



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:

Thank you to those of you who helped us to celebrate our First Anniversary in May. We were so touched that so many of you were able to attend, and many who could not attend called or sent cards with good wishes. It is funny that what we really meant to be a celebration of and thank you to all of our clients, you turned into a celebration of and thank you to us. We have the most wonderful and thoughtful clients and we are grateful for all of you!

We will begin the New Year by wishing Susan a very happy retirement as she leaves the practice of law after more than 30 years of devoted service to her clients. When Susan and I first teamed up about 6 years ago, the idea was that one day I would be able to help provide a smooth transition for her clients when it came time for her to retire. We didn't know when that day would come, and now it will be a bittersweet good-bye for both of us as we will miss working so closely together on a daily basis. We have very similar philosophies and are both very dedicated to providing the very best service to all of our clients. As many of you know, we even share the same birthday, which we have come to believe may really have some bearing on our similarities.

We will again try our hand at celebrating YOU, our clients, at our upcoming CLIENT APPRECIATION CELEBRATION scheduled for January 12, 2012. And, for Susan's clients, it will also be an opportunity to say good-bye to her and be introduced to Helena. Please mark your calendars now and be looking for your personal invitation. We wish you the best for a happy holiday season and a very happy and healthy New Year.

Helena and Susan

New Gifting Opportunities for 2011 and 2012

By Helena S. Mock

In our last newsletter, we highlighted the "temporary" changes made to the estate, gift, and generation-skipping transfer taxes under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA" or "TRA 2010" for short). With this edition, we want to focus more closely on the gift tax implications of the new law. First and foremost, it is important to remember that the changes made by TRUIRJCA with respect to the

federal gift tax are only effective for 2011 and 2012. Unless extended by Congress, TRUIRJCA will expire at midnight on December 31, 2012. It is also important to remember that as with any law, Congress can change it at any time. Therefore, if you are considering making any large gifts before the end of 2012, it would be better to do so now. Let's review the provisions of TRUIRJCA as they relate to gifting.

Under the prior law, the Estate and Gift Tax Relief and Reconciliation Act of 2001 (EGTRRA), the lifetime gift tax exemption was capped at \$1 million, meaning that gift tax would be due and payable once a donor exceeded \$1 million in

total lifetime taxable gifts. Taxable gifts are those which are in excess of the \$13,000 annual exclusion. The \$1 million cap applied because EGTRRA would expire on December 31, 2010, causing the estate tax exemption to return to \$1 million. Basically, the idea was to prevent anyone from making gifts in excess of what the estate tax could realistically be when the person died. But, for some reason, this same concept was not incorporated into TRUIRJCA, so even though the estate tax could still return to \$1 million, donors are now entitled to give away up to \$5 million in assets before being subject to a gift tax.

Another change is in the tax rate applied to taxable gifts. Under EGTRRA, the maximum tax rate was stepped-down from 55% to 45%, finally hitting 35% in 2010. TRUIRJCA extended the 35% tax rate for estate, gift, and generation-skipping transfers made in 2011 and 2012.

What this tells us is that in 2011 and 2012 donors may make very large gifts of up to \$5 million in the aggregate without being subject to the payment of a gift tax. But, what happens if TRUIRJCA is allowed to expire at the end of 2012 and the gift tax exemption drops to \$1 million? The answer is “we don’t know.” What we do know is that it is entirely possible that the donor will have made a completely tax-free gift which is not subject to recapture. However, it is just as likely that the additional exemption used will be recaptured in additional estate tax (this is referred to as the “clawback”). So what’s the benefit of making these large gifts now, you may ask. The answer is that even if the tax is reinstated, the other benefits of lifetime giving remain. They are: 1) computation of the tax due on a tax exclusive basis (meaning that the funds used to pay the tax are not included in determining the amount of the tax due) rather than a tax inclusive basis (as with the estate tax where you are taxed on the funds used to pay the tax and not just the amount going to your beneficiaries); 2) removal of future appreciation on the assets gifted

away; and 3) removal of future income generated on the assets gifted away.

As with any estate planning or tax strategy, the decision of “to gift or not to gift” during lifetime depends on your individual circumstances. Additional considerations such as “basis” may also be relevant. Please contact us if you would like to discuss this issue with respect to your own plan.

New Fiduciary Services

Over the past few years, we have encountered an increasing number of clients who have difficulty selecting a successor trustee who will assume management of the trust and trust property at the client’s death or disability. This occurs for a variety of reasons, but most often the client either has no children or other family members able to help; the family members are simply not suited to this level of responsibility; or the client wants the assets left to children and/or grandchildren managed and distributed by a professional in order to better protect the assets from creditors and other predators. Traditionally when faced with such situations, clients have sought help from corporate fiduciaries (i.e. independent trust companies or trust departments of local banks). More recently, however, as local banks have been absorbed by national banking institutions resulting in the relocation of their trust departments, clients are less comfortable with this option as the trustees are often uncomfortably far from the beneficiaries. We have also often had complaints from clients that the fees charged by corporate fiduciaries are high, especially in terms of certain trusts, such as life insurance trusts, which currently hold no assets and require little oversight. Of course, in terms of the liability assumed by the trustee, the fees charged by corporate fiduciaries are often justified, but where the grantor himself is paying the fee, it can become burdensome.

For these and other reasons, we are regularly asked whether our firm can serve as trustee. For many years, we have usually declined when asked, as we wished to avoid the perception that we have recommended trust planning to clients in order to provide future employment for ourselves as trustee. We simply have not, and would not, guide our clients on that basis. But with the majority of Americans now planning with trusts rather than wills, there is clearly a need for qualified and affordable trust management assistance.

We have in the past served as trustee, executor, and occasionally as guardian or conservator only when appointed by a local court or when specifically asked to do so by a client with special circumstances. As the requests for serving have increased, we have decided that it often makes sense for our firm to serve in a fiduciary capacity. The firm has prepared a handout entitled "Fiduciary Services" which sets out the various services we offer and our charges for the same. There are two factors distinguishing our services from those of most professional trustees. First, we will not manage investment accounts; we will either leave your investments with your current advisor if you wish and specifically advise in the trust agreement, or we will engage advisors we trust to manage the investment assets. Second, we are obviously very familiar with the trust documents, and therefore are well positioned to carry out the trust terms and guide your beneficiaries to be certain they understand how the trust functions with respect to their "inheritance" and as to options which may be

helpful for them. Both factors enable us to offer our services at very competitive rates.

There remain certain circumstances which warrant, and which we will advise, the appointment of a corporate fiduciary. In other instances, we are pleased to now be able to offer our clients an alternative.

If you are interested in receiving a copy of our "Fiduciary Services" handout, please call our office at (757) 969-1900 and request a copy be sent to you by either regular mail or email. We will be happy to discuss how these services may be of benefit to you and your family.

Good News for Veterans

In case you haven't heard, Virginia veterans who are rated by the Veterans' Administration to be 100% disabled due to a service-connected, permanent, and total disability are now exempt from paying property tax on real property used as the Veteran's principal place of residence. In certain circumstances, the surviving spouse of a qualifying veteran is also eligible for this exemption. However, the Attorney General has opined that the tax relief is not available when the veteran has chosen to place title to the real estate in 1) a revocable trust *with the spouse*; 2) a revocable trust with others apart from the spouse; or 3) an irrevocable trust. If you are otherwise eligible and wish to discuss options which would enable you to qualify for the exemption, please call us.

*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. **Please also call Barbara at (757) 969-1900 if you'd prefer to receive future editions of "The Estate Update" by e-mail.***

Check out our website at www.tpcestate.com