

Tax and Non-Tax Changes Affecting Trusts and Estates

What is PORTABILITY? The new Estate Tax Law allows a deceased spouse's estate to transfer to the survivor any unused portion of the \$5 million exemption. This PORTABILITY is a huge estate tax break for a married couple so they do not lose out on their total \$10 million exemption. As a result, it is essential for a higher net worth family to always see tax counsel at the death of the first spouse. Otherwise, the unused estate tax exemption amount may be lost forever.

The Virginia Power of Attorney Act. People are living longer. Due to medical advances, the fastest growing segment of the U.S. population is individuals over the age of 65. However, with increased age comes the increased likelihood that an individual will suffer some sort of disability or incapacity during which they will require assistance with the management of their affairs.

The Power of Attorney (POA) is a tool which allows you to appoint an agent to manage your property, finances and personal affairs.

In July 2010, Virginia adopted the Power of Attorney Act to address problems with POAs executed **prior** to 2010. The New statute (1) improves portability from state to state; (2) encourages acceptance of powers of attorney by third parties (i.e. bank, insurance, etc) by providing protection for good faith acceptance of a power of attorney by third parties; (3) includes legal remedies if a third party refuses, absent good faith, to honor or accept the power of attorney; and (4) includes safeguards, remedies and sanctions for abuse by an agent. As a result, we recommend each estate plan has an updated POA that conforms to the new law.

Can a "TRUST" be a designated beneficiary of your IRA? Since 2002, a "TRUST" that meets the IRS's "Conduit Trust" rules **can** be a beneficiary of an IRA or other

qualified retirement plan. If the trust has included the "conduit" provisions, IRA owners may designate their **Revocable Living Trust or a subtrust** as either the primary or the contingent beneficiary of their IRA, depending on their family situation. Then, at death, the IRA account is converted to an **inherited IRA trust**, which acts as the "conduit" for the beneficiary instead of being paid outright to the IRA beneficiary. This allows the IRA owner to control the distribution of such funds while allowing for the "stretch" of the income taxation of the IRA account over a greater period of time (usually the life expectancy of the oldest trust beneficiary). In addition, an inherited IRA remaining in the trust will protect funds from the beneficiary's possible failed marriage, lawsuit, unwise spending or predators.

Alternatively, you could use a "**Stand Alone**" IRA Trust that offers even more tax and non-tax benefits. The "Stand Alone" Trust allows the IRA owner **more control** over **how** and **when** the beneficiary receives IRA distributions. Like a Revocable Living Trust, the "Stand-Alone" IRA Trust can always be changed and allows the IRA owner complete control during his/her lifetime. The "Stand Alone" IRA Trust is often used with spendthrift beneficiaries, blended families, special needs children, and multi-generational plans. Passing on qualified retirement plan assets without disqualifying tax benefits requires specialized knowledge. Consequently, these assets deserve special attention, and you are encouraged to consult with an experienced attorney.

Any changes in the Health Care Law? Yes! In 2005, the Health Insurance Portability and Accountability Act (HIPAA) mandated that your Agent (spouse or family member) have a signed written release to access your medical records in case of disability or emergency. Then, in July 2009, the Virginia Health Care Decision Act incorporated into one document the Health Care Power of Attorney, Living Will and Anatomical Gift Form – called the **Advance Medical Directive**. In addition to naming an agent, you also may use your Advance Medical Directive to give specific instructions about all

forms of health care you do or do not want. All estate plans should have the new Virginia Advance Medical Directive.

Any changes in the trust law? Yes! In 2004 Virginia changed its **trust law** to allow inheritances to remain in your trust, fully accessible to children or beneficiaries during their lifetime, yet protected from the children's predators, creditors, mismanagement, greedy in-laws, failed marriages and Federal Estate Taxes at the child's death. This state law change allows for the establishment of a subtrust for each of your children at your death that can **continue indefinitely** on a multi-generation basis just for your bloodline descendants or specifically-named persons.

Why do your children need inheritance protection? Studies show that most people usually spend their inheritance within 18 months after receiving it. Obviously, this is not always the case, and many children will be savers and not spenders. In most instances, however, people are not saving what they need for retirement. This is not because they do not want to save but because they cannot earn enough to fund their current lifestyles. Clients will often ask the question "How do we explain to our children why we have used Multi-Generation planning for our wealth transfer plan?" First, we suggest that you begin with a guiding principle explanation of your family's values, what life lessons you have learned over the years, what your spiritual values are and your philosophy about money and its use. Remember, transferring your family "VALUES" through the generations is just as important as transferring your wealth. Then, simply let them know they will inherit enough money to get all of the education and health care they need, and help pay a mortgage on their home or plan for their retirement.

It is a truism to say we live in a "**constantly changing environment**." For example: what if future changes in the Estate Tax Law adversely affect your tax planning? Or what if future major legislation or court rulings undermine the **INTENT** of your estate plan? If such changes do occur during life and you are unable to modify your trust prior to death, there is now relief under a new Virginia statute. Under the Uniform Trust Code adopted by Virginia in 2005, the Successor Trustee (or beneficiary) of a trust at the death of a Trustmaker can now appoint a third party (CPA, Attorney, Financial Advisor or Corporate Trustee) to respond to changes in the law or correct any errors or ambiguities found in a trust document that are inconsistent with the document's **intent**. In other words, the third party, called a **TRUST PROTECTOR**, can introduce flexibility and responsiveness to future needs or legislative changes to your estate planning documents without your family having to seek an expensive, time consuming court reformation. In our opinion, every trust should include **TRUST PROTECTOR** language.

Finally, for individuals who work in a high risk business (i.e., medical practice), or their personal or business activities (i.e., private pilot) may lead to lawsuits, the Commonwealth last July authorized the creation of a **DOMESTIC ASSET PROTECTION TRUST (DAPT)** for comprehensive creditor protection of personal wealth. The features and benefits of the new Virginia DAPT Law are among the best in the nation.

All of the above state law changes and the new tax law will be discussed thoroughly at each of our two-hour workshops. So, call now with your location, date, time of attendance or, if you prefer, schedule an in-office estate plan review conference with one of our attorneys.