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NP TRUSTS & ESTATES BLOG | NIXON PEABODY LLP

AUGUST 01, 2018



What's trending on NP Trusts & Estates

Estate planning for each stage in life, anatomical gifts, tax returns to consider after death and more. Here's what's trending in estate planning and wealth management.

Estate Planning

Estate planning for each stage in life

Everyone needs an estate plan that takes into account their current circumstances and stage of their life. Estate planning is not a one-and-done process.

College-aged persons

As your college-bound child prepares for the new chapter in their life, parents need to remember that they will no longer be able to assist their child with financial and medical matters by simply being the mom and dad. While you may not fully recognize that your 18-year-old is an adult, the law does.

[Three documents to prepare your child for college](#)

Single persons

Single people often think they do not need an estate plan. However, because the law is not structured to benefit single people without children, it is critical that people in this position create an estate plan.

[Why do single people need an estate plan?](#)

Engaged couples

Preuptial agreements used to be thought of for the wealthy or famous, but are becoming

increasingly popular among “ordinary” couples. Prenuptial agreements can offer certain protections and planning opportunities. In addition, unlike the inheritance protections in place for a married couple, there are none in place for an engaged couple.

[Prenuptial agreements and relationship contracts](#)

[Inheritances and the engaged and separated](#)

Newly married couples

Marriage may impact an individual’s estate plan in unanticipated ways that are worth considering. With the joining of two lives, it’s a good time for a financial review too.

[Massachusetts: wills and wedding bells](#)

[Just married! It’s time for a financial check-up](#)

Separated and divorced persons

While divorce may trigger automatic inheritance protections, the same is not true for those who are separated (but no divorce decree has been issued). During a separation and after a divorce, it’s a good time to review your beneficiary designations as well.

[Inheritances and the engaged and separated](#)

[Designating beneficiaries](#)

Parents

When parents of young children design their estate plans, they are likely to be focused on guardian selection and financial planning for education needs. As their children and grandchildren mature, parents and grandparents may want to turn their estate planning focus to inheritance protection from your creditors and a divorcing spouse.

[Choosing a guardian for your children](#)

[Talking to your parents and grandparents about their estate plans and when to say no to an inheritance](#)

Taking care of others in your estate plan

Regardless of your stage in life, there may be loved ones in your life that you want to make sure are taken care of.

[Taking care of elderly parents in your estate plan](#)

[Wealth planning for children with special needs](#)

[Estate planning for your pets](#)

As you can see, changes in your personal life will likely impact your estate plan. Accordingly, throughout your life, you should revisit your plan to make sure it meets your current wishes and the needs of your loved ones.

— Kaitlyn B. Barnett, Sarah T. Connolly, Deborah L. Anderson, Sarah Roscioli, Stephanie A. Bruno, Mary Ford, Evelyn V. Moreno, Steve McCabe

Anatomical gift: donating your whole body to medical education

Donating your whole body to a medical school, known as making an anatomical gift, will assist with essential understanding of human anatomy and provide worthwhile training for future physicians and medical specialists.

Who can make a whole body donation?

Most adults are eligible for anatomical donation. There may be disqualifying circumstances that arise, such as if an autopsy has been performed or if there is a presence of an infectious or contagious disease including HIV, hepatitis and meningitis.

How can a whole body donation be made?

To make a whole body donation, there is important planning that needs to be done while you are alive. Your first step is to contact the medical school to which you want to donate your body. Most medical schools with anatomical gift programs have information posted online.

Once you have identified a medical school, you will need to obtain, complete and submit their donation form(s). Typically, the medical school will provide you with a pocket/wallet card stating your intention to make a whole body donation and the contact information for the medical school.

It is important that you discuss your body donation with your family, close friends, minister and attorney as actions will need to be taken immediately after death for a viable donation to occur.

What happens after you die?

Within 24 hours of your death, your survivors should contact the medical school to make arrangements for your body to be transported to the medical school for embalming.

Once a donated body has been delivered to the medical school, the body is not available for viewing. Therefore, it is important for you and your family to talk before your death as to whether a funeral or memorial service will be held for you. If a funeral service is desired,

then the funeral home needs to be informed about the body donation so that they can contact the medical school for the proper procedures to follow in order for your body to be acceptable for donation after the funeral has taken place.

What happens after the medical school completes its training?

In most cases, a body will be used for instruction and training of medical students by the medical school for approximately 12 to 15 months.

Afterwards, the remains are cremated at the medical school's expense and in accordance with the donor's written wishes. The cremated remains are either returned to the family who will assume the responsibility for the final disposition or the remains can be buried in a communal interment site.

What if you decide that whole body donation is not what you want?

You can certainly change your mind and revise or revoke your donation. To do so, you will need to notify the medical school in writing.

In addition, should you marry, remarry, change your surname or address, you should also contact the medical school to update or change their records and to have them issue a new donor pocket/wallet card.

— *Deborah J. Wilcox Mabry*

Estate Administration

How to handle your woodworker's tools and equipment after death

If you are lucky enough to have a woodworker in your life, like me, you have been the beneficiary of a coffee table, bed frame, dresser and other items made just for you and will be enjoying them for years to come after your woodworker's passing.

But what about your woodworker's tools and equipment? If your woodworker didn't give direction as to the disposition of them, what should be done with the lumber, table saw, drum sander, hand tools and the plethora of clamps that all woodworkers accumulate?

What is what?

While your woodworker is intimately familiar with the tools and equipment in the woodshop, you may not be. Your woodworker likely has friends who are also woodworkers. You could ask these friends to help you determine which tools are valuable within the woodworking community and which tools are more generic.

In the alternative, you could reach out to a woodworker's association in your area or the woodworking store your woodworker frequented for help in finding a professional to assist you.

What goes where?

My woodworker has spent decades acquiring tools and equipment to create beautiful pieces and would want them to find a good home. There are several options for gifts and donation of the tools and equipment:

- Family, friends and neighbors who also share a passion for woodworking
- Technical high schools or the students in their apprentice programs
- Organizations or clubs at your local high school
- Makerspace in your area
- Habitat for Humanity ReStore or similar charity

Another option would be to sell the tools and equipment, in bulk or individually, through:

- Professional estate sale
- Garage sale
- Craigslist, eBay or the like

Tax considerations

If the overall value of your woodworker's estate meets the federal or state estate tax filing threshold, then you should discuss valuation of the tools and equipment before any of the above actions are taken with the attorney or accountant preparing the estate tax return(s).

If you gift tools to an individual, you will need to file a gift tax return if the value of the tools and equipment given to an individual is worth more than \$15,000. A valuation will be needed so contact your attorney or accountant prior to making the gift.

If you donate tools to a charity, make sure you get a donation receipt so you can deduct the donation on your income tax return. There are charitable deduction rules you will need to take into account.

— *Mary-Benham B. Nygren*

Taxes

Death & taxes: the types of tax returns required after death

There are three types of tax returns that the family and/or executor may need to file after death:

The final individual income tax return (Form 1040)

This tax return will include all income earned and expenses paid through and including the date of death.

If the decedent had a surviving spouse, a final joint return can be filed and signed by the spouse. If not, the executor will be responsible for filing.

Since many tax documents issued in the year of death include income earned after death, it may be necessary to prepare an allocation of pre- and post-death income. Any income earned after date of death may need to be allocated to either the estate or a beneficiary.

The final individual income tax return is due on April 15 of the year following death. The decedent's tax preparer will likely be able to prepare the final individual income tax return.

The estate tax return (Form 706)

If the decedent's total assets at death are valued over the federal filing threshold (\$11,180,000 in 2018), a federal estate tax return will be required. Additionally, a state estate tax return may also be required. Not all states impose an estate tax and the filing threshold for the state may differ from the federal—i.e., decedents dying in 2018 as residents of New York State with assets over \$5,250,000 would be required to file a New York estate tax return.

The estate tax return is due within nine months from the date of death. The executor is required to file this return. If no executor is appointed, any beneficiary who receives property from the decedent can file the return.

A surviving spouse may want to file a federal estate return, even if the estate does not exceed the filing threshold, in order to elect "spousal portability," which passes the decedent's unused exemption to the surviving spouse.

It is important that the estate tax return is prepared by an attorney or accountant with sufficient experience and knowledge.

The fiduciary income tax return (Form 1041)

If a decedent dies leaving property in a sole name, it is likely that the executor will be required to file a fiduciary income tax return. A separate tax identification number issued by the IRS, known as an "EIN," is necessary for the filing of a fiduciary income tax return.

This tax return reports all income earned on assets that were in the decedent's name alone from date of death through the distribution to the beneficiaries and close of the estate. If

the decedent's resident state has state income tax, a state fiduciary income tax return will also be required.

The rules pertaining to the preparation of a fiduciary income tax return differ from personal income tax returns, and therefore should be prepared by an attorney or accountant with sufficient experience and knowledge.

— *Nicole A. Place*

Data Privacy

I'm a data privacy attorney, and my identity was stolen.

I've used the phrase "it's not a matter of if, but when" referring to data breaches more times than I can count, but still, I never thought it would happen to me. When it comes to identity security, I like to think I do most things right. My passwords are sentences, combining capital letters, numbers and punctuation, and I rarely use the same password on more than a few sites. I'm cautious with opening e-mails from people I do not know, and I am even more cautious at opening links out of e-mails. I read about data breaches over a cup of coffee. But, on the first Sunday evening in July, I got an e-mail from my credit card company informing me that a new account was opened in my name.

By 8:30 a.m. the next morning, an alert was placed on my credit, supposedly warning creditors to add an extra layer of verification before opening any lines of credit with that social security number and a fraud resolution case was opened. Because of the July 4 holiday, I did not actually speak to a fraud resolution agent until July 5. During this three-day span, I received at least four calls trying to verify my identity before a new credit card was opened in my name. I was able to stop these cards from being open, but the inquiry was already on my credit report. Additionally, at least four other credit cards were opened in my name, despite the alert.

Or a version of my name. Interestingly enough, this thief was able to open cards using a misspelling of my name ("Jeny") and using my maiden name, which is no longer my legal last name.

My fraud resolution agent, Shelly from one of the major credit monitoring bureaus, was extremely helpful and kind, pretending not to notice as my voice cracked when I heard

that over \$5,000 had been charged at a chain jewelry store and almost \$1,000 at a nationwide department store. Together, Shelly and I called the banks issuing these credit cards to inform them of the fraud. Shelly also noticed two more attempts on my credit report, which we were able to call and confirm should not be opened. But, after almost two hours on the phone with me, Shelly had done all she could do.

Over the next week, I received three more credit cards in the mail and more letters denying an attempt to open a credit card than I'd like to remember. In total, "Jeny" spent almost \$10,000 using my social security number in less than one week.

Having drafted letters to individuals affected by data breaches, I knew that I needed to file a report with the FTC and freeze my credit. I will not be able to open any new lines of credit in my name until I lift the freeze, but at least I know that "Jeny" will not be able to either. I also had to file a police report so that I am not responsible for the \$10,000 worth of jewelry, children's clothes, makeup, etc. that "Jeny" purchased. I will need to watch any documents from the IRS and Social Security Administration to make sure that "Jeny" is not working using my social security number.

Over the past two weeks, I've spent countless hours on the phone canceling accounts. I've filled out massive amounts of paperwork from banks declaring that the purchases were actually fraudulent. I feel violated and angry. My credit score has dropped over 40 points (I am told that all of the various inquiries will be removed from my account within 90 days). Surprisingly, I think I only cried once or twice, although we'd need to confirm that detail with my husband.

When I was filing the police report, the police officer nicely told me that he did not think they'd catch this person. Of course I never thought they would. But that led me to ask, what would I even do if they did catch "Jeny"? Correct his or her spelling? Ask why? Ask how? Cyber criminals never have to face their victims. They are able to cowardly hide behind a computer screen. To "Jeny," I was just a 9-digit social security number.

I know that I was lucky. My credit card company alerted me at the first sign of fraud. I was able to stop this from spiraling even further out of control quickly. It could have been worse.

Not to suggest that we need to be doing more to protect ourselves against data breaches, because we already know that, but perhaps the fact that victims remain faceless is a problem. We hear of the “Company Name Breach”; we do not hear of the Jenny Holmes identity theft. We do not think of the innocent victim. Breaches are happening daily and most of us sit thinking that it will never affect us. But it will, trust me.

— *Jenny L. Holmes*

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