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What's trending on NP Trusts & Estates

What estate planning attorneys "need to know" about family dynamics, charitable giving options, May economic highlights and more. Here's what's trending in estate planning and wealth management.

Estate and Gift Planning

What estate planning attorneys "need to know" about family dynamics

When Tom Petty died at the age of 66 from an accidental overdose, he had been considered a "success story" in the realm of celebrity estate planning as he had a full estate plan in place at his death.

For example, he apparently had a trust that disposed of his artistic property upon his passing through instructions to the successor trustee (his wife from a second marriage) to form a California limited liability company ("LLC") to hold and deal with such property. As he had children from a first marriage, his trust apparently further provided that they should "participate equally" in the management of such LLC.

While such provisions seem to be well-meaning, they have apparently been the source of disagreement between Petty's wife and children and have unsurprisingly resulted in recent litigation. From an estate planning perspective, they also call into question the extent to which family dynamics may have been taken into account in the planning process, especially when it is reported that Petty's wife and children may have had a strained relationship during his life.

What can be done to avoid a family dynamics issue?

Regardless of a person's celebrity, it is important that his or her estate plan take into account family dynamics as they may be when he or she is alive and in good health, as well as upon his or her death or in the event of a serious, long-term illness.

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In particular, attention should be paid to family dynamics in the case of "blended" families where there is frequently tension between the spouse from a subsequent marriage and children of a first marriage. However, equal attention should be paid to all other types of family situations, such as adult children of the same marriage, as there is frequently tension in these situations too.

It is important to have an honest and open discussion with your estate planning attorney about how family members have traditionally gotten along and how you think they would get along when you are no longer there. It may be helpful also to discuss how family members have handled stress or grief, about how they have traditionally handled finances and whether you think that they are actually up for handling additional responsibilities, such as taking care of you or managing your finances. You should also think about whether it would be better for a few family members to work together or one family member to be in charge.

Finally, you should inform your estate planning attorney of any significant relationship or marital issues between family members, of any mental illness or of any substance abuse issues, so that your estate planning attorney may tailor his or her recommendations to achieve your estate planning goals and hopefully provide your loved ones with a more harmonious structure upon your incapacity or passing.

— Alexandra P. Crean

Charitable giving

There are numerous ways you can choose to benefit a charity. Writing a check. Donating an item in-kind. Making a bequest. Establishing a charitable entity. As you determine what charity or charities you would like to benefit, here are a few options as to how you might achieve your goals.

Giving items in-kind

Whether you are simply cleaning out a loved one's house, your own closet or planning for an item of interest to you but not your loved ones, you have several options available.

Donating a vehicle to charity
Estate planning for your wine cellar
Handling a woodworker's tools and equipment after death
What to do with unwanted household items

Giving from retirement assets

The IRS allows taxpayers to donate required IRA distributions to charity during their lifetime as well as to designate a charity as the beneficiary of the balance in an IRA upon the IRA owner's death.

Giving your required IRA distributions to charity

Giving through an estate plan

For generations, charities have benefited under the terms of estate plans. Some give an outright donation. Some establish a trust for the charity's benefit.

Specific bequest in a will or trust
Charitable trust option for concentrated equity positions
Valuation of interests in early termination of CRUT

Giving through funds and foundations

Charitable giving of vehicles can be an important financial tool for gift, estate and income tax planning.

Donor advised funds and private foundations

Charitable deductions

Whether the decision to make a donation to a charity is out of the goodness of one's heart or motivated by tax deduction, the donation must meet the IRS regulations to qualify for tax deduction purposes.

Deducting your charitable donations
Substantiating and reporting charitable contributions
Deducting charity-related travel expenses

— Sarah Roscioli, Mary-Benham B. Nygren, Christine A. Sackett, Elena N. O'Leary, Masha Rabkin, John L. Garrett

Non-spouse IRA beneficiaries: how to avoid common mistakes

The rationale behind establishing an IRA may be quite simple; however, the rules for inheriting and distributing IRA benefits upon the IRA owner's death are anything but. Therefore, understanding the rules governing IRA inheritances, for an IRA owner as well as the named beneficiary, is critical to avoid any unintended consequences, including paying higher taxes or forfeiting asset growth.

The rules governing inherited IRA assets depend upon the beneficiary's relationship to the original IRA owner and the type of IRA that is inherited.

When the beneficiary of inherited IRA assets is a surviving spouse, the rules are simple—the spouse has the option of rolling the assets over into his or her own IRA within 60 days of taking the distribution from the decedent's IRA. For income tax purposes, a spousal rollover of IRA benefits is not considered a distribution and therefore has no income tax consequences. On the other hand, when the beneficiary of inherited IRA assets is a non-spouse (i.e., child, grandchild, other relative, friend, etc.), the rules become quite complicated and carry various tax consequences if not followed properly.

Unlike a surviving spouse, a non-spouse beneficiary does not have the option to roll over the IRA benefits into his or her own IRA. Rather, when a non-spouse beneficiary inherits IRA assets, the beneficiary generally has three options from which to choose. Each option carries specialized rules as well as various pros and cons, which should be considered carefully when making a decision regarding distributions:

1. **Take an immediate distribution.**

A non-spouse beneficiary can choose to have the inherited IRA assets distributed to himself or herself immediately. Once the assets are distributed to the beneficiary, they are treated as the beneficiary's own, and may be used or invested as the beneficiary chooses. Although taking an immediate distribution allows greater flexibility to the beneficiary, the distribution will be included in the beneficiary's gross income and subject to ordinary state and federal income taxes. Depending on the value of the IRA assets, the amount of income taxes due on an immediate distribution in full could be significant. Despite the potential income tax consequences, it is important to note that a beneficiary who is under the age of 59½ will not be subject to the 10% penalty for early withdrawal for the distribution of assets. If a beneficiary needs immediate access to the money, taking an immediate distribution of the entire inherited IRA may be most beneficial.

2. **Transfer the assets into a non-spouse inherited IRA and take RMDs.**

A non-spouse beneficiary has the option of transferring the IRA assets into an inherited IRA, sometimes also known as a beneficiary distribution account. It is important that the beneficiary complete what is known as a "trustee-to-trustee transfer," where the assets move directly and immediately from the existing IRA account to the new, inherited IRA account. Unlike the spousal IRA rollover, there is no option for a 60-day rollover when a non-spouse beneficiary inherits IRA assets. If the assets are distributed directly to the non-spouse beneficiary, the money will be taxed as ordinary income and cannot later be

transferred into an inherited IRA.

An inherited IRA account remains in the name of the decedent, and although a "new" retirement account is created, the beneficiary is not able to make new contributions to the inherited IRA account. Keeping the inherited assets in an IRA account allows the assets to continue to grow on a tax-deferred basis. Thus, if a beneficiary does not have an immediate need for the money, transferring the assets to an inherited IRA may have the greatest long-term growth benefits. Notwithstanding the asset growth advantages, a beneficiary of an inherited IRA is required to withdraw a certain amount of money each year based on his or her age and life expectancy, and also other various factors (including whether there are additional beneficiaries). These required distributions generally begin in the year after the year of death and are more commonly known as "required minimum distributions" (RMDs).

3. **Disclaim all or part of the assets.**

A non-spouse beneficiary can choose to decline to inherit all or part of the IRA assets by executing a disclaimer. If a disclaimer is executed, the IRA assets will pass to the contingent named beneficiaries or, in the event there are no contingent beneficiaries, pursuant to the IRA provider's contractual defaults. The decision to disclaim IRA assets is an irrevocable decision by the beneficiary, which must be made within nine months of the original IRA owner's death and before taking possession of the assets. Before making a decision to disclaim, the beneficiary should consult with tax and estate planning professionals to consider the potential benefits and consequences of such a decision.

— *Kaitlyn B. Barnett*

Wealth Management

Market Pulse: May 2019 Economic Highlights

"Sell in May and Go Away" is a well-known financial world adage, based on the historical underperformance of some stocks in the six-month period commencing in May. Unfortunately, the sell-off in the equity markets this May has not been driven by warmer weather and investors out on vacation but rather on concerns about a global growth slowdown due to the trade war.

The S&P 500 is down over 5% for the month of May with tensions between the U.S. and

China heating up over trade issues. News of a jump in tariffs on Mexico is certainly not helping the global growth sentiment, which is already sagging. The odds of two rate cuts in the next year are now almost fully priced into the markets, but there is still time to work out a deal before a cut becomes necessary and the U.S. economy is still on solid footing. Unemployment remains at historically low levels; wage growth is accelerating, which will support the consumer; and the recent drop in mortgage rates is boosting the housing market.

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

ECONOMIC SECTORS	MAY 2019 (THROUGH 5/30/19)	YEAR-TO-DATE 2019 (THROUGH 5/30/19)
Energy	-10.26%	3.57%
Health Care	-1.78%	1.37%
Consumer Discretionary	-6.39%	14.05%
Information Technology	-7.43%	17.53%
S&P 500	-5.33%	11.25%
Industrials	-6.72%	13.21%
Consumer Staples	-2.62%	10.76%

With concerns surrounding slowing global growth in the month of May picking up, sectors that have led the market year to date have pulled back the most led by the energy sector and information technology sectors. The health care sector has been a relative outperformer this month but for the year remains under pressure due to regulatory concerns surrounding drug prices as we head into the election season, but we remain positive on this group over the long term.

Click here for more information about NP's investment capabilities.

— *NP Investment Team*

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