



The Estate Update

*A newsletter provided for the benefit of the clients and friends of
The Peninsula Center for Estate Planning and Elder Law*

A message from the Firm:

As we enter our sixth month in our new firm, Susan and I would like to personally thank each of you for coming with us. The transition has been an extremely satisfying and rewarding experience for both of us, and we want to thank you for the confidence and support you have extended to us over the past several months. We are still receiving requests from clients to have their files transferred, but rest assured that if you have requested your file be transferred to our new firm, this has been done and we stand ready to assist you as needed in the future.

We plan to maintain a closer connection with you than was previously possible. In that regard, please enjoy this copy of our first newsletter "The Estate Update." If you would like to ensure you receive future copies of the newsletter, please call Barbara at (757) 969-1900 to verify that we have your current e-mail address on file as future editions will be sent by e-mail. If, however, you do not use e-mail, please let Barbara know to keep you on our mailing list.

As you know, there is a tremendous amount of uncertainty in the tax laws these days. I will speak to some of this in the following article. To ensure that we can keep you up to date as things change, please advise us of any change in personal contact information (address, telephone, and e-mail) so we can ensure you receive the information as promptly as we can get it out to you. I hope you enjoy this first edition of our Newsletter. Best wishes to you all.

Helena

How the Uncertainty of the 2010 Estate Tax Law Impacts You and Your Heirs...

By Helena S. Mock

This is a special year. We've been talking about 2010 since 2001! The game plan was to gradually reduce estate taxes over the past several years until we finally got down to zero. We made it! The plan however, was intended to be a band-aid that would buy enough time for Congress to really roll up their sleeves and figure out what they wanted the estate tax to look like. But, what most families feared has now happened - NOTHING. Congress has done

nothing to make appropriate adjustments for the future.

It was fully expected that before 2010 arrived, Congress would pass laws to "fix" the estate tax but it didn't. Because the issue was not addressed by Congress, our estate tax has been repealed for this year. Great! But what about next year? Well, that same law says that in 2011, estates over \$1 million can be taxed as high as 55%!

Congress will be looking for ways to reduce the record deficits and pay for the new health care and stimulus packages. One way to raise revenues would be to do nothing and allow the

estate tax to come back with a vengeance in 2011, as provided under the existing law.

Some additional changes which will automatically go into effect if Congress fails to act before the end of the year are:

- (1) Changes in the federal income tax brackets to include the disappearance of the 10% bracket (with the lowest bracket being 15%); reinstatement of the "marriage tax penalty;" and an increase in the top four tax brackets from 25%, 28%, 33% and 35% to 28%, 31%, 36% and 39.6%.
- (2) Loss of the Section 121 exclusion of gain from sale of personal residence for sales by heirs, estates, and qualified trusts.
- (3) Reinstatement of the step-up in basis for property acquired from a decedent.
- (4) Reinstatement of the generation-skipping transfer tax with a top rate of 55% and a GST exemption of \$1 million.
- (5) Increase in the top gift tax rate to 55%.
- (6) Modification of the rules for installment payment of estate tax.

In addition to this tremendous tax law mystery, families are still dealing with the problems that this troubled economy presents as well as changes in their families. For many, these are times of financial uncertainty. But when there's a change in the economy, it is also an opportunity to reevaluate your financial situation to make sure your estate plan is keeping up with those changes and new objectives and you are taking advantage of new planning strategies. For example, if you left an asset that has depreciated in value to one beneficiary and your home to another, you may want to re-balance those allocations to your

beneficiaries. Also, to ensure your maximum flexibility for the future, if your trust does not include a special co-trustee provision, you should amend your trust to include such a provision. This will enable an individual either selected by you or by your trustee to make changes to your trust necessitated by changes in the law if you are unable to do so yourself due to incapacity.

With each passing year, we have found that many families have not kept their estate planning documents up-to-date or their Trusts fully funded. Many times we meet with families after someone has passed away or become disabled only to find that a portion of the family's assets were not transferred into the Trust. When this occurs, the assets not held in the Trust may have to go through the expensive and time-consuming probate process.

The combination of your unique personal and financial changes over the past few years make regularly reviewing your estate and financial plan a necessity. If you would like to schedule an appointment to review your estate plan, please give us a call. •

...AND ONE THING YOU CAN DO ABOUT IT

By Susan E. Luscomb

As you have just read in Helena's article, we are facing great uncertainty regarding tax changes and their impact on your estate plan and finances. Some suggestions Helena offered are case-specific and may not apply to you. But virtually everyone can benefit from including one provision in your documents now, to help protect your plan, your estate and your beneficiaries.

For clients with revocable trusts, you know that as circumstances change, including tax laws, you have the right to amend your trust in light of changes to best achieve your planning goals while minimizing taxes. But what if something

should happen which prevents you from amending your trust -- if, for example, you become incapacitated. The good news is that you can provide in your trust for a person who can make these changes: a "Special Co-Trustee," sometimes called a Trust Protector. Those of you who already have Special Co-Trustee provisions in your trust may recall that this independent, third-party steps in only if there is a particular job to be done that you or your trustees cannot do. This includes amending your trust on your behalf if laws change impacting your trust, mediating disputes between parties after your death to keep them out of court, and a variety of other tasks intended to carry out your wishes while avoiding additional costs, time and litigation. You may name the person you wish to serve as Special Co-Trustee, should the need arise, or simply provide that one will be appointed by your Trustees as needed in the future.

For clients with will-based, rather than trust-based plans, you may benefit from creating a revocable trust for one simple reason: the *only* person who can change your will is you. If you become incapacitated, your existing will cannot be changed, regardless of tax or other changes, and its terms must be carried out. This does not provide any flexibility, which can be the hallmark of a good plan in such uncertain times. A trust with a Special Co-Trustee provision, on the other hand, is a more flexible document which can change with the times, guided at all times by your intentions.

The Special Co-Trustee provision can be addressed as part of the process of updating your documents. Let us know if we can answer questions about this topic. •

Virginia's New Uniform Power of Attorney Act

By Susan E. Luscomb, Esq.

Virginia's version of the Uniform Power of Attorney Act became effective on July 1, 2010.

This Act applies to all powers of attorney, whether created before or after July 1st, and therefore this applies to powers of attorney you presently have as part of your estate plan.

For many years, I have cautioned clients that your power of attorney may not be honored when you most need to use it, as Virginia law did not require that the document be accepted by any third party. The Act seeks to remedy that significant problem, as one of its primary goals is to encourage acceptance of the document, both in Virginia and elsewhere, by providing specific rules regarding acceptance and rejection. Although this is good news, there is a significant time element involved in this process - 14 days – a delay which in some instances could still pose major obstacles to taking action under the power.

Another important change provides that in all instances, with a few statutory exceptions, a photocopy of your power is to be honored the same as an original. For some clients who provided a photocopy of a power to his or her agent, believing that their agent would not be able to exercise their power without possession of the original document, this could give your agent significant power: access to your assets, safe-deposit box, and more, without your knowledge and without your intention that they have such power. You should take stock of the whereabouts of your powers, both the originals and photocopies, to be certain that your power of attorney is not used inappropriately.

The Act also provides a variety of "default" definitions and provisions, meaning that in the absence of certain language in your power, the provisions of the Act will control. This may mean that your power will not work the way you had intended.

For these and other reasons, you should have your existing power of attorney reviewed to determine whether any changes are necessary or advisable in light of the new act, in order to

provide the agent under your power the best ability to act on your behalf.

Life Insurance – Have You Reviewed Your Policies Recently?

By Helena S. Mock, Esq.

Life insurance policies and options are constantly changing. Previously, life insurance was viewed as a buy and hold asset, but this is no longer the case. Constantly evolving tax rules, mortality pricing and changes in the market of insurance providers makes periodic review of insurance a necessity. As with your estate plan, it is important to ensure that your life insurance is up to date and will provide the coverage you expect for your heirs and your estate when you need it. An insurance review is a must for policies that are 8-10 years old, but even if your insurance is even just a few years old, you might benefit from a review.

In addition, with the unified credit against estate tax expected to revert back to \$1 million next year, life insurance trusts are a useful tool for preserving your exemption and saving death taxes. In calculating the value of your estate,

the government includes everything you own or in which you hold an interest, including the death benefit of any insurance on your life. Even though the life insurance may not have had much value while you were alive, the full death benefit would be included in calculating the value of your estate. For example, if you had a house worth \$400,000, investments worth \$200,000, a car worth \$30,000, and a 401(k) with \$370,000, that would add up to \$1 million. If you died in 2011, you could pass that tax-free. However, if you also had a \$1 million life insurance policy, your estate would have a total value of \$2 million and it would incur estate taxes of \$435,000.

By having your insurance owned by an insurance trust, the value of the insurance would not be included in calculating the value of your estate. In other words, your estate would avoid having to pay the \$435,000 in estate taxes outlined in the example presented above!

If we can help you in arranging for an insurance review, or to discuss options for protecting your insurance from estate taxes, please contact us. •

Upcoming Client Seminars:

Everything you ever wanted to know about Long-Term Care Insurance and then some. If you are considering long-term care insurance, or if you have questions about an existing policy, please join us on Tuesday, November 16th at either 12:00 p.m. or 6:30 p.m. for a presentation by Don Levine, of Genworth Financial. Seating is limited, so please call Barbara at (757) 969-1900 for reservations.

Interested in learning more about the federal tax law changes that will go into effect in 2011 and how they will affect your own estate plan? Join us on Thursday, December 2nd at either 12:00 p.m. or 6:30 p.m. for a discussion of the "Death of the 2001 Tax Act." Seating is limited, so please call Barbara at (757) 969-1900 for reservations.

Check out our website at www.tpcestate.com