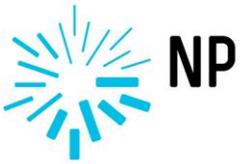


JULY 3, 2018



What's trending on NP Trusts & Estates

Prenuptial agreements and relationship contracts, determining who should be asked to serve in your estate plan, surprise assets, backup withholding and more. Here's what's trending in estate planning and wealth management.

Estate Planning

Prenuptial agreements and relationship contracts

A prenuptial agreement is a legal agreement made by a couple before they enter into marriage to control the financial aspects of their marriage in the event of divorce or death. In order to be legally binding each person must obtain separate legal counsel and provide a full and complete disclosure of all assets, including any expectancy of inheritance.

What aspects of a marriage does a prenuptial agreement control?

Prenuptial agreements govern the financial provisions of a relationship and division of assets if the couple divorce and in the event of the death of a spouse. Many agreements contain provisions that quantify the maximum dollar amount to be paid to a divorcing spouse. This helps protect individual assets and interests in the family assets. The agreement generally has more generous provisions in the event of a death of a spouse, and frequently both the divorce and death benefit under a prenuptial agreement will vary depending on the length of the marriage. The agreement does not control child custody or child support obligations.

Who should have a prenuptial agreement?

A prenuptial agreement is often used by younger couples where there is family wealth that needs to be protected, including a closely held family business or real estate. Older couples often use prenuptial agreements when they have children from earlier marriages and accumulated wealth they want to protect for themselves and their respective children.

Working together to develop a prenuptial agreement is fraught with emotional

considerations. It is often difficult to separate the concepts of love and money. Ideally, a prenuptial agreement will help a couple make positive financial decisions for the management of their financial life on a going-forward basis as a couple. This can be one of the most valuable aspects of thinking through finances before marriage.

What is a relationship contract?

Some prenuptial agreements go a step further and include provisions related to the couple's relationship. For example, a couple may decide to require a certain number of date nights or amount of time alone with each other. A relationship contract can also include an infidelity clause or drug, smoking or alcohol use clauses, with rewards or penalties for certain behaviors.

What if you are married and don't have a prenuptial agreement?

A postnuptial agreement, in states that allow one, is entered into after marriage and contains similar provisions to a prenuptial agreement.

Parents whose children choose not to enter into a prenuptial agreement can help protect family wealth through their estate plan documents by ensuring that their property remains in a specially drafted dynasty trust for the benefit of children and future grandchildren, or other family members, rather than passing outright to children.

— *Deborah L. Anderson*

The people named in your estate plan—what they do and what characteristics they should possess

During the estate planning process, you will likely be asked to nominate persons to serve as your Health Care Proxy, Attorney-in-Fact, Executor and Trustee. As estate planning attorneys, we are frequently asked what these people do and what characteristics they should possess.

Health Care Proxy

The Health Care Proxy makes health care decisions for you if you are unable to make them for yourself. While the Health Care Proxy need not have any medical knowledge, they should be familiar with your health care preferences and be prepared to honor those preferences, even if they conflict with their own.

Attorney-in-Fact

The Attorney-in-Fact under a Power of Attorney handles financial matters for you if you are unable to handle them on your own. The Attorney-in-Fact should be responsible and

trustworthy, as they will be handling your financial matters while you are alive but unable to supervise them.

Executor

The Executor, also known as a Personal Representative in some states, handles your estate. The Executor collects estate assets, pays estate expenses (including estate and income taxes) and distributes assets to the beneficiaries named your will. The Executor should be organized, responsible and trustworthy, someone you feel comfortable carrying on your wishes as expressed by your will.

Trustee

The Trustee handles your trust for the benefit of the beneficiaries, often by overseeing the management of assets for the benefit of a loved one after your death. The Trustee also collects trust assets, pays expenses (including taxes) and, depending on the terms of the trust, distributes assets to the beneficiaries named in your trust. The trustee also must exercise judgment to determine what distributions should or shouldn't be made to the beneficiaries. Like the Executor, the Trustee should be organized, responsible and trustworthy, someone you feel comfortable to carry out your wishes as expressed by your trust. It is usually helpful for the Trustee to be familiar with the beneficiaries and their respective financial situations.

Conclusion

Selecting Health Care Proxies, Attorneys-in-Fact, Executors and Trustees are personal choices that depend, in large part, on your circumstances. Therefore, there is no one-size-fits-all approach. If you are unsure about which persons you should select for these roles, your estate planning attorney can help walk you through the decision process.

— Alexandra P. Crean

Estate Administration

What assets are most often forgotten or unknown by the family?

Our estate attorneys and paralegals have administered a lot of estates over their careers. Here are a few “surprise assets” they have encountered over the years.

What assets are most often forgotten or unknown by the family?

“Frequent flyers often accumulate a substantial amount of airline miles. These miles are often lost at death but some airlines allow for the unused miles. It is, however, important for the frequent flyer to plan ahead to ensure the ability to transfer the unused miles. Some airlines require that the frequent-flyer make a specific bequest of the airline miles in their will.”—**Deborah L. Anderson**

“I have seen furniture, artwork, rugs and other decorative items that family members thought were junk turn out to be collectibles worth a few thousand dollars. If you’re unsure of the value, ask an appraiser for an informal opinion. If the item is valuable, then request a formal appraisal for estate tax purposes. And remember, the cost of an appraisal is a deductible estate expense.”—**Alexandra Crean**

“When doing a search on a state’s abandoned property website, uncashed dividend checks will sometimes appear. This may indicate that there are paper stock certificates still in existence. These often will have been lost and need to be replaced before the shares can be claimed. It is preferable, to the extent that you can, to hold all stock in a brokerage account to eliminate the process and cost of claiming abandoned property and replacing lost certificates.”—**Sally A. Dabrowski**

“A decedent’s son emptied out the contents of a drawer in his father’s house, only to find a handgun among the contents. To say he was quite shocked is an understatement. He called me immediately and was extremely agitated. He had no idea that his father owned a handgun and didn’t know what to do. I advised him to call the local police department for assistance with the disposal of the gun and to be sure to get a receipt.”—**Mary Ford**

“When cleaning out the decedent’s home, family members may find paper stock certificates stuffed in drawers, embedded within piles of papers and hidden in other odd locations. Shares of stock issued as stock splits often get ‘squirreled away’ in this fashion. Many times the certificates are still in their original mailing envelopes. If a cursory review of the decedent’s papers is done, these stock certificates might get overlooked, which would then force the personal representative to report the certificate lost and pay the replacement fee, which is based on the current market value of the shares.”—**Evelyn V. Moreno**

“When cleaning out a loved one’s home, multiple clients have found life insurance policies purchased decades ago by the decedent’s parents when the decedent was a minor or young adult. The beneficiary designations are outdated as they often list the decedent’s parents, who are also deceased. Without such diligent searches, these policies may have never been collected. If you know of a life insurance policy or policies insuring your life, make sure

your executor does as well and check the beneficiary designation.”—**Mary-Benham B. Nygren**

“If an executor is uncertain where a decedent held bank or investment accounts, it is a good idea to send letters to the institutions in close proximity to the decedent’s residence requesting a review of their records to determine if the decedent held an account or accounts with them. The search can also reveal additional accounts at institutions known to have assets belonging to the decedent, like passbook savings accounts or a safe deposit box. It is also a good idea to send search requests to institutions near a decedent’s vacation home as an account may have been established for convenience during visits.”—**Kerri L. Painting**

“When a client has a life insurance policy (i.e., Met Life, Prudential, John Hancock), it is always a good idea to check with the stock transfer agent to determine if there are any shares of stock that were issued when the life insurance companies demutualized. Often times, the owner was never aware that shares of stock were issued in their name. Checking for shares is a relatively easy task—you can call the automated telephone line and enter a social security number to search for an account.”—**Nicole A. Place**

— *Sally A. Dabrowski, Deborah L. Anderson, Alexandra P. Crean, Mary Ford, Mary-Benham B. Nygren, Nicole A. Place, Evelyn V. Moreno, Kerri Painting*

Investments

Trusts: thinking about environmental, social and governance investing

Families utilizing trusts to plan for the future management of assets, as well as beneficiaries of existing trusts, are increasingly interested in thinking about how trust assets can be invested in ways that reflect their values, beliefs and desire for impact on society. Investment strategies that incorporate these ideas are sometimes referred to as responsible investing, socially responsible investing, sustainable investing or impact investing and, more recently, environmental, social and governance (ESG) investing.

What is socially responsible investing?

Until recently, socially responsible investing strategies focused on excluding companies involved in certain products such as weapons, firearms, tobacco, alcohol and/or those companies in conflict with their religious beliefs. Such strategies were thought to sacrifice returns by limiting investment options. In the past 10 years, however, there has been a shift in such investment strategies toward the integration of environmental, social and governance factors into investment portfolios.

What is an ESG integration approach to investing?

The ESG integration approach starts with traditional financial analysis to identify the highest performing companies and then considers ESG factors not typically used in traditional market data, with an emphasis on maximizing financial gain.

What additional factors does ESG investing consider?

ESG factors can include issues that are as diverse as climate change regulation, labor rights, employee work conditions, taxes, safety protections in place to avoid environmental disasters, bribery and corruption, changing demographics and consumer expectations, all of which could potentially impact the long-term success of a company and might provide insight into long-term risk.

Is ESG investing appropriate for a trust?

Implementing an ESG integration investment strategy for trust assets intersects with a trustee's duty to invest trust assets prudently. Under Massachusetts law, unless the language of the trust instrument provides otherwise, a trustee is under a duty to invest trust assets as a prudent investor would, while considering the purposes, terms and other circumstances of the trust, and while exercising reasonable care, skill and caution. Although it is unlikely that an ESG approach to investing would run afoul of a trustee's duties, it remains an unsettled question exactly what a trustee's duties are with respect to implementing an investment strategy aimed at pursuing non-financial benefits. However, the terms of the trust can alter or eliminate the trustee's duties.

What can be done if there is an interest in ESG investing for trust assets?

Individuals interested in ESG integration, or other investment strategies with non-financial benefits, should consult with an estate planning attorney regarding how a revocable trust can be tailored or modified to permit, encourage or even require that a trustee pursue the desired type of investment strategy.

For existing irrevocable trusts, beneficiaries should discuss other options with an estate planning attorney, which may include beneficiary consents, decanting or non-judicial settlement agreements.

— *Sheila Bridges*

Market Pulse: June Economic Highlights

What's happening: Highlights from the NP Investment Team

As the threat of a full-fledged trade war evolves from rhetoric to reality, what are the implications for expectations for economic growth and, in turn, asset classes and asset returns?

While forecasts for 2nd quarter 2018 U.S. economic growth call for a 4.5% increase, a level that would register as the strongest growth in four years, investors — who are always forward-looking — are becoming increasingly anxious about the sustainability of such growth. Investor concerns are attributable to two primary factors.

First, the potential for meaningfully negative economic consequences from a trade war has increased as the number of countries involved increases, as do the retaliatory actions from them. While previously considered a low-probability event by investors during the initial negotiation stages, a larger trade war, and its economic consequences, is now being factored into investor decision-making.

Second, and simultaneously, the U.S. Federal Reserve continues to increase short-term interest rates (in line with previous plans) in an effort to ensure long-run employment and inflation levels do not overheat. Increasing interest rates, which impede the pace of economic growth, coupled with fears of a larger trade war, have caused investor indigestion and an increase in stock market volatility. By extension, safe-haven assets such as longer-term (10+ years) U.S. Treasuries have rallied as investors seek shelter.

Leaders and Laggards: What's Up and Down in the U.S. Stock Market?

ECONOMIC SECTORS	JUNE 2018 THROUGH 6/26/2018	YEAR-TO-DATE 2018 (THROUGH 6/26/18)
Consumer Staples	4.4%	-9.7%
Consumer Discretionary	3.9%	11.2%
Health Care	2.1%	1.6%
Utilities	1.8%	-2.1%
S&P 500	0.6%	1.8%
Financials	-1.5%	-4.4%
Industrials	-3.0%	-5.2%

In reaction to the aforementioned growth concerns, unsurprisingly, global stock markets have taken on a decidedly “risk-off” bias in recent weeks. Domestically, classic defensive

sectors in the S&P 500 have provided leadership while the more-cyclical parts of the market lag as investors contemplate what the next positive catalyst will be for the global economy.

Specifically, Consumer Staples, Health Care, and Utility stocks have all benefited from a relative flight-to-safety in the month of June, given the perceived ability of their businesses to better withstand economic slowdowns. Consumer Staples stocks, led by food, beverage, and household products companies, have bounced back after the sector weight reached its lowest level in over 20 years as a percentage of the S&P 500. In recent years, investors have shunned stocks in this sector due to low revenue growth coupled with increasing costs, which have both depressed profitability. However, as equity market volatility and uncertainty about economic growth increase, these stocks tend to outperform, given their defensive nature.

Simultaneously, the overhang of the threat of a full-fledged trade war and tariff concerns have reversed enthusiasm for Industrials and Financials stocks from the beginning of the year. Financials stocks previously benefited from the expectation of a growing economy, coupled with higher interest rates. As growth expectations come off the boil, longer-term interest rates have plateaued or declined as global investors seek safe-haven assets such as longer-term (10+ year) U.S. Treasuries. The consequence? Banks have a harder time making money from loans.

Finally, Industrials stocks, whose companies have direct exposure to trade/tariffs and global growth concerns, have also been sold off due to greater uncertainty clouding their outlooks.

[Click here](#) for more information about NP's investment capabilities.

— NP Investment Team

Income Taxes

What is backup withholding?

Banks and other businesses that pay certain kinds of income to you must file an information return Form 1099 with the IRS. The Form 1099 shows payment(s) made to you during the year, and includes your name and tax identification number. These payments generally are not subject to backup withholding. Backup withholding, however, is required in certain situations.

What type of payments are subject to backup withholding?

- Interest payments (Form 1099-INT)
- Dividends (Form 1099-DIV)

- Payment Card and Third Party Network Transactions (Form 1099-K)
- Patronage dividends, but only if at least half the payment is in money (Form 1099-PATR)
- Rents, profits or other gains (Form 1099-MISC)
- Commissions, fees or other payments for work you do as an independent contractor (Form 1099-MISC)
- Payments by brokers/barter exchanges (Form 1099-B)
- Payments by fishing boat operators, but only the part that is in money and that represents a share of the proceeds of the catch (Form 1099-MISC)
- Royalty payments (Form 1099-MISC)
- Gambling winnings (Form W-2G) may also be subject to backup withholding
- Original issue discount reportable on (Form 1099-OID), Original Issue Discount, if the payment is in cash
- Certain Government Payments, Form 1099-G

When is backup withholding required?

- You failed to provide a correct taxpayer identification number (TIN) to the payer for reporting on the required information return. A TIN can be either a social security number or individual taxpayer identification number
- You failed to report or underreported interest and dividend income on your federal income tax return
- You failed to certify that you are not subject to backup withholding for underreporting of interest and dividend income

How do I prevent or stop backup withholding?

You will need to correct the reason you became subject to backup withholding. This can include providing the correct TIN to the payer, resolving the underreported income and paying the amount owed or filing the missing return(s).

What is the current backup withholding rate?

The current backup withholding rate is a flat 24 percent.

How do I report credit for backup withholding?

You can report the backup withholding (shown on Form 1099 or W-2G) on your return for the year you received the income.

— *Tiffany Wong*

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NP TRUST & ESTATES BLOG

Achieving success in estate planning, wealth management and tax minimization.