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ESTATE PLANNING IN THE AGE OF A PANDEMIC

Presented by

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What to Say to Clients

- ◆ Do you have lifetime documents (Health Care Proxy, Durable Power of Attorney, HIPAA Authorization and Living Will)?
- ◆ Do you presently have a Will or a Will and Trust?
- ◆ Family information: names of spouse, children, parents, and siblings.
- ◆ Provide a list of assets with approximate values.
- ◆ Explain that estate planning is complex and takes time, but that some simple actions can be taken to achieve many goals.

Life Insurance and Retirement Plans

- ◆ Confirm beneficiary designations – often can be done online.
- ◆ If beneficiaries are minors, name a custodian.
- ◆ Make print copies, scan in, and send to appropriate individuals.

Banks and Brokerage Accounts

- ◆ Who owns the account? Determine title/name.
- ◆ Consider changing title to:
 - “Pay on death” or “transfer on death”;
 - In joint name or split; or
 - Transfer to name of existing trust.

Real Estate

- ◆ Confirm title and if there is a Declaration of Homestead.

Intestacy

- ◆ Determine what would happen to the estate if there is no Will.
- ◆ Probate assets will be determined by state law.
- ◆ It may actually be what client would want anyway.

Laws of Intestacy in Massachusetts

- ◆ M.G.L.c.190B Section 2-102 and 2-103; Section 3-203.
- ◆ Blended families.
- ◆ Determine who inherits if there is no Will.
- ◆ Determine who is in charge if there is no Will.

Documents

- ◆ Divide the document preparation into two parts.
- ◆ Prepare first the lifetime documents (Health Care Proxy, Durable Power of Attorney, HIPAA Authorization and Living Will).
- ◆ Limit signatures to what is absolutely required (e.g., in Massachusetts, only the Durable Power of Attorney needs to be notarized if it includes real estate).

Check Laws of Intestacy

- ◆ See if a Simple Will can suffice for now. -1
- ◆ Much can be done with a Will and review of beneficiary forms and changing title on accounts.
- ◆ The more complex Wills and Trusts will be done later.
- ◆ Only the most compelling circumstances would prompt amending Wills and Trusts.

Taxes

- ◆ Explain the very basic estate tax laws, and that under these circumstances the focus is not on taxes but on who gets the estate property and when.
- ◆ Consider making an appointment with client to review estate plan when the dust settles.

Triage

- ◆ Give priority to:
 - Urgent cases - serious illness, hospitalization;
 - Clients in high risk groups - age, preexisting conditions, and pregnancy; and
 - First responders – medical, law enforcement, fire, and military.

Executing Documents

- ◆ Send documents electronically with instructions for printing and signing.
- ◆ Limit signatures to what is absolutely required.
- ◆ Be available by telephone to assist.

Notaries

- ◆ Hard to come by - but many banks will notarize for account holders.
- ◆ Call in advance and make an appointment.
- ◆ Some states now allow for virtual notarization.
- ◆ An Act providing for virtual notarization to address challenges related to COVID-19.
 - <https://malegislature.gov/bills/191/S2645>

The Two Step

- ◆ If offering to notarize, here is a technique that you may consider:
 - ◆ “The Two Step”

“The Two Step” - How To Notarize Documents Using Social Distancing

- ◆ Table is placed outside and wiped down with sanitizer.
- ◆ Gloves and masks preferred.
- ◆ Everything is signed in duplicate to avoid need for copying.
- ◆ Client signs at the table with her own pen, then steps back six feet.
- ◆ Attorney notarizes, and steps back 6 feet from table.

“The Two Step” - How To Notarize Documents Using Social Distancing

- ◆ Client picks up one set of documents, puts them in a folder, and takes them home.
- ◆ Attorney takes the other set.
- ◆ To avoid possible spread of the virus from the paper, documents are placed in a safe place for 72 hours or longer.
- ◆ Everybody washes hands or uses sanitizer.

Who Can Notarize What?

- ◆ Instruct clients who may serve as a notary.
- ◆ Determined by state law.
- ◆ In Massachusetts, see Chapter 289 of the Acts of 2016.
- ◆ For example, a notary in Massachusetts cannot notarize for a sibling or an in-law.
- ◆ <https://malegislature.gov/laws/generallaws/partIII/titleI/chapter222>

Remote Access

- ◆ Virtual consultations can be done by Facetime, Skype, or Zoom, with proper precautions.
- ◆ Notarization and witnessing can only be done remotely if permitted by state law.
 - <https://www.wagnerlawgroup.com/blog/remote-online-notarization-becomes-law-in-massachusetts-during-covid-19-emergency>

Wills and Trusts – Are Notaries Required?

- ◆ A Will in Massachusetts does not have to be notarized to be valid.
- ◆ Just need two witnesses.
- ◆ A self-proved affidavit can be added later – M.G.L.c.190B Section 5-204(b).
- ◆ A Trust should be notarized whenever it may involve real estate.

Required Minimum Distribution (RMD) Relief

- ◆ No required minimum distributions in 2020.
 - Applies to tax qualified defined contribution plans, 403(b) plans, and 457(b) plans.
 - Does not apply to tax qualified defined benefit plans.
 - Similar to 2009 relief after 2008 meltdown under Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

Required Minimum Distribution (RMD) Relief

- ◆ Applies to both distributions required for 2020 and 2019 distributions required to commence by April 1, 2020.
 - ◆ If a participant attained age 70½ in 2019 and was scheduled to receive two payments in 2020, both of those distributions are waived in 2020.
- ◆ RMDs resume in 2021 and thereafter.
- ◆ Qualified charitable distributions unaffected by RMD waiver.

RMD Relief Implementation

- ◆ Unclear whether this is an optional plan feature.
- ◆ Was an optional feature in 2009 under WRERA.
 - Even if plan not amended, there will be no excise tax for failing to take an RMD in 2020.
- ◆ RMD waiver can be adopted administratively on a current basis.
- ◆ Plan amendment not required until the last day of plan year beginning on or after January 1, 2022.
 - December 31, 2022, for calendar year plans.

RMD Relief

- ◆ If individual received a distribution before CARES Act was enacted, distribution can be rolled over into an IRA within 60 days.
 - IRS indicated in Notice 2020-23 that if 60-day rollover period would have ended after April 1, the individual may roll over the distribution until July 15, 2020.
 - 60-day rollover option not available to inherited IRAs.
- ◆ For nondesignated beneficiaries (e.g., estates and charities) subject to 5-year distribution rule, if one of the years is 2020, that year is disregarded.
 - In effect, 5-year rule becomes 6-year rule.
- ◆ Conversion of traditional IRA to Roth IRA?

Coronavirus Related Distribution (CVRD)

- ◆ One of following conditions must be satisfied:
 - You or your spouse or your dependent must be diagnosed with the coronavirus.
 - You have experienced adverse financial consequences because you have been quarantined, furloughed, laid off, or had work hours reduced because of the coronavirus.
 - You are unable to work because of a lack of childcare due to the coronavirus.
 - You own or operate a business and have had to close or reduce hours because of the coronavirus.
 - You have experienced an adverse financial consequence due to other factors as determined by IRS.

Applicable Plans

- ◆ Applies to wide variety of plans.
 - Tax qualified defined benefit and defined contribution plans;
 - Code Section 403(a) annuity plans;
 - Code Section 403(b) annuity plans;
 - IRAs; and
 - Government Section 457 deferred compensation plans.
- ◆ Plans are not required to treat distributions as CVRDs.

Plan Amendments to Permit CVRDs

- ◆ 401(k) and tax-qualified profit sharing plans can be amended to allow an in-service corona distribution prior to age 59½.
 - ◆ Such an amendment is probably optional.
- ◆ Defined benefit pension plans and money purchase plans cannot be amended to allow in-service distributions prior to age 59½.

Taxation of Coronavirus Related Distributions

- ◆ Permits withdrawal of \$100,000 in aggregate from plans of controlled groups in 2020.
 - Individual could receive distribution of \$100,000 from his/her tax qualified plan, and \$100,000 from IRA.
 - May be available to both spouses.
 - Can be received from one or multiple IRAs.
 - Plan can rely upon individual's representation that he/she is eligible for a CVRD.
 - Plan should also require a representation from plan participant that a CVRD on a controlled group basis does not exceed \$100,000.

Taxation of Coronavirus Related Distributions

- ◆ CVRD can be used for any purpose.
- ◆ 10% penalty on early withdrawal is waived.
- ◆ Distributions from a qualified plan not subject to mandatory 20% withholding.
- ◆ 10% withholding required, unless waived by participant.
 - Participants must receive notice that they can waive 10% withholding.
 - Substantial penalty under SECURE Act for failure to provide notice.

Taxation of CVRDs

- ◆ CVRDs can be included in income ratably over a 3-year period beginning in 2020.
- ◆ CVRDs can be repaid over a 3-year period.
 - Repayment period begins on day after payment is received.
 - Repayment to an IRA not required to be repaid to IRA from which it was received.
- ◆ Amounts withdrawn can be recontributed in one or more payments within 3 years.
 - Recontributed amount not taken into account in determining maximum contribution limit under the plan.

Consider Loans

- ◆ Not all plans provide for loans.
 - Loans not available under IRAs.
- ◆ Even if plans permit loans, may be limited to one loan.
- ◆ Employees eligible for coronavirus distributions also permitted to take out new loans between March 27, 2020 and September 23, 2020, equal to lesser of 100% of vested account balance or \$100,000.
- ◆ Limits reduced by amount of existing loans.
 - Loans have a 5-year repayment period, compared to 3-year repayment period.

Prior Rules for Charitable Contributions

- ◆ A deduction for charitable contributions only available for taxpayers who itemize.
- ◆ Tax Cut and Jobs Act (TCJA) substantially reduced the number of taxpayers who itemize.
- ◆ A substantial increase in the amount of standard deduction.
 - \$12,400 for unmarried taxpayers;
 - \$18,650 for heads of household;
 - \$24,800 for married taxpayers;
 - Addition to standard deduction for age (at least age 65); and
 - \$10,000 cap on state and local taxes (SALT).
- ◆ Adverse effect on charitable contributions.

CARES Act - New Rules for Charitable Contributions

- ◆ Taxpayers who do not itemize can take an above the line deduction up to \$300.
- ◆ Applies only for 2020 taxable year.
 - Married filing jointly can each contribute \$300.
- ◆ Cannot take into account amounts carried forward from prior years.
- ◆ No need to file Schedule A.
 - An adjustment to income on Schedule 1 of Form 1040.
 - Contribution must be in cash.
 - Must be to a 501(c)(3) charity.

CARES Act - New Rules for Charitable Contributions

- Not applicable to contributions to nonoperating private foundations, support organizations, and donor advised funds.
- CARES Act does not specifically exclude gifts to charitable remainder trust and charitable gift annuities.
- Joint Committee Report indicates generally unavailable for charitable remainder trusts.

CARES Act Documentation

- ◆ No requirement to provide documentation for contribution with tax return.
- ◆ Taxpayers must keep a written record of cash contributions.
 - Documentation substantiating contributions under \$250.
 - Contributions above \$250 require a document or receipt from the 501(c)(3) charity.

Increase in Maximum Amount of Charitable Contributions

- ◆ Historically, the maximum permissible charitable deduction for an individual was based on a percentage of adjusted gross income (AGI).
 - ◆ Under TCJA, the cap on charitable contributions was 60% of AGI.
- ◆ For 2020, CARES Act increases the limitation to 100% of AGI.
- ◆ Contributions must be in cash.

Increase in Maximum Amount of Charitable Contributions

- ◆ Same restrictions on recipients as applicable to partial above the line deductions.
 - ◆ Contributions in excess of 100% of AGI can be carried forward for 5 years.
 - ◆ In subsequent years, the applicable percentage applied to carry forward will be 60% of AGI.
- ◆ Taxpayers using this provision should make an affirmative election on 2020 tax return.
 - ◆ If partnership or S corporation, each partner or shareholder should make a separate election.

Charitable Contribution Relief for Corporate Taxpayers

- ◆ TCJA limited charitable contributions by corporations to 10% of taxable income, and 15% deduction for charitable contributions of food.
- ◆ CARES Act increases both limits to 25% for 2020.
 - Donations in excess of 25% may be carried forward for 5 years.

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- ◆ “These are no ordinary times” - Doris Kearns Goodwin, quoting Eleanor Roosevelt.
 - ◆ Stay Calm and Carry On
 - <https://www.theatlantic.com/video/index/254007/the-story-behind-the-iconic-keep-calm-and-carry-on-poster/>

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QUESTIONS?