that many of my single clients who name friends as beneficiaries like creating wills or trusts because they can keep the gifts private during their lifetimes. If their relationships change, they can easily change their beneficiaries and the friends will be none-the-wiser.

TOD deeds work best if a single person wants to make a gift to one more children, but doesn't want to add those children as joint tenants during his life, perhaps because the children have creditor issues or could move into the house before the homeowner is ready. A couple holding property in "joint tenancy" cannot execute a TOD deed in favor of their children; it can only be executed by a single owner.

If a homeowner wants to change the beneficiary of a TOD deed, the owner must execute and record either a Revocation of the TOD deed or a new TOD that identifies a new beneficiary. So, if a single homeowner executed and recorded a TOD deed naming his niece as a beneficiary so that she would be more attentive, he would have to execute and record a new document if he changes his mind. The niece could find out about the revocation in the same way she found out about the TOD deed in the first place. You can imagine the hard feelings that would result! The property owner cannot execute a will to revoke the TOD deed. It must be a public record.

I am happy to speak with you about whether a TOD deed will work in your situation. As is obvious by this discussion, my concern is that recording a TOD deed is a public act. So, if you want to keep your gift private, it isn't for you.

Death With Dignity

California has recently enacted a Death With Dignity Act, so that terminally ill California residents can voluntarily obtain a prescription for an “aid-in-dying drug”. There are many requirements that ensure that the ill person understands all of the ramifications associated with taking the drug and takes it willingly:

(i) The ill person must request the drug at least twice over a 15 day period, both orally and in writing. It must be requested by the patient himself, and not by a conservator, an agent under a power of attorney, or agent under an advanced health care directive. Because of this requirement, a person with dementia is not eligible for this drug.

(ii) The ill person must consult with his treating physician and a consulting physician to ensure that the patient understands his condition, the likely prognosis, and the alternatives to death by drug.

(iii) The ill person has to be able to self-administer the drug (i.e. not get help from a relative or caregiver). But, a relative or caregiver can assist in preparing the drug for the patient.

An ill person isn't required to take the drug, even if he requests it. But perhaps the fact that the drug is available will give the suffering patient some comfort knowing that he can have a bit of control over his final days.

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I know it's verboten to brag about one's kids, but how about a dog? My dog, Houdini, is currently being featured on the KOFY TV station breaks. If you see a Houdini from Los Gatos before your favorite newscast or syndicated show, know it's my crazy pup!

Tel: (408) 358-6900
Fax: (408) 358-6903
Email: carol@zollalawfirm.com